

2025:PHHC:177532



**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

202

CRM-M-7391-2023

**Reserved on: 12.12.2205
Pronounced on: 19.12.2025
Uploaded on 23.12.2025**

AVTAR SINGH

... Petitioner

VERSUS

STATE OF PUNJAB AND ANOTHER

... Respondents

CORAM: HON'BLE MR. JUSTICE H.S. GREWAL.

Present: Mr. P.S. Ahluwalia, Sr. Advocate with
Ms. Bhavi Kapur, Advocate for the petitioner.

Mr. Rishabh Singla, AAG, Punjab.

Mr. B.S. Rana, Sr. Advocate with
Mr. Nayandeep Rana, Advocate
for the complainant.

H.S. GREWAL, J. (ORAL)

The petitioner, by way of filing instant petition under Section 482 of Cr.P.C. is seeking quashing of order dated 18.01.2023 (Annexure P-7) passed by the learned trial Court in case bearing FIR No.01 dated 08.03.2013 (Annexure P-1) registered at Police Station NRI, Kapurthala, for offences punishable under Section 406, 420 and 120-B of IPC, whereby the learned trial Court has rejected the cancellation report submitted by the Investigating Agency and has also dismissed the application of the petitioner seeking discharge and consequently opted to frame charges against the petitioner on the same date i.e. 18.01.2023; with a further prayer of quashing the said charge sheet.

2. Learned senior counsel for the petitioner contends that Harneet Singh- the complainant in the present case, had entered into an agreement to sell dated 07.11.2008 for purchasing a chunk of land measuring 07 acres from the petitioner for a total sale consideration of Rs.4 crores. He further submits that an amount of Rs.2 crores was paid in cash and balance amount of Rs.2 crores was paid by way of issuing 08 cheques. The last date for execution and registration of the sale deed was 31.12.2009. However, it is stated that the father of the petitioner executed three sale deeds on 24.04.2009 in favour of four persons qua the land measuring 02 acres and 19 marlas (Annexure P-4). Thereafter, an FIR was registered on the complaint moved by the complainant on 08.03.2013 i.e. after the delay of 4 years and 4 months. Thereafter, the petitioner being an NRI moved a petition bearing No.CRM-M-35393 of 2013 seeking quashing of FIR, however, the same was dismissed vide order dated 14.02.2017 while observing that the petitioner had been declared as proclaimed offender, thus the FIR in question cannot be quashed at his behest. Thereafter, on an application dated 11.04.2017 moved by the petitioner before the IGP, NRI and Women Wing, an SIT was constituted and the matter was referred to the said SIT. The SIT had observed in its report dated 21.04.2017 that 08 cheques, issued for making payment of Rs.2 crores, were dishonoured on account of “insufficient funds.”

3. Moreover, another fact was that the purchasers of 2 acres and 19 marlas of land i.e. Inderpal Singh, Tirlok Singh, Pawan Kumar and Sant Devi had stated that sale deeds were executed by co-accused Sohan Singh in their name for which consideration was already paid to the complainant earlier, in addition to the cheques, which were subsequently dishonoured. Thereafter, on 30.01.2020, a cancellation report was prepared and presented before the Court, whereupon a

private complaint was also filed by the complainant. During this period, a petition bearing No.CRM-M-25481 of 2017 was moved before this Court, wherein the statement of AIGP Surinder Lamba, who was then present in the Court, was recorded. In his statement, he had stated that inquiry report dated 09.05.2018 had been submitted to IGP, NRI and Women Wing, Mohali and as per the said report, a complaint was moved by the complainant by concealing material facts from the earlier investigation and petitioner Avtar Singh son of Sohan Singh, Rashpal son of Chandan Singh (witness) and Girdhari Lal son of Pritam Singh (power of attorney holder of the petitioner) were not joined in the investigation. Besides, the persons, in whose names the sale deeds were executed, were also not joined in investigation. Therefore, as per the inquiry report, the allegations levelled in the complaint against the petitioner- Avtar Singh and his father Sohan Singh were not proved as the matter was of civil in nature. It was also observed that the FIR has been registered after inordinate delay of 04 years and 04 months.

4. Learned sr. counsel further argued that the petitioner had accepted that the deal was made for an amount of Rs.4 crores, out of which an amount of Rs.2 crores was given in cash, against which 02 acres and 19 marlas of land was sold to third person on the asking and at the behest of the complainant, who is also a property dealer and for the remaining amount of Rs.2 crores, 08 cheques were issued, which were dishonoured. Therefore, the land, sold before the target date for execution and registration of sale deed, was sold on the asking and at the behest of the complainant himself, qua which, the report of SIT is there.

5. The learned senior counsel for the petitioner has argued that the FIR has been registered after exhausting the period of limitation prescribed for filing a civil suit for specific performance. Admittedly, no civil suit had been filed.

Therefore, offence under Sections 406 and 420 of IPC is not made out. It is also argued that FIR would have to be read in the light of the ingredients of Sections 406 and 420 of IPC and criminal breach of trust and cheating or dishonesty inducing delivery of property could not go hand in hand.

6. Learned senior counsel for the petitioner has relied upon ***Arshad Neyaz Khan Versus The State of Jharkhand and another, 2025 SCC online SC 2058***, in which it has been observed as under: -

“19. It is settled law that for establishing the offence of cheating, the complainant/respondent No.2 was required to show that the appellant had a fraudulent or dishonest intention at the time of making a promise or representation of not fulfilling the agreement for sale of the said property. Such a culpable intention right at the beginning when the promise was made cannot be presumed but has to be made out with cogent facts. In the facts of the present case, there is a clear absence of dishonest and fraudulent intention on the part of the appellant during the agreement for sale. We must hasten to add that there is no allegation in the FIR or the complaint indicating either expressly or impliedly any intentional deception or fraudulent/dishonest intention on the part of the appellant right from the time of making the promise or misrepresentation. Nothing has been said on what the misrepresentations were and how the appellant intentionally deceived the complainant/respondent No.2. Mere allegations by the complainant/respondent No.2 that the appellant failed to execute the agreement for sale and failed to refund the money paid by the complainant/respondent No.2 does not satisfy the test of dishonest inducement to deliver a property or part with a valuable security as enshrined under Section 420 IPC.

20. On perusal of the allegations contained in the complaint, in light of the ingredients of Section 406 IPC, read in the context of Section 405 IPC, do not find that any offence of criminal breach of trust has been made out. It is trite law that every act of breach of

trust may not result in a penal offence unless there is evidence of a manipulating act of fraudulent misappropriation of property entrusted to him. In the case of criminal breach of trust, if a person comes into possession of the property and receives it legally, but illegally retains it or converts it to its own use against the terms of contract, then the question whether such retention is with dishonest intention or not and whether such retention involves criminal breach of trust or only a civil liability would depend upon the facts and circumstances of the case. In the present case, the complainant/respondent No.2 has failed to establish the ingredients essential to constitute an offence under Section 406 IPC. The complainant/respondent No.2 has failed to place any material on record to show us as to how he had entrusted property to the appellant. Furthermore, the complaint also omits to aver as to how the property, so entrusted to the appellant, was dishonestly misappropriated or converted for his own use, thereby committing a breach of trust.

21. Furthermore, it is pertinent to mention that if it is the case of the complainant/respondent No.2 that the offence of criminal breach of trust as defined under Section 405 IPC, punishable under Section 406 IPC, is committed by the accused, then in the same breath it cannot be said that the accused has also committed the offence of cheating as defined in Section 415, punishable under Section 420 IPC. This Court in Delhi Race Club (1940) Limited vs. State of Uttar Pradesh, (2024) 10 SCC 690 observed that there is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making false or misleading representation i.e. since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriates the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver a property. In such a situation,

both offences cannot co-exist simultaneously. Consequently, the complaint cannot contain both the offences that are independent and distinct. The said offences cannot co-exist simultaneously in the same set of facts as they are antithetical to each other.

22. *At this point, we must hasten to add that the complaint was filed after a delay of nearly eight years. Learned counsel for the complainant/respondent No.2 has failed to impress the Court about the reason for the delay and hence this fact further raises a suspicion about the bona fides of the complainant/respondent No.2. The delay in lodging of the complaint and FIR, coupled with the vague allegations do not inspire any confidence in the Court to allow the criminal proceedings to continue against the appellant. Further, the complainant/respondent No.2 had an alternative remedy of filing a civil suit claiming damages for the alleged violation of his contractual rights which has not been availed but a route through criminal proceedings, when no ingredient of offence is made out, cannot be permitted. Criminal law ought not to become a platform for initiation of vindictive proceedings to settle personal scores and vendettas. The appellant therefore, in our view, could not be attributed any mens rea and therefore, the allegations levelled by the prosecution against the appellant are unsustainable.*

23. *Furthermore, in Inder Mohan Goswami, it was held by this Court that the Court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. It was further held by this Court that it is neither possible nor desirable to lay down any inflexible rule that would govern the exercise of inherent jurisdiction. In view of the above and for the reasons stated above, we are of the firm opinion that to continue the criminal proceedings against the appellant herein would cause undue harassment to him because as observed hereinabove, no prima facie case for the offence under Sections 406 or 420 IPC is made out.”*

7. Learned Sr. Counsel for the petitioner has further placed reliance upon the judgment dated **22.07.2024** of Hon'ble Supreme Court passed in ***Criminal Appeal No.3020 of 2024***, titled as ***“Radheyshyam & others Versus State of Rajasthan and another”***, wherein it has been held as under:

“6. As already indicated above, a perusal of the complaint which has been registered as the FIR does not spell out any element or ingredient of cheating or breach of trust. Mere non-performance of an Agreement to Sell by itself does not amount to cheating and breach of trust. Respondent no. 2 has adequate remedy of filing a Civil Suit for relief of specific performance of a contract which he has already availed and the suit is still pending. The FIR only appears to be an arm-twisting mechanism to pressurise the appellants to execute the Sale Deed or to extract money. Every civil wrong cannot be converted into a criminal wrong. As we find in the present case, respondent no. 2 is trying to abuse the criminal machinery for ulterior motives. It is not his case that the appellants duped him to pay the advance amount and entered into an Agreement to Sell. The High Court fell in error in recording a finding that the ingredients of offences under sections 420 and 406 of IPC are present in the instant case.

7. Section 420, IPC provides that:

“Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

For an offence under Section 420, IPC, the following ingredients must be present:

- i. *Cheating as defined under Section 415, IPC, that is, there should be a fraudulent or dishonest inducement of a person;*
- ii. *An intention to deceive; and*
- iii. *The person cheated must be dishonestly induced to*
 - a. *Deliver property to any person; or*
 - b. *Make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.*

8. *Thus, cheating forms an essential ingredient to constitute and offence under Section 420, IPC. Further, to constitute cheating as defined under Section 415, IPC, it is necessary that a fraudulent or dishonest inducement is done and the deceived person is made to deliver any property owing to the fraud. Section 415, IPC, defines 'cheating', as:*

"Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"."

9. *From the bare perusal of the FIR, it is evident that there was no act of cheating, that is, the complainant was nowhere fraudulently induced or dishonestly deceived by the appellants. A commercial transaction took place between the parties during which the parties consensually agreed for the sale of the property of the appellants and respondent no. 2 paid the part consideration. The default in payment of their loan dues on part of the appellants is not reflective of their deceitful intention towards the complainant. Mere non-registration of the sale or its refusal cannot amount to cheating. The delivery of the advance payment towards consideration was made in furtherance of*

an Agreement to Sell and it is not the case of the respondent that he was in anyway deceived or duped to make such payments to the appellants. It is a civil dispute and gives rise to the complainant's right to resort to the remedies provided under civil law by filing a suit for specific performance."

8. In the light of the above, the case in hand is a case of breach of trust which could not give rise to a criminal prosecution unless fraudulent or dishonest intention is shown right from the beginning of the transaction as the latter sale deeds were executed at the behest of the complainant himself, as has been observed by the SIT in its report as well. Therefore, even subsequent events could not be considered for registering an FIR as fraudulent and dishonest intention from the very beginning is to be taken into account. In the matter of ***Sarabjit Kaur Versus State of Punjab and another, (2023) 5 SCC 360***, in which it has been observed as under:

"12. There is nothing on record to suggest that any notice was issued by the respondent No.2 or the vender to the appellant to get the sale deed registered just either before expiry of the last date fixed for executed of sale deed or immediately thereafter. No civil proceedings were also initiate rather the respondent No.2 proceeded only by filing complaints with the police two of which were earlier filed. Had there been any civil proceedings initiated, the question of readiness and willingness of the vendee is also an aspect to be examined by the Court.

13. A breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep up promise will not be enough to initiate criminal proceedings From the facts available on record, it is evident that the respondent No.2 had improved his case ever since the first complaint

was filed in which there were no allegations against the appellant rather it was only against the property dealers which was in subsequent complaints that the name of the appellant was mentioned. On the first complaint, the only request was for return of the amount paid by the respondent No.2. When the offence was made out on the basis of the first complaint, the second complaint was filed with improved version making allegations against the appellant as well which was not there in the earlier complaint. The entire idea seems to be to convert a civil dispute into criminal and put pressure on the appellant for return of the amount allegedly paid. The criminal Courts are not meant to be used for settling scores or pressurise parties to settle civil disputes. Wherever Ingredients of criminal offences are made out, criminal courts have to take cognizance. The complaint in question on the basis of which F.I.R. was registered was filed nearly three years after the last date fixed for registration of the sale deed. Allowing the proceedings to continue would be an abuse of process of the Court.”

9. Learned Senior Counsel appearing on behalf of the complainant, on the other hand, contends that the petitioner had an intention to defraud the complainant right from the very inception, as four sale deeds were executed even prior to the target date for execution and registration of the sale deed i.e. 31.12.2009. It is further contended that 02 acres and 19 marlas of land was sold on 24.04.2009, which clearly demonstrate that the complainant was cheated. Learned senior counsel for the complainant further stated that since the petitioner had already sold best parcel of land out of 07 acres, the complainant was no longer interested in purchasing the remaining land and also he was not interested in purchasing the alternate land offered to him by the petitioner. Consequently, the complainant did not file any suit for specific performance and straightway got the

FIR registered, which itself registered after a prolonged inquiry. Therefore, on this count alone, the petition deserves to be dismissed.

10. Learned State Counsel also argued on the similar lines as those of the learned senior counsel for the complainant while adding that since the trial Court has already taken cognizance of the offence, this Court should refrain from exercising its inherent jurisdiction under Section 482 of Cr.P.C. It is further argued that on an earlier occasion, a petition bearing No.CRM-M-35393 of 2013 was filed by the present petitioner seeking quashing of the FIR. Hence, the present petition is not maintainable being hit by the principle of res-judicata. At last, he prayed for dismissal of the present petition.

11. Rebutting to the above, it is argued by the learned senior counsel for the petitioner that the earlier petition was not decided on merits and was disposed of vide order dated 14.02.2017 since the petitioner had been declared as proclaimed offender at that stage. Therefore, disposal of the earlier petition would not have any bearing on the instant petition regarding entertaining the same, merely on the ground that the trial Court has already taken cognizance. He places reliance on ***Anand Kumar Mohatta and another Versus State (Govt of NCT of Delhi), Department of Home and another, 2018 SCC Oline SC 2447***, wherein it has been observed as under:

“17. There is nothing in the words of this Section which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High court can exercise jurisdiction under Section 482 of Cr.P.C even when the discharge application is pending with the trial court G. Sagar Suri and Anr. v. State of U.P and Others, 2000(1) RCR (Criminal) 707: (2000) 2 SCC 636 (Para 7). Umesh Kumar v. State of Andhra Pradesh and Anr. (2013) 10

SCC 591 (Para 20). Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced, and the allegations have materialized into a charge sheet. On the contrary it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court.

12. I have heard the learned senior counsel for the respective parties and have gone through the documents and other material available on record with their able assistance.

13. After hearing the senior learned counsel for the respective parties, the admitted facts which emerges out herein are that an agreement to sell dated 07.11.2008 was executed between the parties for selling land measuring 07 acres and the target date for execution and registration of the sale deed was fixed as 31.12.2008. Even though part of land i.e. 02 acres and 19 marlas was sold before the target date, however, according to the petitioner, the said land was sold with consent and at the instance of the complainant in view of the cash amount of Rs.2 crores paid earlier. Even though the said fact has been denied by the complainant, who states that 2 acres and 19 marlas of land was sold in contravention of and in breach of agreement to sell dated 07.11.2008, even then it was open to the complainant to file a civil suit for specific performance and for setting aside the subsequent sale deeds.

14. However, the complainant got registered the FIR in question that too after the expiry of limitation for filing civil suit i.e. after a period of 04 years and 04 months. It appears that the complainant has given criminal colour to a civil

dispute that too after expiry of period of limitation prescribed for seeking redressal through civil remedy. Initially, the petitioner was very much in a position to sell the land in question to the complainant. However, it is a well settled proposition of law that criminal law cannot be set into motion for vindictive proceedings to settle personal scores. Moreover, in such like matters, the ingredients of Section 406 and Section 420 of IPC are not maintainable together, as has been laid down in ***Delhi Race Club (1940) Ltd. And others Versus State of Uttar Pradesh and another, (2024) 10 SCC 690***, in which it has been held that, “Both the offence of cheating and criminal breach of trust are independent and distinct. They both cannot coexist simultaneously in the same set of facts since they are antithetical to each other.”

15. Hence, this Court is of the considered view that every act of breach of trust may not constitute penal offence of criminal breach of trust. The breach of trust involves civil wrong in respect of which a person may seek his remedy for damages in Civil Court. Therefore, the case in hand deserves to be allowed. Moreover, it is a settled principle of law that the High Court is entitled to quash the proceedings if it is of the opinion that continuation of proceedings would amount to abuse of the process of law. In this regard, this Court takes its support from the judgment of Hon’ble Supreme Court in the matter of ***State of Karnataka Vs. L. Muniswamy and others, (1977) 2 SCC 699***, in which the Hon’ble Supreme Court has observed as under:

“7.....In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's

inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice....."

16. In light of the above, the instant petition is allowed and the impugned order dated 18.01.2023 passed by the learned trial Court in case bearing FIR No.01 dated 08.03.2013 (Annexure P-1) registered at Police Station NRI, Kapurthala, for offences punishable under Section 406, 420 and 120-B of IPC, whereby the learned trial Court has rejected the cancellation report submitted by the Investigating Agency and has also dismissed the application of the petitioner seeking discharge and consequently opted to frame charges against the petitioner on the same date i.e. 18.01.2023, is hereby quashed. Consequently, the FIR is quashed and the charges framed against the petitioner alongwith all consequential proceedings arising therefrom also stand quashed. The petitioner is hereby discharged accordingly.

DECEMBER 19, 2025.
Rajender

(H.S. GREWAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No