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

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1. CRM-M No.14357 of 2017

Gurmail Singh son of Bant Singh ... Petitioner

Versus

State of Punjab and another ... Respondents

2. CRM-M No.21191 of 2017

Gurmail Singh son of Ujjagar Singh ... Petitioner

Versus

State of Punjab and another ... Respondents

Date of Decision: 09.01.2025

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. S.S. Rangi, Advocate,
for the petitioner in CRM-M No.14357 of 2017
and for respondent No.2 in CRM-M No.21191 of 2017.

Mr. Sunil Agnihotri, Advocate,
for the petitioner in CRM-M No.21191 of 2017.

Ms. Swati Batra, DAG, Punjab.

MANISHA BATRA, J. (Oral)

1. This common order will dispose of CRM-M No.14357 of 2017 titled as *Gurmail Singh son of Bant Singh v. State of Punjab and another* and CRM-M No.21191 of 2017 titled as *Gurmail Singh son of*

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Ujjagar Singh v. State of Punjab and another.

2. The aforementioned petitions have been filed seeking quashing of a common order dated 06.04.2017 passed by the Court of learned Additional Sessions Judge, Ludhiana in Criminal Revision bearing No.217 of 2017 titled as *Gurmail Singh son of Bant Singh v. Gurmail Singh son of Ujjagar Singh and another*, whereby order dated 14.02.2017 passed by the Court of learned Judicial Magistrate, 1st Class, Ludhiana in Criminal Complaint bearing No.COMI/425 of 2013 titled as *Gurmail Singh son of Ujjagar Singh v. Gurmail Singh son of Bant Singh* thereby summoning the accused Gurmail Singh son of Bant Singh for commission of offences punishable under Sections 177 and 420 of IPC, had been partly allowed and the order for summoning him under Section 177 of IPC was set aside.

3. For the sake of continuity and coherence, the parties shall be nominated as per their original nomenclature as given during before the trial Court.

4. Brief facts relevant for the purpose of disposal of these petitions are that the complainant filed the aforementioned complaint against the accused on the allegations that he was a member of The Chakohi Cooperative Agricultural Services Society Ltd., Chakohi (For short "Society"). The accused had contested election for the post of member of the Society that took place on 19.11.2004. He had filed an affidavit giving false information to the effect that he was not defaulter of any Society though infact loan from one House Fed Society was due to be payable by him. He

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was elected as a member by adopting unlawful means and giving false information and had thereby cheated the Society and also the complainant, he being a member of the same. As such, he prayed for taking action in the matter.

5. In preliminary evidence, the complainant produced oral as well as documentary evidence. Besides himself, he examined two witnesses namely CW-2 Pawan Kumar and CW-3 Bhag Singh. After considering the said evidence, the learned Magistrate vide order dated 05.03.2014, issued process for commission of offences under Sections 177 and 420 of IPC as against the accused by observing that there was a prima facie case to summon him under the aforementioned provisions.

6. The accused appeared in response to the process as issued against him and was admitted to bail. Pre charge evidence was recorded thereafter. On finding a prima facie case for commission of offences punishable under Sections 177 and 420 of IPC, the learned trial Magistrate passed order dated 14.02.2017 thereby framing charges under the aforementioned Sections as against the accused.

7. Feeling aggrieved, the accused preferred a Criminal Revision bearing No.217 of 2017 which was partly allowed vide order dated 06.04.2017 by observing that the order of framing charge under Section 177 of IPC was liable to be set aside and by directing the trial Magistrate to reframe charge under Section 420 of IPC. Feeling dissatisfied, both the parties have preferred the present petitions.

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8. It is argued by learned counsel for the complainant that the impugned order dated 06.04.2017 is liable to be set aside to the extent to which the learned Revisional Court had allowed the revision petition filed by the accused and had observed that no case for issuing process against him qua commission of offence punishable under Section 177 of IPC was made out. It is argued that the learned Revisional Court committed a grave error in observing so since there was sufficient prima facie evidence on record to prove the ingredients for commission of offence under Section 177 of IPC by the accused. Accordingly, it is urged that petition as filed by the complainant deserves to be allowed whereas the petition as filed by the accused is liable to be dismissed.

9. Since it is a case having arisen out of private criminal complaint, therefore, learned Deputy Advocate General, Punjab has not chosen to address any arguments.

10. Per contra, it is argued by learned counsel for the accused that there was no illegality or infirmity in the order as passed by the learned Revisional Court to the extent to which it was held that no case for commission of offence under Section 177 of IPC was made out. It is, however, argued that the learned trial Magistrate as well as the Revisional Court erred in holding that a prima facie case for commission of offence under Section 420 of IPC was made out as against the accused since the ingredients for commission of offence of cheating punishable under Section 420 of IPC had not at all been attracted. Accordingly, it is urged that the

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petition as filed by the accused deserves to be allowed, the impugned order dated 14.02.2017 passed by the Magistrate is liable to be set aside whereas the order dated 06.04.2017 is liable to be set aside to the extent to which the revision petition as filed by him, was dismissed.

11. I have heard learned counsel for both the parties at considerable length and on giving due deliberations to the contentions raised by them, I am of the considered opinion that the petition filed by the accused deserves to be allowed whereas the petition filed by the complainant is liable to be dismissed.

12. At the outset, it may be mentioned that so far as Section 177 of IPC is concerned, as per the same, a person who is legally bound to furnish information on any subject to any public servant, furnishes an information on the subject which he knows or has reason to believe to be false, is liable for punishment. As per the allegations, the accused had furnished a false information before the Election Officer qua his not being a defaulter of any Society whereas infact, it was so. The learned Revisional Court had observed that since no cognizance qua commission of offence under Section 177 of IPC could be taken by the Court in view of the bar created under Section 195 of the Code of Criminal Procedure, therefore, the accused could not be summoned thereunder. On perusal of the record, I am of the considered opinion that there is no illegality or irregularity in the observations so made by the learned Revisional Court. As per Section 195

(1) (a) of Cr.P.C., no Court shall take cognizance of any offence punishable

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under Section 177 of IPC except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. Since in the instant case, there was no complaint in writing of the Election Officer concerned or any person administratively superior to him, therefore, the learned Magistrate obviously could not take cognizance qua commission of this offence. As such, no interference in the order as passed by learned Revisional Court for allowing the petition as filed by the accused against his summoning under this section is called for.

13. So far as the summoning of the accused under Section 420 of IPC is concerned, the same deals with cases of cheating whereby the deceived person is dishonestly induced:-

- (i) to deliver any property to any person or;
- (ii) to make, alter or destroy;
 - (a) the whole or any part of a valuable security or;
 - (b) anything which is signed or sealed and which is capable of being converted into a valuable security.

14. To attract this provision, there are two essential elements i.e. there must be fraudulent intention and something acted on that representation. It is well settled proposition of law that mere deception or mere dishonest intention is not a criminal offence. To hold a person guilty of cheating, it is necessary to show that he had a fraudulent and dishonest intention at the relevant time so as to cause wrongful loss to the

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complainant. For a person to be convicted under this provision, it has to be established not only that he has cheated someone but also that by doing so, he dishonestly induced the person so cheated to deliver any property, or do any other act thereby causing wrongful loss to him. In the instant case, the allegations against the accused are that he had submitted an affidavit containing false information qua his not being a defaulter of any Society, while contesting election for the post of member of the Chakohi Society. It might be so. However, in the opinion of this Court, on the basis of these allegations, no case attracting the commission of offence under Section 420 of IPC had been made out, keeping in view the fact that the allegations in the complaint and the preliminary evidence produced on record by the complainant even if considered to be correct do not make a prima facie case for commission of the offence of cheating. There is neither any allegation in the complaint that by furnishing a false information by way of affidavit, the complainant was put to any wrongful loss by the accused nor any evidence had been led by the complainant to this effect. Further, the material placed on record does not show that as on 18.11.2004 when the affidavit had been furnished by the accused, he was having knowledge that he was a defaulter of any Society and had dishonestly concealed this fact. There is neither any allegation nor any evidence has come on record to show that there was inducement on the part of the accused to deliver any property or to make, alter or destroy any valuable security or anything capable of being converted into valuable security by giving false information at the time of contesting

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election. It has also come on record that he was appointed as Member but his election as such had been subsequently cancelled. Mere concealment of a true fact on his part, even if assumed, was not sufficient to assume commission of offence under Section 420 of IPC by him. While passing the impugned orders, the learned trial Magistrate as well as the Revisional Court, however, did not take the above discussed points into consideration. As such, in the considered opinion of this Court, the order as passed by the learned Magistrate thereby issuing process against the accused qua commission of offence punishable under Section 420 of IPC and the order passed by the learned Additional Sessions Judge affirming the same are not sustainable and are liable to be reversed. The same are accordingly reversed and set aside. As a consequence, the petition i.e. CRM-M No.21191 of 2017 as filed by the complainant is ordered to be dismissed whereas the petition as filed by the accused i.e. CRM-M No.14357 of 2017 is allowed. Consequently, the complaint is dismissed.

09.01.2025
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No