



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

CRM-M-16788-2018
Reserved on 29.10.2024
Date of decision: 23.01.2025

Pardeep

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by: Mr. Salil Dev Singh Bali, Advocate and
Mr. Parveen Jain, Advocate for the petitioner.

Mr. P.K. Aggarwal, DAG, Haryana.

KARAMJIT SINGH, J. (ORAL)

1. The present petition has been filed by the petitioner under Section 482 Cr.P.C seeking quashing of FIR No.227 dated 28.11.2016 (Annexure P-2), registered under Section 420 IPC, in Police Station Line Paar, Bahadurgarh, District Jhajjar and all the subsequent proceedings arising therefrom including final report submitted by the police under Section 173 Cr.P.C dated 18.01.2018 (Annexure P-8).

2. The present petition is contested by the State and reply by way of affidavit of Shashank Kumar Sawan, IPS, Assistant Superintendent of Police, District Jhajjar was filed on behalf of the State.

3. Brief facts of the case are that complainant Santra Devi wife of Hoshiyar Singh reported to the police that she and her children are co-sharer in total land measuring 19 kanal 1 marla comprised of Khewat No.49. The



petitioner/accused was also co-sharer in the said land to the extent of 1/3 share but he sold more than his share out of the aforesaid joint land and thus, committed cheating. Resultantly, FIR (Annexure P-2) was registered against the petitioner.

4. The counsel for the petitioner has contended that even if the allegations made in the FIR are taken to be true, then also no offence is made out against the petitioner. It has been further submitted that the petitioner has not sold any land beyond his share out of the joint land. The sale of land if any made by the petitioner is to the extent of his own share out of the total land. It has been further submitted that Sheetal sister of the petitioner relinquished her share out of the joint land in favour of the petitioner vide blood relation transfer deed (Annexure P-3). It has been further submitted that the allegations made in the FIR are totally false and the prosecution of the petitioner on the basis of FIR (Annexure P-2) is not tenable. In support of his arguments, the counsel for the petitioner has placed reliance upon the decision of Hon'ble Supreme Court in ***Mohd. Ibrahim and others Vs. State of Bihar 2009 (8) SCC 751*** and decision of Full Bench of this Court in ***Bhartu Vs. Ram Sarup 1981 PLJ 204***.

5. On the other hand, the State counsel while supporting the FIR Annexure P-2 and challan Annexure P-8 has *inter alia* contended that complainant Santra Devi is co-sharer in the land in question. That earlier petitioner was also co-owner in the joint land to the extent of 6 kanal and 7 marlas and he sold land measuring 6 kanal 3 marlas to one Rajiv vide sale deed dated 21.01.2007. Petitioner also sold 0 kanal 7 marlas out of joint land to Manna Devi vide sale deed dated 18.11.2005 and he also sold another 3



marlas out of joint land to Laxmi and others vide sale deed dated 26.05.2016. In this manner, the petitioner cheated the complainant and other co-sharers and subsequent purchasers by selling 6 marlas more than his total share of 6 kanal 7 marlas. It has been further argued that on completion of investigation, police has presented challan Annexure P-8 against the petitioner. The present petition deserves to be dismissed being devoid of merits.

6. I have considered the submissions made by counsel for the parties.

7. From the perusal of record, it appears that Hoshiyar Singh, Phool Singh and Sardar Singh were co-owners of land measuring 19 kanal 1 marla, situated in village Parnala, Tehsil Bahadurgarh, District Jhajjar in equal shares. In this manner, Sardar Singh father of the present petitioner was owner to the extent of 1/3 share out of aforesaid joint land measuring 19 kanal 1 marla. Subsequently, petitioner became co-owner in the aforesaid joint land to the extent of 1/3 share. The allegations in the FIR are that the petitioner sold more than his share out of the said joint land and thereby committed cheating. The said FIR is lodged on the basis of complaint lodged by Santra Devi wife of Hoshiyar Singh (since deceased).

8. Admittedly, at the relevant time, the petitioner was a co-sharer in the joint land. The *inter se* rights and liabilities of the co-sharers were settled by Division Bench of this Court in ***Sant Ram Nagina Ram Vs. Daya Ram Nagina Ram AIR 1961 Pb. 528*** which were reiterated by the Full Bench of this Court in ***Bhartu's case (supra)*** and the following propositions, *inter alia* were settled:-



“(1) A co-owner has an interest in the whole property and also in every parcel of it.

(2) Possession of joint property by one co-owner, is in the eye of law possession of all even if all but one are actually out of possession.

(3) A mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.

(4) The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession of a co-owner must not only be exclusive but also hostile to the knowledge of the other as, when a co-owner openly asserts his own title and denies that of the other.

(5) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.

(6) Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners.

(7) under an arrangement consented by the other co-owners, it is not open to any body to disturb the arrangement without the consent of other except by filing a suit for partition.”

9. In the light of the aforesaid settled position of law, the question whether the petitioner has sold the land which is beyond his share, out of the joint land has to be determined only in a civil proceeding and even if it is found that petitioner has sold land beyond his share, the final rights of the co-sharers have to be adjusted at the time of partition of the joint holding. Infact, parties are litigating in the civil Court as Ajit Singh son of Hoshiyar Singh filed civil suit Annexure P-7 dated 16.03.2017 against the present petitioner and other persons, with regard to aforesaid joint land measuring 19 kanal 1 marla.

10. It is pertinent to note that in the instant case, purchasers under the sale deeds have not made any grievance about the sale deeds in question. The FIR Annexure P-2 is registered at the instance of Santra Devi paternal aunt of the petitioner who became co-sharer in the joint land measuring 19 kanal 1 marla on death of her husband Hoshiyar Singh. The Hon'ble



Supreme Court in ***Mohd. Ibrahim's case (supra)*** held as follows:-

14. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner. As the ingredients of cheating as stated in [section 415](#) are not found, it cannot be said that there was an offence punishable under [sections 417, 418, 419](#) or 420 of the Code.

A clarification

15. When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint. The term 'fraud' is not defined in the Code. The dictionary definition of 'fraud' is "deliberate deception, treachery or cheating intended to gain advantage". [Section 17](#) of the Contract Act, 1872 defines 'fraud' with reference to a party to a contract. In [Dr. Vimla vs. Delhi Administration](#) - AIR 1963 SC 1572, this Court explained the meaning of the expression 'defraud' thus "The expression "defraud" involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied."

11. Further, it is trite law that 'cheating' is made out if there was fraudulent or dishonest intention at the very inception of a transaction. Thus,



for establishing an offence of 'cheating', the complainant is required to show that the accused had fraudulent intention at the time of making promise or representation, as is held by Hon'ble Supreme Court in ***Hridaya Ranjan Pd. Verma and others Vs. State of Bihar and another*** AIR 2000 Supreme Court 2341. The same view has been reiterated recently by the Hon'ble Supreme Court in ***Delhi Race Club (1940) Limited and others Vs. State of Uttar Pradesh and another*** 2024 INSC 626. In the instant case, there is nothing on the record to *prima facie* show that petitioner has ever made any such promise/representation/inducement to complainant Santra Devi. So, in this case, there is no question of any fraudulent intention on the part of petitioner qua the complainant. In fact, no transaction or contract has been entered into by and between the petitioner and complainant. Thus, the very first ingredient of offence under Section 420 IPC is not fulfilled from the allegations made in the impugned FIR. In this context, reference is made to recent judgment of Hon'ble Supreme Court in Criminal Appeal No.393 of 2024 titled ***Jit Vinayak Arolkar Vs. State of Goa and others***, decided on 06.01.2025, wherein it is held that cheating case can only be filed by defrauded purchasers of the property, and not by the third parties who are not purchasers under the sale deed in question.

12. From the facts and circumstances of the case in hand, it appears that the complainant tried to give colour of criminal offence to a civil dispute. The Hon'ble Supreme Court has expressed concern over the wrong and rampant practice of converting civil disputes into criminal cases. In Criminal Appeal No.932 of 2021 titled ***Randheer Singh Vs. State of UP and others***, decided on 02.09.2021, the Hon'ble Supreme Court observed as follows:-

“32. In Kapil Agarwal (supra), this Court observed that Section 482 is designed to achieve the purpose of ensuring that criminal proceedings are not permitted to generate into weapons of harassment.

33. In this case, it appears that criminal proceedings are being taken recourse to as a weapon of harassment against a purchaser. It is reiterated at the cost of repetition that the FIR does not disclose any offence so far as the Appellant is concerned. There is no whisper of how and in what manner, this Appellant is involved in any criminal offence and the charge sheet, the relevant part whereof has been extracted above, is absolutely vague. There can be no doubt that jurisdiction under Section 482 of the Cr.P.C. should be used sparingly for the purpose of preventing



abuse of the process of any court or otherwise to secure the ends of justice. Whether a complaint discloses criminal offence or not depends on the nature of the allegation and whether the essential ingredients of a criminal offence are present or not has to be judged by the High Court. There can be no doubt that a complaint disclosing civil transactions may also have a criminal texture. The High Court has, however, to see whether the dispute of a civil nature has been given colour of criminal offence. In such a situation, the High Court should not hesitate to quash the criminal proceedings as held by this Court in Paramjeet Batra (supra) extracted above.

34. The given set of facts may make out a civil wrong as also a criminal offence. Only because a civil remedy is available may not be a ground to quash criminal proceedings. But as observed above, in this case, no criminal offence has been made out in the FIR read with the Charge-Sheet so far as this Appellant is concerned. The other accused Rajan Kumar has died.

35. The appeal is, thus, allowed. The impugned judgment and order of the High Court is set aside and the proceedings in Crime Case No.5973/2020 are quashed as against the Appellant.”

13. With the above reasoning, this Court finds that there are justifiable grounds to exercise its jurisdiction vested under Section 482 Cr.P.C. to quash the proceedings initiated against the petitioner as they amount to abuse of process of Court.
14. Accordingly, the present petition is hereby allowed and FIR No.227 dated 28.11.2016, registered under Section 420 IPC, in Police Station Line Paar, Bahadurgarh, District Jhajjar (Annexure P-2) and all the subsequent proceedings arising therefrom including the final report submitted by the police under Section 173 Cr.P.C dated 18.01.2018 (Annexure P-8) are quashed qua the present petitioner.

23.01.2025
YOGESH

	(KARAMJIT SINGH)
	JUDGE
Whether speaking/reasoned:-	Yes/No
Whether reportable:-	Yes/No