IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 17.01.2025

1. CRM-M 18904 -2017(O&M)

Mohan Singh ... Petitioner

Versus

State of Punjab and another ...Respondents

2. CRM-M-51966 -2022(O&M)

Pritpal Singh ... Petitioner

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. G.K. Mann, Sr. Advocate with
Mr. Anmol Jeevan Singh Gill, Advocate for the petitioners in both cases.

Mr. Rishabh Singla, AAG Punjab.

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HARPREET SINGH BRAR, J. (ORAL)

1. This common order shall decide both the abovementioned petitions as they arise out of similar factual matrix. However, for the sake of brevity, the facts are taken from CRM-M 18904 -2017(O&M).

2. The petitioners have approached this Court for the second time by the present petition under Section 482 Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') for quashing of FIR No. 59 dated 21.05.2015 under Sections 420/467/468/120-B of IPC registered at Police Station Payal, District Ludhiana. (Annexure P-3)

FACTUAL BACKGROUND

3. Succinctly, the facts of the case are that the petitioner had joined as a Clerk on 01.12.1994 with the Municipal Council, Payal, and was allotted the task of house tax assessment. On 07.05.2007, a resolution bearing no. 542 was passed by the Municipal Council directing a new assessment for the collection of tax to be made, owing to the allotment of new house numbers in the town. In lieu of the same, the petitioner along with other staff deputed in this regard, prepared the house tax assessment. In the meeting dated 28.06.2007, house tax assessment list was submitted. Thereafter, as per rules, the assessment list was published in two state level newspaper i.e. Rozana Jagbani and Rozana Tribune, to bring it to the notice of general public. Apart from this, an announcement was also made asking the general public to raise objections, if any. Consequently, 147 objections were raised but respondent No.2 did not raise any objection.

4. The respondent No.2/complainant-Jagdish Singh and his brother Harjit Singh (the co-accused) were co-owners of ½ share each in the residential property. Eventually, Harjit Singh sold his share in the house vide sale deed dated 20.01.2004, which was attested vide Vasika No- 2717 in favour of Jagdish Singh, who had taken a loan of Rs. 3,00,000/- from ICICI Bank for the same. The entry reflecting the sale was also made in the record of Municipal Council, Payal. However, complainant came to know that Harjit Singh in connivance with witness Pritpal Singh Ex. MC and Rajinder Singh and purchaser Darshan Singh has got prepared one fictitious sale deed dated 17.10.2014.

CONTENTIONS

5. Learned counsel for the petitioner *inter alia* contends that the petitioner is a public servant within the meaning of Section 197 of Cr.P.C., which provides for a sanction of the appropriate Government to be mandatorily obtained before prosecution of a public servant. The petitioner made the house tax assessment in the name of the person who was in the occupancy of the said house in pursuance of the official duty imposed on him. However, in this case the sanction of the government was not taken. Furthermore, on 30.05.2006, a family settlement took place wherein all the properties were partitioned and the house was given to Harjit Singh (Annexure P-9). Therefore, in view of the said settlement and the record of the tax assessment in Municipal Council, Harjit Singh was the owner of the house. Hence, any sale executed by Harjit Singh would be legal in nature and no offence qua the same can be made out against the petitioner.

6. Moreover, the entry in the assessment register is not a document of title but is merely prepared to recover the house tax from the occupier. Additionally, the Tax Summary (TS) certificate only shows that the person is paying property tax and does not declare anybody to be the owner of the concerned property. Also, the house falls in *abadi deh* and accordingly, whosoever is in the possession will be deemed to be the owner. Learned counsel further contends that no offence under Sections 420,467,468,120-B of IPC is made out and it is purely a civil dispute that has been given a criminal colour.

7. *Per contra* learned counsel of the respondent contends that the petitioner intentionally omitted the entry at the time of preparing new

assessment register and thereafter falsely recorded Harjit Singh as the owner of the disputed property. Subsequently, this record was used to sell the property to Darshan Singh for Rs. 7,63,000/- vide vasika no.1431 dated 17.10.2024. Learned counsel further argues that Harjit Singh intentionally failed to produce the assessment register for the year 2003-2004. The petitioner prepared a forged assessment register in connivance with Harjit Singh in order to fraudulently sell the property to Darshan Singh.

ANALYSIS AND OBSERVATION

8. Having heard the learned counsel for the parties and after perusing the record of the case, it transpires that the genesis of the dispute lies in the sale deed dated 17.10.2024 executed in favour of Darshan Singh for Rs. 7,63,000/. The case set up by respondent No.2 revolves around the allegation that the petitioner intentionally recorded the name of Harjit Singh in the assessment register as the occupier of the house, enabling him to fraudulently sell it further to Darshan Singh. However, the petitioner is merely a tax clerk and in colour of his official duty, the petitioner made the house tax assessment. Whoever was in the occupancy of the house was entered into the assessment register of the Municipal Council for the purpose of collecting tax.

9. Further, objections were called from the general public by making proclamation in two newspapers consecutively for two days i.e. on 24.07.2007 and 25.07.2007, as well as by announcement in the town. Because of these efforts, 147 objection were raised. However, no objection was raised by respondent No.2 regarding the same. Moreover, a family settlement dated 30.05.2006 (Annexure P-9) has been arrived at wherein respondent No.2 has

already surrendered his right in the said property in favour of his brother Harjit Singh.

10. Pertinently, the petitioner being a public servant cannot be prosecuted without sanction from the appropriate government, which is conspicuously missing in the present case. At this stage, it would be beneficial to study Section 197 Cr.P.C., the relevant part of which is reproduced below:

> ***Section 197. Prosecution of Judges and public servants***.
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> *(1)When any person who is or was a Judge or Magistrate or a public servant not removable from his officer save by or with the sanction of the Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-*
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> *(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;*
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> *(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State of the State Government.*

11. A two Judge bench of the Hon'ble Supreme Court comprising of Justice R. Banumathi and Justice Indira Banerjee in the case of ***D. Devaraja vs. Owais Sabeer Hussain, 2020(7) SCC 695***, speaking through Justice Indira Banerjee, has held as under:

> *"The tenor of section 197 of the Code of Criminal Procedure, 1973 makes it absolutely clear that sanction is required not only for acts done in discharge of official duty but also for the acts done in excess of such duty or authority. To test the veracity of prior sanction of Appropriate Government is whether there is a nexus between the official duty of the public servant and reasonably discharge of such duty. However if the act alleged against public servant is reasonably connected with discharge of his official duty, it is immaterial whether the public servant*

has exceeded the scope of his powers and/or acted beyond the four corners of law. The imperative behind the legislation of section 197 is to safeguard the public servant from prosecution in vexatious and frivolous proceedings. Therefore the act alleged in a complaint purported to be filed against the public servant is reasonably connected to discharge of official duty, cognizance thereof cannot be taken unless requisite sanction of the appropriate government is obtained under section 197 of the Code of Criminal Procedure, 1973."

12. A bare perusal of the allegation contained in the FIR (supra) indicates that it is not a case where the petitioner dishonestly or fraudulently made a document in favour of Harjit Singh with a mala fide intention. Neither is it a case where the petitioner has dishonestly or fraudulently altered a document without lawful authority. Further, the entry in the assessment register is not a document of title but is merely to record recovery of tax from the occupier. Since there was no intention to cheat from the inception of the transaction, offence under Section 420 IPC is not made out against the petitioner(s). A two Judge Bench of the Hon'ble Supreme Court in ***Mariam Fasihuddin and another vs. State by Adugodi Police Station and another 2024 AIR SC 801***, speaking through Justice Surya Kant, opined as follows:

"11. It is thus paramount that in order to attract the provisions of Section 420 IPC, the prosecution has to not only prove that the accused has cheated someone but also that by doing so, he has dishonestly induced the person who is cheated to deliver property. There are, thus, three components of this offence, i.e., (i) the deception of any person, (ii) fraudulently or dishonestly inducing that person to deliver any property to any person, and (iii) ***<u>mens rea or dishonest intention of the accused at the time of making the inducement.</u>*** *There is no gainsaid that for the offence of cheating, fraudulent and dishonest deliver any property to any person, and* ***<u>dishonest intention must exist from the inception when the promise or representation was made</u>****."*
(emphasis added)

As far as the offence of forgery is concerned, a two Judge Bench of the Hon'ble Supreme Court in ***Arun Bhandhari vs. State of Uttar Pradesh***

(2013) 2 SCC 693, speaking through Justice Dipak Misra, made the following observations:

> *"20. In G.V. Rao v. L.H.V. Prasad and others, 2000(2) RCR (Criminal) 290: (2000)3 SCC 693 this Court has held thus:*
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> *"7. As mentioned above, Section 415 has two parts. While in the first part, the person must "dishonestly" or "fraudulently" induce the complainant to deliver any property; in the second part, the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional. As observed by this Court in Jaswantrai Manilal Akhaney v. State of Bombay, AIR 1956 Supreme Court 575 a guilty intention is an essential ingredient of the offence of cheating.* ***In order, therefore, to secure conviction of a person for the offence of cheating, "mens rea" on the part of that person, must be established.*** *It was also observed in Mahadeo Prasad v. State of W.B., AIR 1954 Supreme Court 724 that in order to constitute the offence of cheating, the intention to deceive should be in existence at the time when the inducement was offered."* (emphasis added)

13. Recently, a two Judge bench of the Hon'ble Supreme Court in ***Kunti and Another vs. State of U.P. Criminal Appeal No. 1380 of 2023*** *decided on 03.05.2023*, speaking through Justice Sanjay Karol, observed as follows:

> *"9. However, we do not find the need to engage with the grounds as urged, because a perusal of the record in no uncertain terms reflects the dispute as being of a civil nature. This court recently, in Sarabjit Kaur vs. State of Punjab and anr., observed that "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."*
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> *10. A two judge bench of this Court in ARCI v. Nimra Cerglass Technics (P)Ltd., while deliberating upon the difference between mere breach of contract and the offence of cheating, observed that the distinction depends upon the intention of the accused at the time of the alleged incident. If dishonest intention on part of the accused can be established at the time of entering*

into the transaction with the complainant, then criminal liability would be attached.

11. In Vijay Kumar Ghai v. State of W.B (2022) 7 SCC 124, on e of us (Krishan Murari J.), observed in reference to earlier directions as under:

> *"24. This Court in G. Sagar Suri v. State of U.P. [G. Sagar Suri v. State of U.P., (2000) 2 SCC 636 : 2000 SCC (Cri)513] observed that it is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process, particularly when matters are essentially of civil nature.*
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> *25. This Court has time and again cautioned about converting purely civil disputes into criminal cases. This Court in Indian Oil Corpn. [Indian Oil Corpn. V. NEPC India Ltd. (2006) 6 SCC 736 : (2006) 3 SCC(Cri) 188] noticed the prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/ creditors. The Court further observed that: (Indian Oil Corpn.Case [Indian Oil Corpn. V. NEPC India Ltd. (2006) 6 SCC 736 : (2006) 3 SCC(Cri) 188] SCC p.749 para 13)*
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> > *"13. ... Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pres sure through criminal prosecution should be deprecated a nd discouraged."*
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> *12. Having regard to the above well - established principles and also noting that the present dispute is entirely with respect to property and more particularly buying and selling thereof, i t cannot be doubted that a criminal hue has been unjustifiably lent to a vicil natured issue."*

14. In view of the discussion above, this Court finds that the issue involved between the parties is purely of civil nature. The matter already stands settled between Harjit Singh and Jagdish Singh (Annexure-9). Moreover, the ingredients of any of the alleged offences are not made out against the petitioner(s).

15. In view of the aforesaid facts and circumstances, both the abovementioned petitions are allowed and FIR No. 59 dated 21.05.2015 under Sections 420, 467, 468, 120-B of Indian Penal Code registered at Police Station Payal, District Ludhiana (Annexure P-3) and all subsequent proceedings arising therefrom, are quashed qua petitioner(s).

16. Pending miscellaneous application(s), if any, shall also stand disposed of.

17. Photocopy of this order be placed on the connected file.

(HARPREET SINGH BRAR)
JUDGE

17.01.2025
Ajay Goswami

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