

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-33087-2012 (O&M)

Reserved on 16.10.2024

Pronounced on 09.01.2025

Sanjeev Kumar Jain

... Petitioner

VS.

State of Punjab & Anr.

... Respondents

CRM-M-33936-2012 (O&M)

Narinder Dhir

... Petitioner

VS.

State of Punjab & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Nitin Thatai, Advocate and
Mr. Karan Sharma, Advocate (CRM-M-33087-2012)
Ms. Sapna Seth, Advocate (CRM-M-33936-2012)
for the petitioner (s)

Mr. Malkiat Singh, DAG Punjab

Mr. Aayush Gupta, Advocate for respondent No.2-complainant

Sandeep Moudgil, J.

(1). By this order, I shall dispose of the above-cited two criminal misc. petitions which have been preferred against the same FIR got lodged by respondent No.2-Amarjit Singh. For the purpose of order, CRM-M-33087-2012 is treated as the lead case.

(2). This petition under Section 482 CrPC has been filed by the petitioner seeking to quash the FIR No.65 dated 24.05.2011 (Annexure P8) under Sections 406/120-B IPC (Section 420 IPC added later on), registered at Polie Station Model Town, District Ludhiana and all subsequent proceedings arising therefrom.

(3). Learned counsel for the petitioner submits that even as per the allegations made in the FIR, it was Anil Jain, who was met with the complainant and the agreement to sell has been entered by the complainant with Anil Jain and in fact the petitioner never met with the complainant nor he gave any money to the petitioner or his partner and thus there is no question of any offence under Section 406/420 IPC. Moreover, there is no signature of the petitioner on the alleged agreement to sell between Anil Jain and the complainant whereas he had agreement to sell dated 18.03.2008 from Narinder Dhir and the same was in writing and while entering into an agreement in favour of Anil Jain on 15.07.2008, specific reference with respect to the agreement dated 18.03.2008 was also made in the same.

(4). It is urged that there is nothing on record to even remotely show that there was any *mens rea* between the petitioner and Anil Jain. It is submitted that in village Ayali Kalan, no consolidation had taken place which is the reason for rise in civil disputes and in fact, the complainant is in collusion with other persons after having sold his part of the land to Narinder Dhir (petitioner) which is on the road and is trying his best to get the said land back. Further, it is argued that as per the statement of Gurpreet Singh, the complainant Amarjit Singh entered into agreement with Dinesh Kumar and Ashok Kumar to sell land in question and the money was given by the complainant to Anil Jain and not to the petitioner.

(5). Learned State counsel submits that the offences attributed are non-compoundable and the final report under Section 173 CrPC has already been filed on 20.12.2011 against the petitioner(s). In the additional affidavit dated 27.01.2023 filed by Jasroop Kaur Batth, IPS, ACP, Civil Lines,

Ludhiana, it has been averred that there are specific allegations that the petitioner – Narinder Dhir and Sanjeev Kumar Jain connived with each other and allured the complainant to purchase the said property from his co-accused Anil Jain with an assurance to get the sale deed executed from Narinder Dhir knowing full well that Narinder Dhir-petitioner has already been restrained by the Civil Court vide order dated 29.04.2009 from selling this property, therefore, sufficient evidence is available with the prosecution to connect the accused persons with the commission of offence.

(6). Notice of motion was issued on 19.10.2012 and the trial court was directed to adjourn the hearing beyond that date. Umpteen adjournments were sought on behalf of the parties until 19.01.2017, when a Coordinate Bench took cognizance of the interim order in favour of the petitioner(s) and since it was informed that the parties are likely for amicable settlement, the matter was referred to Mediation and Conciliation Centre of this Court. There also, the mediation proceedings could not fructify and the matter was remitted in ordinary course of hearing on 09.02.2018. However, thereafter, the matter was ultimately came up for hearing before this Bench on 03.05.2024.

(7). Learned counsel for the parties have been heard.

(8). The allegations leveled by the complainant/respondent No.2, no doubt are serious where Narinder Dhir – owner of the disputed property (petitioner in CRM-M-33936-2012), entered into an agreement to sell with Sanjeev Kumar Jain – the petitioner on 18.03.2008 (Annexure P5) for land measuring 6080 sq. yards and earnest money of Rs.2 crores was received by Narinder Dhir. The petitioner herein entered into another agreement to sell

dated 15.07.2008 (Annexure P6) in favour of his friend, Anil Jain and based on these agreements (Annexure P5 & P6), Anil Kumar falsely assured and allured the complainant/respondent No.2 and got executed an agreement to sell dated 18.09.2009 (Annexure P9) by stating that the property was free from all encumbrances and as such, respondent No.2 made payments to Anil Jain and Sanjeev Kumar Jain. However, when the petitioners(s) did not come forward to register the sale deed, it came to the knowledge of the respondent No.2 that the petitioner(s) had fraudulently executed a cancellation document dated 23.02.2011 (Annexure P7), annulled their agreement (Annexure P6) without prior information or consent of respondent No.2 and refused to return the payment made by respondent No.2.

(9). It is of paramount importance 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) deception of any person,
- (ii) fraudulently or dishonestly inducing that person to deliver any property to any person, and
- (iii) mens rea of the accused at the time of making the inducement. It goes without saying that for the offence of cheating, fraudulent and dishonest intention must exist from the inception when the promise or representation was made.

(10). In the case of **State of Kerala v. A. Pareed Pillai and another, AIR 1973 SC 326** the Supreme Court ruled that to hold a person guilty of the offence of cheating, it has to be shown that his intention was dishonest at the time of making the promise and such a dishonest intention cannot be inferred

from a mere fact that he could not subsequently fulfill the promise. Similar view has been taken in the case of **S.W. Palanikar and others v. State of Bihar & another (2002) 1 SCC 241** and also in the case of **State of Kerala vs. A. Pareed Pillai and Anr. (1972) 3 SCC 661**.

(11). In **Mariam Fasihuddin v. State, 2024 SCC OnLine SC 58**, the allegations were of forgery and cheating against the appellants, who are the mother and maternal grandfather of a minor child. The charges stemmed from a complaint by the child's father, claiming that his signature was forged on a passport application for the minor child. While addressing the contours of the offence of 'cheating' adverting to the facts involved therein, the Supreme Court underscored that not every unlawful act automatically qualifies as 'deceitful'. Speaking for the Bench, Justice Surya Kant held as under:-

“23. 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) mens rea or dishonest intention of the accused at the time of making the inducement. There is no gainsaid that for the offence of cheating, fraudulent and dishonest intention must exist from the inception when the promise or representation was made.

24. It is well known that every deceitful act is not unlawful, just as not every unlawful act is deceitful. Some acts may be termed both as unlawful as well as deceitful, and such acts alone will fall within the purview of Section 420 IPC. It must also be understood that a statement of fact is deemed 'deceitful' when it is false, and is knowingly or recklessly made with the intent that it shall be acted upon by another

person, resulting in damage or loss. 'Cheating' therefore, generally involves a preceding deceitful act that dishonestly induces a person to deliver any property or any part of a valuable security, prompting the induced person to undertake the said act, which they would not have done but for the inducement.

25. The term 'property' employed in Section 420 IPC has a well-defined connotation. Every species of valuable right or interest that is subject to ownership and has an exchangeable value - is ordinarily understood as 'property'. It also describes one's exclusive right to possess, use and dispose of a thing. The IPC itself defines the term 'moveable property' as, "intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth." Whereas immoveable property is generally understood to mean land, benefits arising out of land and things attached or permanently fastened to the earth."

(12). In the present case, the manner in which Narinder Dhir sold the land to Sanjeev Kumar Jain who in turn sold the same land to Anil Jain and thereafter, Anil Jain further entered into agreement to sell with the complainant and received Rs.1.5 crores and subsequently backed out stating that since agreement to sell between Anil Jain and Sanjeev Kumar Jain stood cancelled, the agreement entered into with the complainant by Anil Jain cannot be executed, itself, is sufficient enough to infer, though *prima facie*, that all the three persons have conspired and are acting in connivance, with prior intention to deceive and play fraud with the respondent No.2.

(13). Moreover, it is also an admitted fact that the property in question could not have been sold by Narinder Dhir as there is civil court injunction and the fact the property is not free from encumbrances was

concealed which was not informed by the petitioner to the complainant-purchaser. Therefore, the allegations of fabrication of the agreement with premeditated mind to cheat and defraud respondent No.2 by unlawfully retaining Rs.1.5 crores cannot be brushed aside which can only be established by leading evidence.

(14). In case of State of **A.P. v. Aravapally Venkanna & Anr., (2009) 13 SCC 443**, the Supreme Court has held that exercise of power under Section 482 CrPC is an exception and not the rule and the acceptability of materials to fasten culpability is a matter of trial. It held that the inherent power should not be exercised to stifle a legitimate prosecution and when FIR discloses commission of an offence, interference with FIR at threshold is to be in very exceptional circumstances. The relevant extract of the said pronouncement reads as under:-

“8. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. It would not be proper for

the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint/F.I.R. has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant or disclosed in the F.I.R. that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint/F.I.R. is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in Court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceeding.”

(15). In view of the above discussion, there is no cogent reason available on record which may prompt this court to interfere and quash the FIR proceedings in exercise of Section 482 CrPC.

(16). Dismissed.

09.01.2025
V.Vishal

1. *Whether speaking/reasoned?*

2. *Whether reportable?*

(Sandeep Moudgil)

Judge

Yes/No

Yes/No