HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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CRM-M-18998-2025
Date of Decision: 09.04.2025
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Pardeep Suri & Anr. ... Petitioners

VS.

Karandeep Bansal ... Respondent

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CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

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Present: Mr. Ankur Bansal, Advocate for the petitioner

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Sandeep Moudgil, J. (Oral)

(1). This petition under Section 528 BNSS, 2023 has been filed by the petitioner seeking to quash the criminal complaint No.10 dated 06.01.2022 (Annexure P1) as well as the summoning order dated 03.06.2024 passed by ACJM, Bathinda (Annexure P2) vide which the petitioners have been summoned to face trial in the above said complaint.

(2). Learned counsel for the petitioners contends that the cheque in question has not been issued by petitioners nor the same pertained to the petitioners' account and it does not bear the signatures of the petitioner No.1 and even as per memo dated 17.10.2019, the Bank reported that the Title of the account is wrong as the cheque No. 103264 is issued from account no. 01578460541137 of OBC Bank Branch Hambra District Ludhiana inasmuch as cheque book 103251 to 103275 (25 leaves) to which cheque No. 103264 belonged was issued to one Amandeep Singh son of Bikramjit Singh pertaining to account No.15782191004136 and as such, neither the cheque in question nor the account number pertained to the petitioners.

(3). He raised an argument that the impugned summoning order dated 03.06.2024 is cryptic and 'non-speaking' order and is passed without appreciating the facts on the record and the settled principle of law and is not based on appreciation of the evidence. It is then urged that the trial court ought to have resorted to Section 202 CrPC which clearly envisages holding of an inquiry either by the police officials prior to issuance of process under Section 204 CrPC which has not been adhered to. It is then asserted that the amendment of the Code of Criminal Procedure in the year 2005 makes it mandatory for the Magistrate to hold an enquiry, in a case, where the accused persons are residing at a place beyond the area in which the Magistrate exercises his jurisdiction.

(4). Having heard learned counsel for the petitioners, it appears that the allegations leveled in the complaint are grave inasmuch as the specific case of the complainant is that he had business dealings of sale-purchase of buffaloes with the accused persons on credit basis and as such, many buffaloes were taken by the petitioners on credit basis running into Rs.33,60,000/- which fell to the debt liability of the petitioners towards the complainant and as such, they issued one cheque bearing No.103264 dated 08.10.2019 for Rs.8,20,000/- drawn on OBC as part payment. It has also come on record that the complainant had moved an application before the police of Bathinda but no action was initiated observing that the complainant has already filed a case under section 138 NI Act against the accused and there is no need for further proceedings.

(5). On critical analysis, it is now a well settled proposition of law that the offences under Section 138 of the NI Act and Section 420 of IPC are distinct from each other because ingredients of the two offences are different, for, in a prosecution under Section 138, it has to be established that the cheque has been issued by the accused to discharge a legally enforceable debt or liability and the same has been dishonoured for insufficiency of funds etc. and despite receipt of statutory notice of demand, the accused has failed to pay the amount of cheque within the stipulated time. But in a prosecution under Section 420 IPC, fraudulent or dishonest intention is an important ingredient to be established and it has to be proved by prosecution that at the very inception i.e., at the time of issuance of the cheque by the accused, he had a dishonest intention.

(6). According to section 420 of IPC, "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." Cheating involves breaking rules to gain an unfair advantage, whether those rules are written or based on mutually agreed norms. Under the Indian Penal Code, cheating is considered a crime. A person is said to be cheating when they use dishonest methods to benefit at the expense of others. IPC Section 415 gives a comprehensive definition of what it means to cheat and the punishment for cheating is defined under 420 IPC.

(7). The crux of the complaint coupled with the perusal of the impugned summoning order would leave no manner of doubt that there had been business dealing the complainant and it was due to good faith and trust shown by the petitioners that the complainant agreed to sell 10 buffaloes on 23.08.2019 for Rs.9,90,000/- out of which they paid only Rs. 1 lakh and again on 03.09.2019, the petitioners came to the house of the complainant and demanded 18 buffaloes for a value of Rs.17,65,000/- and the initial amount paid in lieu thereof was as meager as only Rs.65,000/-. This did not stop here: the petitioners are said to have again approached the complainant and purchased 9 buffaloes for a sum of Rs.8,70,000/- and paid Rs.1 lakh only and in such way, Rs.33,60,000/- became due towards the petitioners.

(8). The facts narrated in the complaint are self-speaking and requires no special comprehension to assimilate that the intention of the petitioners was to cheat and dishonestly induce the complainant on the pretext that they have business dealings. Had there been bona fide on the part of the petitioners, they would have come forward to make the due payments. Nor is there any documents produced on record to show that the petitioners are the victim of fraud and cheating at the hands of the complainant and it is the complainant who have duly produced the bank statement and other witnesses before the trial court on the basis of which, the impugned order has been passed calling upon the petitioners to face trial. Prima facie, there are evidences and material which tilt against the petitioners and to prove otherwise, if at all, they have to undergo the trial proceedings.

(9). In view of the above discussion, there is no merit in the present petition for this Court to interfere and quash the complaint (Annexure P1) as well as the consequential summoning order dated 03.06.2024 (Annexure P2).

(10). Dismissed.

09.04.2025
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? *Yes/No*