



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

CRM-M-20725-2025(O&M)
Date of decision: 22.04.2025

Prabhjeet Singh and another

...Petitioners

versus

State of Punjab and another

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Dr. Rau P.S. Girwar, Advocate
with Ms. Archana Arora, Advocate,
Ms. K.T. Rau, Advocate
and Mr. Ashish Sharma, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. A.G., Punjab.

HARPREET SINGH BRAR, J.(Oral)

1. The present petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') seeking quashing of FIR No.52 dated 08.03.2023 registered under Sections 406, 420,120-B IPC at Police Station Samrala, Khanna and all subsequent proceeding emanating therefrom.

2. Briefly, the facts, as alleged, are that respondent No.2-complainant purchased a piece of land measuring 07 kanals 10 marlas in village Mal Majra, Tehsil Samrala from the petitioners vide a registered sale deed dated 03.09.2019. However, they failed to give her possession of the same. An application to this effect was moved before the jurisdictional police authorities. In furtherance of the same, petitioner No.1 and Baljot Kaur, his wife appeared and agreed to return Rs. 72 lakh to respondent No.2. However, neither was the possession handed over nor was any money returned.

3. Learned counsel for the petitioners *inter alia* contends that the petitioners are being subjected to double jeopardy as they have already been declared innocent as per report of the Tehsildar dated 12.05.2022 (Annexure P-3). Further, in order to attract the offences under Sections 406 and 420 IPC, it is essential for there to be an intention to deceive since the inception. A mere breach of contract does not constitute the said offences. Respondent No.2 ought to avail the remedies available in civil law to seek specific performance and the FIR(supra) has only been registered to harass the petitioners. As such, continuation of criminal proceedings against the petitioners is not warranted. Reliance in this regard is placed on the judgments rendered by the Hon'ble Supreme Court in ***S.C. Garg vs. State of Uttar Pradesh and another Criminal Appeal No. 438 of 2018 decided on 16.04.2025*** and ***C. Subbiah @ Kadambur Jayaraj and others vs. The Superintendent of Police and others, 2024 AIR SC 2633***.

4. *Per contra* learned State counsel opposes the prayer of the petitioners and submits that they sold the said property to respondent No.2, even though they are not the real owners of the same. Therefore, intention to deceive existed since the very inception and as such, no interference by this Court is warranted involved in two more cases of cheating.

5. Having heard learned counsel for the parties and after perusing the record of the case it transpires that the parties had entered into a sale deed, however, mutation with respect to the same was not sanctioned as it was discovered that the land originally belonged to Daljit Kaur and Navjit Singh. Since the petitioners were fully aware that the land they are selling to respondent No.2 does not belong to them, it is *ex facie* evident that the sale was made to cheat respondent No.2 and cause wrongful loss to her.

6. 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) 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 deliver any property to any person, and dishonest intention must exist from the inception when the promise or representation was made.” (emphasis added)

Further 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:

“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 *Jaswantraji 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)

7. Recently, the same principle has been reiterated by a two Judge bench of the Hon'ble Supreme Court in *C. Subbiah (supra)*, wherein, speaking through Justice Sandeep Mehta, the following was held:

“38. It is thus clear that from the complaint, there is no such allegation therein which can persuade the Court to hold that the intention of the accused appellants was to defraud the complainant right from the inception of the transactions. The accused appellants have unquestionably, passed on some plots as well as part profits from the land deals to the complainant but the dispute is regarding the quantification of profits and full satisfaction of the share claimed by the complainant proportional to the investments made by him.” (emphasis added)

8. As far as the matter of multiple inquiries is concerned, a perusal of the report of the Tehsildar dated 12.05.2022 (Annexure P-3) indicates that he had not conducted any inquiry but merely recorded the finding of the Halka Patwari that the mutation sought was not approved. Further, the report of the Senior Superintendent of Police, Khanna (Annexure P-4) also does not indicate an inquiry being undertaken as the findings are based on the report of the Tehsildar itself. Since the reports furnished were not in furtherance of an inquiry, it cannot be said that the petitioners are being subjected to parallel or multiple inquiries.

9. In view of the discussion above, this Court does not find any reasons to interfere with the matter at hand. Accordingly, the present petition is dismissed.

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

22.04.2025
manisha

(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No