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

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Criminal Revision No.4787 of 2015
Date of Decision: 27.02.2025

Krishan Kumar and others

... Petitioners

Versus

Jitender Malhotra @ Toni and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Tarun Yadav, Advocate,
for the petitioners.

None for respondent No.1.

Mr. Deepender Singh, Advocate,
for respondent No.2.

Mr. Apoorv Garg, Sr. DAG, Haryana.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioners against the common judgment dated 02.09.2015 passed by the Court of learned Additional Sessions Judge, Rewari in three Criminal Appeals bearing **No.127 of 2012** titled as *Jitender Malhotra alias Toni v. State of Haryana*, Criminal Appeal bearing **No.126 of 2012** titled as *Ashok Sharma v. State of Haryana* and **Criminal Appeal No.171 of 2012** titled as *Krishan Kumar and others v. Jitender Malhotra alias Toni and others* whereby, the **Criminal Appeals No.127 of 2012 and 126 of 2012** were allowed whereas the **Criminal Appeal No.171 of 2012** filed by the

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present petitioners had been dismissed and the respondents-accused were acquitted of the charges framed against them and further the judgment of their conviction as passed by the Judicial Magistrate in Criminal case No.464 of 2004 titled as *State v. Sanny Sharma and others* arising out of FIR No.65 of 28.04.2003 registered under Sections 406 and 420 of IPC at Police Station Model Town, was set aside.

2. For the sake of coherence and continuity, the petitioners shall be referred to as the complainants whereas the respondents shall be referred to as accused.

3. The aforementioned FIR had been registered on the basis of complaint lodged by the complainants Devender Yadav, Pankaj Yadav and Krishna Yadav on the allegations that they had been induced by the accused Jitender Malhotra and Ashok Sharma i.e. present respondents No.1 and 2, Bimla Sharma and Dipti Malhotra (discharged during investigation) to part with different sums of money by representing that they were directors of one M/s Midas Touch Multi Level Marketing Private Limited Company, Delhi (**For short "Company"**) which was having branch office at Rewari. The accused offered the victims to give articles like TV, furniture, air conditioner, computer, microwave oven, water filter and RO System etc. on lower rates on depositing some particular sums of money/making investment by them. The victims had deposited different amounts of money. However, neither any article was supplied to them, nor their money was returned and thereby wrongful loss had been caused to them by the accused with an

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intention to cheat them. A case under Sections 406 and 420 of IPC was registered. Investigation proceedings were initiated. During investigation, the accused were arrested and subsequently they were released on bail. Recovery of some money was effected from them.

4. After completion of investigation, challan was presented. Copies thereof were supplied to the accused. On finding a prima facie case for commission of offences punishable under Sections 406 and 420 of IPC, the accused had been charge-sheeted accordingly to which they pleaded not guilty and claimed trial.

5. The prosecution examined as many as 19 witnesses in support of prosecution case besides placing reliance upon certain documents and thereafter the evidence of prosecution was closed by Court order.

6. Statements of accused persons were recorded under Section 313 of Cr.P.C. They abjured their guilt and claimed to be innocent. No defence evidence was adduced.

7. The learned trial Magistrate considered the evidence produced on record and held the accused i.e. respondents No.1 and 2 guilty for commission of offences punishable under Sections 406 and 420 of IPC vide judgment dated 09.03.2012 and they were sentenced to undergo rigorous imprisonment for a period of three years each and to pay fine of Rs.1000/- each for the commission of offence punishable under Section 420 of IPC and to further sentenced to undergo rigorous imprisonment for a period of three years each and to pay fine of Rs.1000/- each for the commission of offence

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punishable under Section 406 of IPC. They were further sentenced to undergo SI for a period of one month in default of payment of aforesaid amount of fine vide order on quantum of sentence dated 12.03.2012.

8. As revealed from the record, the accused filed Criminal Appeals No.127 of 2012 and 126 of 2012 aggrieved by the judgment of conviction and order on quantum of sentence whereas the complainant-victims filed Appeal No.171 of 2012 seeking enhancement in the sentence as awarded to the accused. The appeal filed by the complainant had been dismissed whereas the appeals filed by the accused had been allowed and they were ordered to be acquitted of the charges as framed against them.

9. Dissatisfied with the order as passed by the learned Appellate Court, the instant petition has been filed.

10. It is argued by learned counsel for the petitioners-complainants-victims that the impugned judgment dated 02.09.2015, is liable to be set aside as while passing the same, the learned Appellate Court did not appreciate the evidence produced on record in a proper manner. It failed to take into consideration the fact that the petitioners-complainants had fully supported the version of the prosecution and there was overwhelming evidence on record in the form of their statements as well as remaining evidence to prove the factum of commission of offence punishable under Section 420 of IPC by the respondents No.1 and 2-accused. It is argued that the accused had made false representations to them and had falsely assured them and made them to part with money with dishonest intention to not to

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supply the articles which were assured to be so given. The respondents were beneficiary of the transaction of the receipt of money. Their complicity in the crime stood fully established. The learned Appellate Court committed a grave error in holding that the ingredients for commission of offence under Sections 406 and 420 of IPC were not made out. He further argued that the appeal filed by the petitioners-complainants seeking enhancement in the sentence as awarded to the respondents also deserve to be allowed but this fact had not been appreciated in a proper manner. With these broad submissions, it is urged that the impugned judgment dated 02.09.2015 is liable to be set aside, the revision petition deserves to be accepted and order passed by the learned trial Court as to conviction of the respondents-accused deserve to be upheld with modification in the same to the extent to which the quantum of sentence is concerned and the period of sentence of the respondents is liable to be enhanced.

11. Per contra, learned counsel for the respondent No.2 argued that there was no illegality or infirmity in the order passed by the Appellate Court and the same is well reasoned. The learned Appellate Court properly appreciated the evidence produced on record and rightly came to the conclusion that the prosecution had failed to bring home the guilt of the respondent-accused for commission of offence punishable under Section 420 of IPC. Accordingly, it is urged that the petition is devoid of any merit and is liable to be dismissed.

12. Learned State counsel did not choose to contest the petition.

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13. Learned counsel for the parties have been heard at considerable length and the trial Court record has been carefully perused by this Court.

14. On a perusal of record, it is revealed that the FIR of this case had been registered on the basis of joint complaint filed by the present petitioners. However, during the course of investigation, several other victims had been joined. Their statements were recorded. These victims namely, Pankaj Yadav, Devender Singh Yadav, Ashok Kumar, Rameshwari, Gopal Sharma, Krishna Devi, Malkhan Singh, Desraj, Dilawar Singh and Devender Yadav appeared before the trial Court as PW-1 to PW-10 respectively. However, they did not support the prosecution version and did not implicate either of the accused in the commission of the subject offences. The petitioners appeared as PW-17 to PW-19 respectively. They deposed that the accused had visited their houses and on being convinced by them that they (PW-17 to PW-19) could earn money by joining the Company and purchase its goods on cheaper rates, they had given sums of Rs.7000/- each. It was stated by them that the aforementioned amount was given to Dipti Malhotra (since discharged) and receipt had been given by her.

15. Now the question that requires consideration before this Court is as to whether the evidence produced on record by the prosecution was sufficient to prove the factum of commission of offences punishable under Sections 406 and 420 of IPC i.e. offences of cheating and criminal breach of trust. The offence of criminal breach of trust is defined under Section 405 of IPC as per which misappropriating or converting another person's property

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for one's own use with the purpose to defraud, is considered a criminal breach of trust whereas, on the other hand, cheating incorporates the ingredient of having a dishonest or fraudulent intention that is intended to persuade the other party to give any property to a specified person is an offence described under Section 415 of IPC. Section 420 of IPC deals with cases of cheating where there is dishonest inducement of the deceived person to deliver any property, or to make, alter or destroy any valuable security or anything which is capable of being converted into a valuable security.

16. It is well settled proposition of law that Sections 406 and 420 of IPC cannot subsist in the same transaction as the offence under Section 406 of IPC is an antithesis of the offence under Section 420 of IPC. Reliance in this regard can be placed upon the observations made by this Court in **Jalpa Parshad Aggarwal v. State of Haryana and others**, 1987 (2) RCR 427. It is also well settled that in an offence of cheating, delivery of any property due to dishonest deceiving is an essential ingredient and obviously entrustment and deceiving cannot go together. As such, it is apparent that the accused could be held guilty either for commission of offence of cheating or for criminal breach of trust.

17. Let us now proceed further and consider as to whether the evidence produced by the prosecution proved the ingredients of either of these offences. The offence of criminal breach of trust is defined under Section 405 of IPC whereas Section 406 of IPC is the penal section for this

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offence. The essential ingredients of the offence of criminal breach of trust are as follows:-

- (i) The accused must have been entrusted with property or with dominion over property.**
- (ii) The accused must have misappropriated or converted to his own use, that property or used or disposed of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged or used or disposed of the property in violation of any legal contract (express or implied) which he has made touching the discharge of such trust or wilfully suffered any other persons so to do.**
- (iii) Such misappropriation or user or disposal must be dishonest or such sufferance must be wilful.**

18. It is apparent from the above that there must be entrustment of property to the accused by the complainant and its misappropriation by the accused to constitute offence under Section 406 of IPC. The term “entrustment” ordinarily connotes that a property is handed over by one person to another in whom he reposes confidence for his specific performance. For constituting an offence of criminal breach of trust, the property must have been entrusted for being used in a particular manner and that manner alone. In this case, however, there is no material on record to show that there was any entrustment on the part of the victims of their

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money to the respondents-accused for using the same in a particular manner. Rather the allegations are that the petitioners had been induced by them to give money to them. If that is so, then ofcourse the question of entrustment did not arise and consequently there could be no misappropriation or conversion. While recording the finding of guilt of the respondents-accused under Section 406 of IPC, the learned trial Magistrate did not consider this fact as well as the fact that the offence under Section 406 of IPC is antithesis to offence under Section 420 of IPC. The learned Appellate Court, on the other hand, had observed that the prosecution had failed to prove that the accused had dishonestly misappropriated or converted to their use any money entrusted to them by the complainants. The evidence led by the prosecution does not prove the factum of any entrustment of property belonging to the complainants to the accused or misappropriation thereof. Therefore, this Court has no hesitation to say that the Appellate Court rightly acquitted the accused of the charge under Section 406 of IPC.

19. So far as the charge under Section 420 of IPC is concerned, the same provides for punishment for offence of cheating and dishonest inducement for delivery of any property. Section 415 of IPC deals with cases of cheating. For a person to be convicted under Section 420 of IPC, it has to be established not only that he has cheated someone but also that by doing so he has dishonestly induced the person so cheated to deliver any property or do any other act as mentioned in this section. In this case, PW-17 to PW-19 i.e. the present petitioners deposed that they had given cash amount of

Rs.7000/- each to Dipti Malhotra who was discharged. It was not the version

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made by them that they had been induced by the present respondents-accused to give money to Dipti Malhotra. Though they deposed that receipts had been issued by the abovesaid Dipti Malhotra but no such receipt had been made part of the record. On the basis of the oral testimonies of the petitioners-complainants, it had obviously not been established beyond doubt that there was any dishonest inducement on the part of the respondents-accused to deliver any money to them and the victims had infact delivered the same thereby suffering wrongful loss. The learned First Appellate Court, therefore, rightly acquitted the respondents No.1 and 2 – accused of the charges under Sections 406 and 420 of IPC.

20. There is no infirmity or illegality in the impugned order passed by the First Appellate Court warranting interference by this Court as the same is well reasoned and based on correct appreciation of facts and material produced before it. In view of the discussion as made above, I see no reason to come to a different conclusion. Accordingly finding no merit, the present revision petition is dismissed.

27.02.2025
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(MANISHA BATRA)
JUDGE

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