2025:PHHC:071966

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

CRM-M No.32218 of 2024
Reserved on: May 23rd, 2025
Pronounced on: May 28th, 2025

Namit Jaswal

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by: Mr. Bhupender Pratap Singh, Advocate
for the petitioner.

Mr. Karan Sharma, Deputy Advocate General, Haryana.

Ms. G.K. Mann, Senior Advocate
with Mr. Anand Vardhan Khanna
and Ms. Amandeep Kaur Sidhu, Advocates
for respondents No.3 to 5.

MANJARI NEHRU KAUL, J.

The petitioner is challenging the dismissal of his protest petition by the learned Additional Chief Judicial Magistrate, Gurugram, vide order dated 13.04.2023 (Annexure P-1) and the rejection of his revision petition by the Revisional Court vide order dated 25.01.2024 (Annexure P-2), raising substantial legal and procedural questions. It is contended by the learned counsel for the petitioner that both the Courts below failed to appreciate the factual matrix and mischaracterized a grave financial misappropriation- concerning over ₹20 crores of the security deposits of the residents-as a mere civil dispute.

BRIEF FACTS OF THE CASE:

2. It is the case of the petitioner that he, along with six other resident owners of Ireo Victory Valley, a Group Housing Society located in Sector 67, Gurugram, had instituted a complaint under Section 200 of The Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.') along with an application under Section 156(3) of the Cr.P.C. before the learned JMIC, Gurugram. The complaint was directed against Ireo Victory Valley Pvt. Ltd. (hereinafter referred to as 'respondent-company'), its associate entities, and other key management personnel arrayed as respondent Nos.3 to 14, alleging embezzlement and misappropriation of public funds.

3. As per the complaint, the respondent-company and its management systematically siphoned off approximately ₹20 crores collected from resident-owners towards Replacement Fund Maintenance Security (RFMS) corpus. The complainants asserted that such conduct amounted to criminal breach of trust and cheating.

4. Pursuant to cognizance taken on the said complaint, FIR No. 261 was registered on 21.12.2021 at Police Station Sector 65, Gurugram, under Sections 120-B and 420 of the IPC. However, after the investigation, the Investigating Officer concluded that there was no substance in the allegations, and accordingly, a cancellation report was submitted on 25.07.2022. Aggrieved by the cancellation report, one of the complainants filed a protest petition, which was dismissed by the learned Additional Chief Judicial Magistrate, Gurugram, vide order dated 13.04.2023. Thereafter, a revision petition was preferred against the said order, which was also dismissed by the learned Additional

Sessions Judge, Gurugram, on 25.01.2024. It is against this order that the present petition has been preferred.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

5. Learned counsel for the petitioner has assailed the impugned order dated 25.01.2024 (Annexure P-1) on multiple grounds. Learned counsel argued that the learned Revisional Court failed to appreciate the factual matrix of the case and passed an order that is a verbatim reproduction of the order dated 13.04.2023 passed by learned ACJM, Gurugram, thereby rendering the impugned order non-speaking and indicative of non-application of judicial mind.

6. Learned counsel for the petitioner also invited the attention of this Court to Annexure P-1 to contend that, despite the presence of substantial incriminating material placed on record, both the learned ACJM and the Revisional Court erroneously relied upon clause 7.1(b) of the Bye-Laws of the Society to justify the alleged utilization of RFMS funds by the respondent-company. It was argued that clause 7.1(b) of the Bye-Laws does not, even remotely contemplate that the developer company can appropriate or adjust resident-deposited RFMS corpus towards its own dues or liabilities.

7. It was further submitted that the impugned order dated 25.01.2024 makes a cursory reference to the ingredients of the offence of criminal breach of trust under Section 406 of the IPC but does not delve into a reasoned analysis as to why the offence is not attracted on the facts of the case. As per the learned counsel, such a perfunctory and superficial treatment of the legal provisions constitutes manifest non-application of mind, rendering the impugned order unsustainable in

law.

8. Learned counsel further drew the attention of this Court to the nature and purpose of the RFMS corpus, which, according to the Bye-Laws of the Society, is intended solely for contingencies and the replacement of capital equipment such as elevators and generators. Learned counsel further submitted that the terms governing the usage of the RFMS funds are rigid and definitive. The corpus, initially aggregating approximately ₹19 crores, has been allegedly depleted and now stands entirely dissipated due to misappropriation by the respondent-company, in collusion with the RWA.

9. It was also argued that the RWA neither sought the approval of the petitioner and other residents nor invited them to be members of the association before appropriating the RFMS funds for the benefit of the developer. Such action, it was alleged, is in clear violation of clause 7.4 of the Bye-Laws, which imposes a fiduciary obligation upon the RWA to invest the funds strictly in:

(i) Government securities and mutual funds;
(ii) Fixed deposits with public sector banks;
(iii) Private or foreign banks having a minimum of six years' presence in India;
(iv) Deposits with institutions rated at least BBB or investment grade.

10. Instead, learned counsel argued the funds were allegedly misutilized and diverted in breach of the said clause, thereby betraying the statutory and fiduciary duties cast upon the association.

11. Upon a specific query from this Court as to whether the interpretation of Sections 420 and 406 of the IPC by both the learned

ACJM and the learned Revisional Court was perverse, learned counsel candidly conceded that no perverse interpretation had been given. However, it was argued that mere recitation of the ingredients of an offence does not satisfy the requirements of a judicial determination. He asserted Courts are expected to engage in a meaningful application of the law to the facts at hand.

SUBMISSIONS OF LEARNED COUNSEL FOR THE RESPONDENTS:

12. *Per contra,* learned counsel for the State assisted by learned counsel for respondents No.3 to 5 vehemently opposed the contentions advanced by the learned counsel for the petitioner. While inviting the attention of this Court to Annexure P-2, it was submitted that the impugned orders passed by both the trial Court as well as the Revisional Court do not suffer from any illegality or perversity warranting interference by this Court. It was contended that the said orders were passed after due appreciation of the material on record and upon a holistic consideration of the facts and circumstances of the case.

13. It was further submitted that the cancellation report, which forms the foundation of the orders under challenge, was prepared by the investigating agency pursuant to a comprehensive and detailed investigation. The outcome of the investigation revealed that the respondent-company had utilised the funds from the RFMS corpus in a matter consistent with the collective welfare of the residents and the maintenance of the project. The funds were expended towards essential services such as the payment of electricity bills to DHBVNL, charges for security services, lift maintenance, diesel supply, telephone

connections, and other related maintenance obligations-all of which directly served the interests of the residents and the upkeep of the housing society.

14. Further reliance was placed upon the reply file by the State dated 29.10.2024. It was submitted that, as per the said reply, the developer owed a sum of ₹15,63,30,990/- to the RWA. Out of this, a substantial portion amounting to ₹6,23,09,621/- was actually recoverable from the residents themselves. However, in light of the failure by the residents to make such payments, the developer, in consonance with clause 7.1(b) of the Bye-Laws of the society, legitimately appropriated the said sum from the RFMS funds. Clause 7.1(b) is reproduced hereinunder:

> *"7.1(b) - Deposits/funds created by the developer and transferred/entrusted to the Association for the purposes of maintenance and upkeep of Victory Valley Complex as well as the replacement of capital equipment installed therein."*

15. On the strength of the above clause, learned counsel submitted that there was no dishonest or fraudulent intent on the part of the respondent-company in utilising the RFMS corpus. The utilisation was not for any personal or pecuniary benefit of the respondent-company, and as such, no ingredients of the offence punishable under Section 420 of the IPC are attracted. It was also submitted that there was no allegation, even in the present petition, that any portion out of the RFMS corpus was siphoned off into the personal account of the respondent-company or misappropriated for its own gain.

16. To fortify the submission that the dispute in question is essentially civil in nature, learned counsel for the respondents submitted

that proceedings were pending before the RERA in RERA Application No.53 of 2023 titled 'Nidhi Singh Versus Ireo Victory Valley Pvt. Ltd. and others' It was contended that the subject matter of the present petition is substantially identical to the issues pending before RERA, thereby evidencing that the grievance of the petitioner arises out of an alleged breach of contractual obligations and does not entail any criminal culpability.

17. Learned counsel further submitted that the petitioner has not approached this Court with clean hands, having failed to disclose the pendency of parallel proceedings before RERA, which raises serious questions about the *bona fides* of the present litigation.

18. In conclusion, it was argued that the allegations made in the petition are, at best, civil in nature and do not satisfy the essential ingredients of cheating or dishonest inducement so as to constitute an offence under Section 420 of the IPC. Hence, it was urged that no interference with the well-reasoned cancellation report and the consequential orders passed by both the learned trial Court as well as the Revisional Court is warranted.

FINDINGS OF THE COURT:

19. The grievance of the petitioner lies in the alleged financial irregularities concerning the utilization of RFMS corpus by the RWA and the developer, which as per the learned counsel for the petitioner, constitute criminal misappropriation and cheating. The petition, however, fails to disclose the foundational ingredients essential to constitute the offence of cheating punishable under Section 420 of the IPC/318(4) of the BNS.

20. The first objection raised by the learned counsel for the petitioner is with respect to the non-speaking orders passed by the trial Court as well as the Revisional Court. It has been vehemently argued that the impugned orders are non-speaking and mechanically reiterate each other without independent application of judicial mind. Learned counsel for the petitioner has claimed that the Revisional Court merely endorsed the findings of the learned ACJM, Gurugram, without adding any substantive reasoning of its own.

21. However, this Court finds the said objection to be misconceived. It is well-settled that a "speaking order" need not be prolix or unnecessarily verbose. What is required is that the order reflects due consideration of the submissions and demonstrates application of mind to the material facts and law.

22. In the present case, both the learned Magistrate and the learned Revisional Court have engaged with the factual and legal issues raised. The learned Revisional Court has concurred with the learned Magistrate's reasoning after due appraisal, which, in law, is permissible. A concurring order that adopts the reasoning of a subordinate forum, while reflecting conscious application of mind, does not suffer from the vice of being non-speaking. Accordingly, this objection raised by the learned counsel for the petitioner deserves to be rejected.

23. The learned counsel for the petitioner, who is a resident of Ireo Victory Valley, a Group Housing Society, Sector 67, Gurugram, has alleged that the developer, in connivance with the elected members of the RWA, siphoned off a substantial portion of the corpus of the RFMS-an amount estimated to be around ₹20 crores-collected from the

residents for the upkeep and maintenance of the complex.

24. Learned counsel for the petitioner argued that this fund intended for the welfare of the residents, was diverted or misused under the guise of operational expenditure, thereby constituting criminal breach of trust, cheating, and conspiracy. However, the cancellation report submitted by the investigating agency, after a comprehensive investigation, recorded that no criminal offence was made out and attributed the expenditure to maintenance necessities under the applicable Bye-Laws. The protest petition filed against the said report was dismissed by the learned Magistrate, and the Revisional Court, upon due consideration, affirmed the same.

25. The Ireo Victory Valley Condominium Owners Welfare Association Bye-Laws govern the management and application of RFMS funds. From the cancellation report and accompanying documents, it is evident that ₹17.54 crores were collected till 2021 under the Head of the RFMS corpus, while the RWA expended over ₹42.43 crores during the corresponding period towards maintenance services including electricity, security, common area upkeep, procurement of diesel, and emergency infrastructure repair.

26. A closer examination of the relevant Bye-Laws provisions reveals the following:

> "***7. FUNDS AND UTILIZATION:***
>
> *7.1 A common fund shall be generated through the following resources:*
>
> *a. Membership application fees and annual subscription fees,*
>
> *b. Deposits/Funds created by the Developer and transferred/entrusted to the Association for the*

purposes of maintenance and upkeep of Victory Valley Complex as well as the replacement of capital equipment installed therein;

c. *Fines and penalties imposed on Owner/ Resident/ Members/ Associate Members for any breach or violation of these Bye-laws;*

d. *Sponsorship/Charity receipts;*

e. *Voluntary contribution from Residents and if such contributions or a part thereof is for any specific purpose then towards that purpose alone;*

f. *by raising loans, if necessary, subject to the terms and conditions or approvals as may be necessary hereunder or under any applicable statute; and*

g. *Any other receipts whether through schemes formulated by Board of Management or any other income generated by the Board of Management from time to time or otherwise.*

i. *Contributions or funds raised through community functions and activities.*

7.2 *All the incomes, earnings and deposits, movable/immovable properties of the Association shall be solely utilized and applied for the benefit of the Association and no profit accruing thereon shall be paid or transferred directly or indirectly by way of dividends, bonus, profits in any manner whatsoever, to the present, past or future Members of the Board of Management, Members of the Association.*

7.3 *No Member will lay claim on any income, earnings, deposits or the movable property of the Association or make any profit, whatsoever, by virtue of this membership. The Association's policy shall be to strictly avoid all situations* *which place any Member or the Board of Management in a position where his/her judgment may be biased because of any past, present, or currently planned interest, financial or otherwise, of that Member. The Board of Management shall not award any work where a Member's performance of such work may provide him/her or any/all Members of the Board of Management with an unfair competitive advantage unless such transaction is at arm's length.*

7.4 The Association may invest its funds only in Government Securities and mutual funds or fixed deposits of public sector banks or such private or foreign banks having minimum 6 years of existence in India or deposits with institutions rated at least BBB-/Investment Grade.

7.5 The Association may make payment to the Developer on account of any enhanced EDC or IDC or any other taxes, fees, charges as may be payable to the developer.

9. RIGHTS AND DUTIES OF THE MEMBERS:

9.1 All Members shall be obliged to observe their duties and obligations as set out herein and any violation of the same shall make them liable to fine and/or forfeiture of their rights as may be fixed.

9.2 All Members shall be obliged to pay all expenses attributable to them specifically. including electricity and back-up charges as well as their share in the common expenses as assessed by the Association. The Association shall be authorized to recover the projected expenses in advance from the Members subject *to periodic reconciliation based on actual expenses:*

11. MAINTENANCE AND REPAIRS:

11.1 The Association shall not be responsible for the maintenance and repair work within the Apartment which shall be the sole responsibility of the Owner/Resident.

11.2 The Member shall be under an obligation to reimburse the Association for any expenditure incurred in repairing or replacing any portion of the common areas, common services and facilities damaged due to his fault or negligence."

27. The petitioner argued that the RWA in violation of the Bye-Laws, failed to concur with the resident owners before utilising the RFMS corpus towards payment of dues however, the investigation revealed that by dint of a meeting as well as e-mail, the resident owners were communicated prior in time about RWA paying for electricity bills from the corpus of RFMS and qua lesser rates being paid by the residents and yet, the residents continued to pay less. Further, the record discloses that several residents, including the petitioner, were in arrears of these obligatory dues. The Association, in the interest of ensuring uninterrupted civic and maintenance services, deployed the RFMS corpus for discharging pending liabilities. Such utilization, in the absence of personal gain or *mala fide* benefit, cannot *prima facie* be classified as misappropriation.

28. Furthermore, coming to the allegations of cheating so as to attract an offence under Section 420 of the IPC/318(4) of the BNS, it needs to be emphasized that Section 420 of the IPC/318(4) of the BNS penalizes the offence of cheating and dishonestly inducing delivery of

property, which reads as under:

> *"420. Cheating and dishonestly inducing delivery of property. - 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."*

29. The offence of cheating as defined under Section 415 of the IPC/318(1) of the BNS and punishable under Section 420 of the IPC/318(4) of the BNS, comprises the following essential elements:

(a) Deception of any person;

(b) Fraudulent or dishonest inducement to:
- deliver any property, or
- consent that any person shall retain any property, or
- do or omit to do anything which they would not do if not so deceived;

(c) *Mens rea* in the form of dishonest intention at the inception of the transaction;

(d) Resulting wrongful loss to the person deceived or wrongful gain to the accused.

30. These ingredients have been consistently reiterated in various judicial pronouncements. In ***Lalit Chaturvedi and others Versus State of Uttar Pradesh and another 2024 SCC OnLine SC 171***, it was clarified by the Hon'ble Supreme Court that mere breach of trust or contractual obligation, without clear evidence of deception and fraudulent inducement from the outset, does not attract the rigours of Section 420 of the IPC.

31. Similarly, in ***Rikhab Birani and another Versus State of Uttar Pradesh and another 2025 INSC 512,*** the Hon'ble Supreme Court cautioned against the criminalization of civil disputes and held that invocation of Section 420 of the IPC requires a clear, discernible intention to defraud, *ab initio.*

32. Applying these principles to the instant case, it would be pertinent to observe that there is no material on record to demonstrate that the developer or RWA fraudulently induced the residents to part with their money. The RFMS corpus was a structured fund collected transparently and applied for community benefit. Further, there is no allegation or evidence suggesting that at the time of collection of RFMS contributions, there existed any dishonest intention to misappropriate the funds. Instead, the funds were used for common welfare purposes, under the authority of the provisions of the Bye-Laws, and there is no element of deception or misrepresentation apparent from the material on record.

33. Thus, the foundational elements of deception and dishonest inducement are completely absent in the present case. The dispute, at best, pertains to the manner and propriety of fund utilization, a matter falling squarely within the realm of civil law and governance of the RWA, not criminal prosecution.

34. The invocation of criminal law in what is essentially a civil dispute concerning fund management sets a dangerous precedent and amounts to misuse of the criminal process. It is a settled proposition that criminal proceedings cannot be used as a pressure tactic for financial recovery or as a substitute for civil remedies.

35. As a sequel to the above, this Court concurs with the findings recorded by the learned ACJM, Gurugram, as well as the learned Revisional Court.

36. Accordingly, the instant petition stands dismissed.

May 28th, 2025 **(MANJARI NEHRU KAUL)**
Puneet **JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : Yes