



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

CRM-M-42479-2023
Date of decision: 09.01.2025

Bhawna NimbrayanPetitioner

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Amar Vivek Aggarwal, Advocate with
Ms. Arundhati, Advocate and
Ms. Sanchi Bindra, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG Punjab

Mr. Saksham Arora, Advocate
for respondent no. 2.

HARPREET SINGH BRAR, J. (ORAL)

1. The petitioner has approached this Court by way of filing the present petition under Section 482 Code of Criminal Procedure, 1973 (hereinafter Cr.P.C., for brevity) for quashing of the impugned FIR bearing no. 0017 dated 06.02.2022 under Section 420 of IPC registered at Police Station Mullanpur Garibdass, District SAS Nagar (Annexure P-1), as well as all subsequent proceedings arising therefrom.

2. The facts of the present case, tersely put, are that the petitioner, who was serving as an officer at the Punjab & Sind Bank, Mullanpur Branch, is alleged to have opened a bank account, bearing number 11411000001663 in the name of the complainant-respondent No.2, Neeraj Kumar. Neeraj Kumar is the husband of the petitioner's real sister, Tripti, with whom he is involved in a matrimonial dispute. It is alleged that the petitioner opened the account without



Neeraj Kumar's consent and without obtaining his signature on the account opening form. Subsequently, Neeraj Kumar was compelled to transfer Rs. 2,00,000/- to this account by the petitioner and her sister. Furthermore, it has been alleged that the petitioner, without anyone's signature on the bank account receipt, fraudulently transferred an amount of Rs. 1,96,000/- to the account of one Sakshi Dutt for the purpose of procuring a honeymoon package for the complainant and his wife, Tripti. Aggrieved by this, respondent no.2-complainant filed an application before the police in Panchkula, which was transferred to the SSP, SAS Nagar. After a detailed enquiry, the impugned FIR was registered against the petitioner-accused under Section 420 of IPC.

3. Learned counsel for the petitioner *inter alia* contends that although the petitioner herself filled in all the particulars to open the bank account of the complainant, she did so with his full knowledge and consent. Therefore, the ingredient of fraudulent intention or deception is clearly missing in the present case. Moreover, when the petitioner transferred Rs.1,96,000/- from the bank account of the complainant to the travel agent, the complainant received SMS notifications from the bank on his mobile number, indicating that the petitioner had linked the mobile number of the complainant to his bank account. This clearly shows that the petitioner had no dishonest intention on her part. Also, the complainant transferred Rs.2,00,000/- in the said bank account of his own volition. Additionally, the complainant did not raise any objections when the aforesaid amount was withdrawn and the complainant received the transaction notifications. Learned counsel further argues that the impugned FIR is simply a counterblast to the FIR bearing No.198 dated 17.05.2021 registered under Sections 323, 34, 406, 498-A, 506 of IPC (Annexure P-4) which was lodged by the wife of the complainant. Lastly, it is averred that by making the said



transaction there was neither any wrongful gain to the petitioner since she did not use the money for herself nor any wrongful loss occurred to the complainant as he availed the honeymoon package for himself. Reliance in this regard was placed on the judgments rendered by the Hon'ble Supreme Court in *'Archana Rana vs. State of Uttar Pradesh and another'* 2021(3) SCC 751, *'Prof. R.K. Vijayasaratthy vs. Sudha Seetharam'* 2019(16) SCC 739, *'Vijay Kumar Ghai and others vs. The State of West Bengal and others'* 2022(7) SCC 124 and *'Anupriya Pal vs. The State of Uttar Pradesh'* 2019 (4) SCC 643.

4. Per contra, learned counsel for respondent no.2-complainant submits that the very act of opening the savings bank account of the complainant, without obtaining his consent, by the petitioner in conspiracy with her sister clearly amounts to forgery and fabrication of the official records of the bank by misuse of the authority vested with the petitioner. The withdrawal of Rs.1,96,000/- was clearly without the permission of the complainant. This is clear from the fact that the complainant neither signed any withdrawal slip nor issued a cheque or any kind of promissory note. In fact, the complainant did not share any secure information with the petitioner yet the amount was withdrawn from his bank account. Moreover, the complainant did not receive any passbook, cheque-book, ATM card or any other documents pertaining to the bank account at his residential address. The allegations levelled against the petitioner are serious in nature, which stand duly proved during the course of investigation and form the basis of the Final Report under Section 173 of CR.P.C. Thus, no cause of action has arisen in favour of the petitioner to approach this Court by way of filing the instant petition.



5. Having heard the learned counsel for the parties and after perusing the record with their able assistance, this Court would like to examine the necessary ingredients constituting the offence as defined under Section 420 IPC:

Section 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.

6. A two Judge bench of the Hon'ble Supreme Court in ***Mariam Fasihuddin & Another vs. State by Adugodi Police Station and another***, speaking through Justice Surya Kant, made the following observations:

“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) mensrea 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.”

7. Having gone through the record of the case, in the present case, the petitioner withdrew an amount of ₹1,96,000/- from the complainant's account. However, the circumstances reveal that there is no deception or dishonest intention since the inception. The withdrawal of money was not accompanied by a false representation or fraudulent inducement by the petitioner. Further, the complainant utilized the withdrawn funds to avail the petitioner nor a wrongful



loss to the complainant. The essential ingredient of dishonest inducement as also defined under Section 24 of IPC is, therefore, absent. It is also imperative to note that the complainant himself transferred Rs.2,00,000/- in the bank account created by the petitioner. Clearly thus, the former was aware of the existence of such an account and yet chose not to file any complaint against the petitioner. Resultantly, the version put forth by the complainant wherein every single event took place without the consent of the complainant cannot merit acceptance. The complainant willingly availed the benefit of the honeymoon package. The transaction, as it stands, does not satisfy the requirement of fraudulent or dishonest inducement to deliver property. In light of the above, it is evident that the withdrawal of ₹1,96,000/- does not fulfill the essential ingredients of Section 420 IPC. The absence of wrongful intent, deception, and fraudulent inducement negates the foundational elements of the offence of cheating. Accordingly, the petitioner cannot be held liable under Section 420 IPC. Reliance in this regard is placed on ***Lalit Chaturvedi and Ors. v. State of U.P. and Anr. Criminal Appeal No. of 2023 (Arising out of SLP (Crl.) No. 13485 of 2023)***, in which a Division Bench of the Hon'ble Supreme Court held as follows:

“7. Similar elucidation by this Court in “V.Y. Jose v. State of Gujarat”⁵, explicitly states that a contractual dispute or breach of contract per se should not lead to initiation of a criminal proceeding. The ingredient of ‘cheating’, as defined under Section 415 of the IPC, is existence of a fraudulent or dishonest intention of making initial promise or representation thereof, from the very beginning of the formation of contract. Further, in the absence of the averments made in the complaint petition wherefrom the ingredients of the offence can be found out, the High Court should not hesitate to exercise its jurisdiction under Section 482 of the Cr. P.C. Section 482 of the Cr. P.C. saves the inherent power of the High Court, as it serves a salutary purpose viz. a person should not undergo harassment of litigation for a number of years, when no criminal offence is made out. It is one thing to say that a case has been made out for trial and criminal proceedings should not be quashed, but another



thing to say that a person must undergo a criminal trial despite the fact that no offence has been made out in the complaint. This Court in V.Y. Jose (supra) placed reliance on several earlier decisions in “Hira Lal Hari Lal Bhagwati v. CBI”, “Indian Oil Corporation v. NEPC India Ltd.”, “Vir Prakash Sharma v. Anil Kumar Agarwal” and “All Cargo Movers (I) (P) Ltd. v. Dhanesh Badarmal Jain.”

8. It is settled law that the recourse to inherent power of under Section 482 CrPC can be taken to ensure that criminal proceedings are not allowed to be used as weapons of harassment. In the considered opinion of this Court, the criminal proceedings launched by respondent no. 2 cannot be sustained in the facts and circumstances of the present case.

A two Judge bench of the Hon’ble Supreme Court in ***Vesa Holdings P. Ltd. v. State of Kerala (2015) 8 SCC 293***. Speaking through C. Nagappa, J., it was observed as follows:

“9. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 I.P.C. In our view the complaint does not disclose any criminal offence at all. Criminal proceedings should not be encouraged when it is found to be malafide or otherwise an abuse of the process of the court. Superior courts while exercising this power should also strive to serve the ends of justice. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and the High Court committed an error in refusing to exercise the power under Section 482 Criminal Procedure Code to quash the proceedings.”

9. In view of the discussion above, the present petition is allowed and



FIR bearing no. 0017 dated 06.02.2022 under Section 420 of IPC registered at Police Station Mullanpur Garibdass, District SAS Nagar and all subsequent proceedings arising therefrom are quashed qua the petitioner.

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

(HARPREET SINGH BRAR)
JUDGE

09.01.2025
Neha

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