

2025:PHHC:017848



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

CRM M-58017 of 2022

Date of Decision:30.01.2025

Avtar Singh @ Avtar Chima and another ...Petitioners
Versus
State of Punjab and others ... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Sunny Kumar Singla, Advocate for the petitioners.

Mr. I.P.S. Sabharwal, DAG, Punjab.

Mr. Vishal Sharma, Advocate
for respondent No. 4

N.S.SHEKHAWAT, J. (Oral)

1. The petitioners, who are settled in Canada permanently for the last more than 35 years, have invoked the jurisdiction of this Court under Section 482 Cr.P.C. with a prayer to quash the FIR No. 137 dated 10.07.2020 registered under Sections 420 and 120-B IPC at Police Station Sadar Ahmedgarh, District Sangrur (Annexure P-1), look out notices dated 04.08.2020 (Annexures P-8 and P-9) and all subsequent proceedings arising therefrom, which were initiated at the instance of Sharanjit Kaur, respondent No. 4, who is also permanent resident of Canada.

2. The FIR in the present case was registered on the basis of a complaint moved by Sharanjit Kaur, wife of Shamsher Singh

through her GPA holder Harpreet Singh son of Sarabjit Singh and the same has been reproduced below:-

“Respected S.S.P. sahib, Sangrur Application against: (1) Avtar Singh S/o Pratap Singh, R/o Baurhai Kalan, District- Sangrur. (2) Jaswinder Kaur W/o Avtar Singh R/o Baurhai Kalan, District- Sangrur, Mobile No.- 81465-00354 and (3) Harpreet Singh R/o Baurhai Kalan, District- Sangrur, Mobile No.- 99145-80575.

Respected Sir, I am Saranjit Kaur W/o Shamsher Singh S/o Pratap Singh, R/o Baurhai Kalan, District-Sangrur, through GPA holder Harpreet Singh S/o Sarabjit Singh R/o Baurhai Kalan, Tehsil- Malerkotla. I am submitting the following application:-

(1). That there is a electric water motor running vide account no. B.K. 177A.P. at Village Baurhai Kalan.

(2) That there are two partners in this motor, one of which is me and the other person is Avtar Singh S/o Partap Singh, R/o Baurhai Kalan, District-Sangrur but on papers he is the sole owner.

(3) That there was a dispute regarding our land and the said motor.

(4) That the respectable members of our society settled the dispute between us on dated 01.07.2019. That as soon as we were about to go for a written agreement, Avtar Singh left for Canada. While leaving for Canada he gave his power of attorney to his nephew Harpreet Singh. After that Avtar Singh backed out from the agreement. We met Harpreet Singh many times regarding this matter. He also didn't give us any straight answers. He kept on dodging our questions. Now Avtar

Singh gave his power of attorney to his wife and sent her to India who sold of the property and the motor because of which we incurred very heavy losses. According to the agreement Harpreet Singh S/o Jang Singh R/o Village Baurhai Kalan bought the stamp paper and according and had signed the compromise on behalf of Avtar Singh. (5) That according to the agreement the value of the motor was kept at 2 Lac rupees, which came in my share. Accordingly I paid of Rs. 1 Lac for my share to Avtar Singh through a cheque numbered-12683 in the name of Avtar Singh to his nephew in the presence of witnesses and then the said cheque of Rs. 1 lac was deposited in Avtar Singh's account by his nephew namely Harpreet Singh on 12.01.2019.

(6) Then I kept meeting Harpreet Singh several times and kept on asking him to transfer the motor in my name. Harpreet Singh kept on making false promises and passing the time. Just like that a couple of months passed away.

(7) That the wife of Avtar Singh namely Jaswinder Kaur is in India and I went and met her as well and prayed her to transfer the ownership of the motor in my name but she also kept on making false promises but did not transfer the motor to my name and instead, after a while sold the property. We met and talked about it several times at the police station.

(8) That thus Jaswinder Kaur and Avtar Singh have betrayed me and committed a crime by violating the terms of the agreement. Therefore, by submitting this

application, it is requested that appropriate action be taken against :-Avtar Singh S/O Pratap Singh, R/O Baurhai Kalan, District- Sangrur and Jaswinder Kaur W/O Avtar Singh R/O Baurhai Kalan, District- Sangrur. Thanking you. SD/ Harpreet Singh (GPA) son of Sarabjit Singh on behalf of Sharanjit Kaur wife of Shamsher Singh son of Partap Singh, R/o Village Bourahi Kalan, Distt. Sangrur”.

3. Learned counsel for the petitioners has vehemently argued that the petitioners are permanently settled in Canada for the last more than 35 years. The FIR has been got registered by respondent No. 4 through her GPA holder, who is also resident of Canada. In fact, the petitioner No. 1 had three brothers, namely, Shamsher Singh (since deceased), Daljeet Singh and Nirbhay Singh. After the death of Shamsher Singh, his widow Sharanjit Kaur (respondent No. 4) and their daughters Gurjeet Kaur, Manjeet Kaur, Rajwinder Kaur and Jasmine Kaur are his legal heirs, who are all residing in Canada for the last several years. The petitioner No. 1 and his brothers had 106 bighas of land and the land was in two parcels, i.e., 70 bighas and 36 bighas approximately. Even, there was another piece of land measuring 36 bighas, owned by four brothers in village Bath District Malerkotla and the land was still joint in nature. In March 2019, the petitioner No. 1 came to India and had given his share of land to Harpreet Singh son of Sarabjit Singh on lease, but Sarabjit Singh was not paying the lease money to petitioner No. 1 for

the last several years. Thus, the petitioner No. 1 wanted to give his share of land to some other person after taking it back from Harpreet Singh. During this process, a writing dated 22.04.2019 was prepared as a temporary adjustment of possession between petitioner No. 1 and the legal heir of Shamsher Singh, which included respondent No. 4. This document did not create any ownership or possessive right in favour of the complainant and her children and it was only a temporary arrangement between the parties. Even, the compromise dated 22.04.2019 was not a valid agreement as it was not signed by the other co-sharers and had no sanction or authority of law. Still further, the petitioner No. 1 or his registered attorney had not signed the said compromise. Even, on coming to know about the misuse of compromise, the petitioner No. 1 had also filed a suit for declaration for declaring the agreement/compromise dated 22.04.2019, compromise dated 01.07.2019 and affidavit dated 26.04.2019 as null, void and illegal.

4. Learned counsel further contends that the FIR in the present case is based on the allegations pertaining to the compromise dated 01.07.2019, which was not signed by petitioner No. 1 or respondent No. 4. Even, the FIR was registered on 10.07.2020, at the back of the petitioners. In fact, the petitioner No. 1 had left the country on 02.05.2019 whereas respondent No. 2 had left the country on 19.03.2020. Even, under the influence of respondent No. 4, look

out circulars dated 04.08.2020 (Annexures P-8 and P-9) were illegally issued against the petitioners. Learned counsel further contends that even the FIR (Annexure P-1) did not disclose any offence qua petitioner No. 2, who had been implicated in the present case, only being the wife of petitioner No. 1. Even vague and unfounded allegations have been levelled against the petitioner No. 2. He further contends that in fact, it is a matter of dispute between the families of two real brothers, i.e., the family of petitioner No. 1 and his real brother Shamsher Singh, since deceased. Even, the local police colluded with respondent No. 4 and wrongly registered the FIR with regard to a dispute of partition between the parties. Thus, the FIR itself was not maintainable against the present petitioner.

5. On the other hand, learned State counsel assisted by learned counsel for respondent No. 4 have vehemently opposed the submissions made by learned counsel for the petitioner. It was submitted that the petitioner through his attorney had already approached the Punjab State Commission for NRIs at Chandigarh prior to filing of the petition and the status of proceedings before the NRI Commission was not mentioned in the petition. Still further, the investigation was at a crucial threshold and in any case, the investigation ought not to have been set at naught but ought to have been permitted to be taken to its logical conclusion. Learned counsel further contends that a complaint dated 09.07.2020 has been moved to

the Superintendent of Police, Sangrur and after an inquiry by the DSP Sub Division, Ahmedagarh, the FIR in the present case was registered by the police after it was found that the complaint disclosed the commission of cognizable offence. Learned counsel further contends that even during the course of investigation, sufficient incriminating evidence had been found against the petitioners. It was found that the parties had settled the dispute between them on 01.07.2019, but before the settlement could be reduced into writing properly, the petitioner No. 1 left for Canada and give his power of attorney to his nephew Harpreet Singh. However, the petitioner No. 1 backed out from the agreement and despite repeated requests, Harpreet Singh did not reply properly to the respondent No. 4. Due to this, respondent No. 4 had suffered huge loss and the FIR is based on concealment of facts. It was also mentioned that Harpreet Singh, attorney of petitioner No. 1 had bought some papers and had signed the compromise on behalf of petitioner No. 1. Even, a cheque of Rs. 1,00,000/- was given to Avtar Singh, petitioner No. 1 and it was got encashed by him.

6. I have heard the rival contentions of learned counsel for the parties and perused the record.

7. In fact, this Court as well as the Hon'ble Supreme Court have held in number of judgments that every breach of contract may not give rise to a criminal offence. Many a times, certain civil transactions or criminal transactions may not contain ingredients of

criminal offence and in such cases the Court must come forward to quash the criminal prosecution. The Hon'ble Supreme Court in the matter of **Gian Singh Vs. State of Punjab and another, [2012(4) RCR, (Criminal) 543** observed as under:-

“55. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. Ex debito justitiae is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court under section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection.”

7. Still further, in the present case, the petitioners are sought to be prosecuted for the offence under Sections 420, 467, 468, 471 and 120-B IPC. Firstly, I shall deal with Section 420 of Indian Penal Code. The offence of cheating has been defined under Section 415 IPC and made punishable under Section 420 IPC.

8. Section 415 of IPC is reproduced as under-

"415. Cheating. Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat'. Explanation. A dishonest concealment of facts is a deception within the meaning of this section."

Section 415 Indian Penal Code thus requires -

- 1. deception of any person.*
- 2. (a) fraudulently or dishonestly inducing that person -*
 - (i) to deliver any property to any person; or*
 - (ii) to consent that any person shall retain any property;**or*
 - (b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body mind, reputation or property.*
- 9. On a reading of the aforesaid section, it is manifest that in the definition there are two separate classes of acts which the person deceived may be induced to do. In the first class of acts he may be induced fraudulently or dishonestly to deliver property to any person. The second class of acts is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, the*

inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but need not be fraudulent or dishonest. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had a fraudulent or dishonest intention at the time of making the promise. From his mere failure to subsequently keep a promise, one cannot presume that he all along had a culpable intention to break the promise from the beginning”.

8. In the present case, it is apparent that the petitioners as well as respondent No. 4, who are members of the same family and are permanently settled in Canada had a dispute relating to their joint property, which is situated in District Malerkotla in the State of Punjab. Even, the respondent No. 4/complainant, who is a NRI has attempted to misuse the process of law by getting the complaint filed through her power of attorney namely, Harpreet Singh, who is resident of village Baurhai Kalan. Nowadays, this Court has noticed in several cases that certain officials of local police colluded with non resident Indians and attempted to misuse the process of law by getting FIRs registered with regard to civil disputes or trivial issues which do not make out any offence. The present case is also a conspicuous example of one example, where two NRIs are litigating over a joint land and motor and the police has registered the FIR with regard to the dispute, which is essentially civil in nature. Even, a civil litigation

is also pending before the competent Court of law, which is yet to adjudicate the rights of the parties with regard to their ownership as well as possession. In the present case also, it is apparent that the FIR was based on concoctions and exaggerations. Even, the respondent No. 4 has attempted to misuse the process of law by getting the FIR registered through a relative in India. It was primarily a civil dispute and both the parties had attempted to resolve the dispute by getting certain documents prepared. Now, it has been alleged that the petitioners had violated the terms of the said writings/compromise deeds/agreements and had allegedly cheated the respondent No. 4. However, from a perusal of the FIR, it is apparent that the FIR has been got registered by respondent No.4, only as a tool to pressurize the petitioners to enter into a compromise with respondent No.4, especially, when the rights of the parties are yet to be decided by the competent Civil Court. Even otherwise, for the division of the properties, the appropriate remedy for respondent No. 4 was to approach the revenue Courts for partition of the land and the tube well. However, the complainant got the FIR registered on the basis of certain documents, which were not even signed by all the co-sharers and tried to convert a civil dispute in a criminal prosecution illegally.

6. In view of the above discussion and also in view of the law laid down by the Hon'ble Supreme Court, the initiation of

criminal proceedings by the respondent No.4 against the petitioners is clearly an abuse of the process of the Court. Consequently, this Court would be justified in protecting the ends of justice by invoking the inherent powers under Section 482 Cr.P.C. As a consequence, the FIR No. 137 dated 10.07.2020 registered under Sections 420 and 120-B IPC at Police Station Sadar Ahmedgarh, District Sangrur (Annexure P-1), look out notices dated 04.08.2020 (Annexures P-8 and P-9) and all proceedings emanating therefrom are hereby ordered to be quashed qua the petitioners only.

30.01.2025
amit rana

(N.S.SHEKHAWAT)
JUDGE

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