2026:PHHC:062310

247 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-44177-2016
Date of Decision: 20.04.2026

Baldev Krishan Dua ..... Petitioner

Versus

State of Punjab and others ....Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Ms. Devika Kamboj, Advocate for
Mr. Vikram Singh, Advocate,
for the petitioner.

Dr. Savi Nagpal, AAG, Punjab.

Vinod S. Bhardwaj, J. (ORAL)

Present petition has been filed under Section 482 of the Code of Criminal Procedure (for short “the Code”) for setting aside the order dated 30.08.2016 passed by Additional Sessions Judge, Jalandhar (for short ‘ASJ Jalandhar’) whereby the order dated 23.08.2006 passed by Judicial Magistrate First Class, Jalandhar (for short ‘JMIC’), discharging respondents No.2 and 3/accused, was affirmed.

2. Vide order dated 23.08.2006, JMIC discharged respondents No.2& 3-accused while noticing that the offences under Section 406 and 420 of the IPC would not be made out as it was a case akin to civil liability. The petitioner herein preferred Criminal Revision No. 468-2014, which was dismissed by ASJ, Jalandhar vide order dated 30.08.2016; hence, the present petition.

3. Learned counsel for the petitioner contends that the petitioner is a business partner of M/s Dua Trading Company, having business dealings with M/s Shiva Trading Company Rice Mills. The petitioner is a Commission Agent who supplied paddy to M/s Shiva Trading Company Rice Mills. On 23.03.2005, the petitioner lodged an FIR against respondents

No.2 & 3 for cheating to the tune of Rs.30,69,198.15/-, concerning the supply of paddy. The petitioner procured the said paddy from the farmers and supplied it to respondents No.2 & 3. When the petitioner demanded money, the respondents No.2 & 3 threatened him. He further alleged that the accused had siphoned off the whole amount and lured him to supply paddy on the assurance of profits; thus, an FIR under Sections 406/420 IPC was registered against them.

4. While considering the point of charge, in Criminal Case No. 59/1/2006, the JMIC, while appreciating the arguments of both the parties, found that the necessary ingredients for the commission of an offence under Sections 406 and 420 IPC were not made out and that it was a case of civil liability, thus, not justifying the initiation of criminal proceedings.

5. Counsel for the petitioner contends that the aforesaid accused firm took delivery of the paddy from the complainant on a false pretence and did not make payment while retaining the paddy with them. It is vehemently argued that the necessary ingredients for the offences are duly made out.

6. I have heard learned counsel for the petitioner at length and perused the documents available on record and the order passed by JMIC as affirmed by ASJ, Jalandhar.

7. The operative part of the order passed by JMIC reads thus:-

> *"2. I have considered the averments of the prosecution and the ld. defence counsel and have gone through the file carefully. It is pertinent to note that in the entire allegations contained in the FIR and the supplementary statement made by the complainant, there is no allegation of entrustment of paddy by the firm of the complainant to the firm of the accused. In fact, as per the version of the complainant, both the firms of the complainant and the accused had business dealings over a period of time and the complainant firm*

supplied paddy to the accused firm and maintained regular accounts regarding the goods supplied and the payment received. In these circumstances, offence under section 406 IPC cannot be made out.

3. The prosecution has prayed that the accused firm took delivery of paddy from the complainant on false pretences. Even though the accused did not intend to make payment for the consignment of paddy delivered by the complainant firm to the accused. The prosecution claimed that the initial payments were made by the accused to the complainant only in order to create trust and thereafter, the accused betraved the trust reposed by the complainant firm and failed to make payment. In these circumstances, the prosecution has claimed that the offence under section 420 IPC is made out in the present case.

4. I have heard the contention of the prosecution. It is pertinent to note that the complainant firm has brought on record the account statement of firm of the accused maintained by the firm of the complainant during the period from 1.4.2001 to 8.2.2005. The perusal of the statement of account shows that consignments of paddy were regularly received by accused from the complainant from time to time and payments were made by the firm of the accused to the complainant on various dates, which were credited by the firm of the complainant to the accounts of the accused. So, that during the financial year, 2001 from 1.3.2001 to 30.3.2002, the firm of the accused received paddy for the amount of Rs.47,51,897-93 ps and made payment of the amount of Rs.7,82,221-38 ps to the firm of the complainant. The firm of the complainant duly credited the payment in the account of the firm of the accused, so that at the end of the financial year 2002-02, a payment of Rs.39,69,676/- became outstanding due from the accused to the firm of the complainant. During the financial year 1.4.2002 to 4.2.2003, further consignment of paddy were delivered by the firm of the complainant to the accused, so that a sum of Rs.42,59,198-15 ps became due from the accused towards the firm of complainant. During this year, the firm of the accused made payment of Rs.11,70,000/- to the complainant, which was duly credited to the account of the firm of the accused and thereby a sum of Rs.30,89,190-15 ps became due. During the financial year 1.4.2003 to 30.3.2004 no paddy was supplied by the firm of the complainant to the accused. Only two cheques were *issued by the firm of the accused to the complainant during this year. Both the cheques were dishonoured on different dates. During the financial year 1.4.2004 to 8.2.2005 again no paddy was supplied by the firm of the complainant to the accused. Only one payment of Rs.20,000/- was made through cheque to the firm of the complainant by the accused. So that at the end of the financial year 2004-2005, an amount of Rs.30,69,198-15 ps remained as outstanding balance due from the firm of the accused to the complainant.*

5. In the light of the above discussion, it is clear that the bulk of the outstanding financial liability was incurred by the firm of the accused during the financial year 2001-2002 and 2002-03. During this period the consignments of paddy were received and payments were made from time to time. From the perusal of the statement of accounts, it is clear that the complainant firm was maintaining a regular and running account of the accused. The firm of the accused was making purchases of paddy from the complainant and was making payment from time to time. However, the firm of the accused failed to clear the account even till 8.4.2005. In these circumstances, I am of the considered view that the dealings of the complainant and the accused clearly make out that the accused firm entered into a period of financial difficulties, after the financial year 2002-03. There is nothing on record to show that the accused firm from the beginning intended to cheat the complainant and thereby induced delivery of consignment of paddy, even though they had no intention of making payment. In case firm of the complainant had suspected the intention of the accused, then there was no reason for the complainant to have waited for a period of two years from 2003 to 2005 to file the present case, as during the period from 2003 to 2005 only one payment of Rs.20,000/- was made by the firm of the accused to the complainant, even though the liability for the amount of Rs.30,89,198-15 ps, was outstanding. In these circumstances, I am of the considered view that the present case is one such case where a large amount is due from the firm of the accused to the complainant. It is clearly a case of the firm of the accused being unable to make payments of the outstanding amounts to the firm of the complainant. If all such cases of financial difficulties were to be treated as criminal offences, then commercial transaction would be carried out by the parties always under the fear of criminal prosecution. Such a *condition would be detrimental to the economic progress of the community. In these circumstances, I am of the considered view that this is clear case of civil liability. ғ The offence under section 406/420 IPC in my view is also not made out. Accordingly, both the accused are discharged. File be consigned to the Record Room."*

8. It is also noticed that the contentions raised by the petitioner were specifically dealt with by ASJ, Jalandhar and relevant paragraphs thereof read thus:-

"10. But on the other hand, respondents stated that in the present case paddy was not entrusted for milling purpose and there was no agreement between the parties. So learned counsel for the revisionist while relying upon the above said law stated that paddy was entrusted to the respondents and they had committed the breach of trust. But it is clear that above said law relied upon by the learned counsel for the revisionist is not applicable to the facts of the present case, because in the above said case paddy was entrusted to the accused for milling purpose. But in the present case revisionist had filed the application that he had to receive Rs.30,69,198.15 paise from the respondents. So revisionist had not stated in his application that paddy was given for milling purpose and respondents had to deliver the rice etc. So the above said law is not applicable to the facts of the present case.

11. Learned counsel for the revisionist stated that respondents had not made the payment and cheated the complainant. He further stated that at the time of framing the charges court had to see a prima facie case. He further stated that from the statements of witnesses and documents placed on the file, a prima facie case is made out against the respondents, but learned trial court had wrongly discharged the respondents. In this respect, he relied upon the law laid down by Hon'ble Supreme Court of India in the case titled as ***State of Himchal Pradesh Versus Krishan Lal Pardhan in Criminal Appeal No.67 of 1987 decided on 5.2.1987*** *wherein, it has been held that framing of charge- Trial court discharging the accused on the ground that the charges against accused are groundless-High Court affirmed the order- Held that trial court failed to restrict its scrutiny within the limits of section 239- at the* *stage of framing charge the thing required to be seen is whether prima facie case is made out or not- Whether charge will stand prove or not is to be determined after evidence is recorded- Case remanded to be tried after framing charges. He also relied upon the law laid down by Hon'ble Supreme Court of India in the case titled as* ***State of Orissa and another Versus Saroj Kumar Sahoo in Criminal Appeal No.920 of 2003 decided on 7.12.2005 and State of Maharashtra Versus Priya Sharan Maharaj in Criminal Appeal No.263 of 1997 decided on 11.3.1997****.*

12. But on the other hand, respondents stated that they have not cheated the revisionist. He further stated that if anything is due, then revisionist can recover the same in due process of law. He further stated that court had to frame charges, if prima facie case is made out. He further stated that in the present case no prima facie case is made out. Revisionist got registered the present case on the ground that he had to receive Rs.30,69,198.15 paise from the respondents, but respondents had not returned the amount and cheated the complainant. So from the perusal of the application dated 17.3.2005 filed by revisionist being proprietor of M/S Dua Trading Company, it is clear that there is a dispute of money. So when there is a dispute of balance amount, then revisionist can recover the same in due process of law. Although, learned counsel for the revisionist stated that a prima facie case is made out in favour of the revisionist and learned trial court had wrongly discharged the respondents/accused. But it is clear that revisionist himself stated in the application that their firm Dua Trading Company had to receive Rs.30,69,198.15 paise from the respondent company M/S Shiv Trading and they have not returned the amount. So from the perusal of the contents of the application, no offence of cheating is made out.

13. Learned counsel for the revisionist stated that he can initiate criminal proceedings also. In this respect he relied upon the law laid down by Hon'ble Supreme Court of India in the case titled as ***Tamil Nadu Merchantile Bank Ltd. versus State through Deputy Superintendent of Police and another in Criminal Appeal No.1959 of 2013 (Arising out of SLP (Crl) No.1501 of 2010)*** *wherein, it has been held that criminal and civil proceedings- Criminal proceedings can continue even if the allegation discloses a civil dispute also- It is* *on when the dispute is purely civil in nature still the party chooses to initiate criminal proceeding, the criminal proceeding may quashed. But on the other hand, learned counsel for the respondents stated that in the present case there is a matter of civil nature. So although, learned counsel for the revisionist while relying upon the above said law, stated that a party can initiate criminal proceedings also. But it is clear that from the contents of the application a matter of civil nature is made out. So the above said law is not applicable to the facts of the present case.*

14. So from the above said discussion, it is clear that although revisionist stated that offence under section 406 IPC is made out, but revisionist failed to prove that how the offence under section 406 IPC is made out. Similarly revisionist stated that offence under section 420 IPC is made out, but revisionist failed to prove that how the offence under section 420 IPC is made out. Revisionist filed application dated 17.3.2005 for registration of the case. So revisionist had mentioned in the application that their firm had to receive Rs.30,69,198.15 paise from the respondents and respondents had not delivered the amount. So from perusal of the contents of the application dated 17.3.2005 it is clear that there is a dispute of balance amount. So if anything is due against the respondents, then revisionist can recover the same in due process of law. So it is matter of civil nature. So from the perusal of the order of the learned trial court, it is clear that revisionist failed to reveal any kind of infirmity or illegality committed by the learned trial court, so revision filed by the revisionist is without merits and accordingly stands dismissed. This order of mine will have no bearing on the merits of the case. Parties are directed to appear before the learned trial court on 13.9.2016. Record of trial court be sent back alongwith copy of this order immediately. File of this Court be consigned to the record room."

It is evident from the perusal of the above extracts that both the Courts have specifically taken into consideration the nature of the transaction between the parties and the nature of the dispute between them. It was noticed that both the accused's and the complainant's firms had had business dealings for a long period, and that their accounts had been regularly maintained for the paddy supplied and payments received. It was accordingly noticed that there is no presumption that the intention of the accused/respondents No.2 & 3 was fraudulent from the inception of the relations between the parties. It was also noticed that during these financial years, different amounts had been paid and credited into the petitioner's account as part of ongoing account transactions; thus, it cannot be perceived that the necessary ingredients of Section 420 IPC would be satisfied. It was also noticed that even when no supplies were made, the payments were still disbursed to the petitioner and that at the end of the financial year 2004-2005, a sum of Rs.30,69,198-15 ps remained outstanding and payable. The same was thus noticed to be a financial dispute which would give rise to a civil proceeding for effecting recovery thereof and rendition of accounts, but would not satisfy the prerequisites of a criminal offence. The said aspect has been reiterated by learned ASJ, Jalandhar.

9. Learned counsel for the petitioner has failed to point out as to how the findings recorded by both the Courts are bad in law.

10. Finding no illegality, impropriety, perversity or misappreciation of evidence, the present petition lacks merit. The same is hereby dismissed, and the orders concurrently passed by ASJ Jalandhar dated 30.08.2016 and the order dated 23.08.2006 passed by JMIC, discharging respondents No.2 & 3/accused, are accordingly affirmed.

(VINOD S. BHARDWAJ)
JUDGE

20.04.2026
SN

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No