



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

239

CRM-M-9319-2018 (O&M)

Date of decision: 09.02.2026

Palwinder Singh

...Petitioner(s)

VERSUS

Ajit Singh

...Respondent(s)

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

Present :- Mr. Manas Bhatia, Advocate for
Ms. Arti Kaur, Advocate for the petitioner(s).

Mr. Gurvinder Pal Singh, Advocate and
Ms. Anjali, Advocate for the respondent(s).

VINOD S. BHARDWAJ, J. (Oral)

1. The present petition has been filed for seeking quashing of the impugned order dated 29.09.2017 passed by the Additional Sessions Judge, SBS Nagar as well as the order dated 25.09.2015 passed by the Additional Chief Judicial Magistrate, SBS Nagar, whereby the complaint of the petitioner was dismissed.

2. Learned counsel appearing on behalf of the petitioner contends that a criminal complaint No. COMI/4872/2013 was registered on the complaint of the petitioner in the Court of Additional Chief Judicial Magistrate, SBS Nagar. The brief facts of the said complaint reads thus:-

“2. xxxxxxxx the complainant is resident of village Durgapur, PS City, Nawanshahr and is running the business of book shop at Chandigarh Road, Nawanshahr under the name and style of Shivalik Book Depot, Nawanshahr. Hardip Kaur sister of the

complainant is married with Devinder Singh, resident of Mohalla Majri, Khanna, District Ludhiana. The accused is acquainted with the husband of sister of the complainant as the children of the sister of the complainant are studying with accused. The accused also became acquainted with the complainant and he used to meet the complainant as and when he used to come to Nawanshahr. During the talks, the accused represented to the complainant that besides doing the job of teacher, he was also engaged in the business of travel agent and also represented to the complainant that he was in a position to arrange study visa for the complainant to United Kingdom. As the complainant wanted to send his son Rajwant Singh to United Kingdom on study visa, so he fell into the temptations of the accused and the accused represented to the complainant that he was in a position to arrange study visa for his son Rajwant Singh and for that purpose, the complainant shall have to prepare a demand draft in the sum of 3500 G.B.P. (Great Britain Pounds) as a fee of the college in the name of RIC London. The complainant accordingly got sanctioned educational loan from Punjab & Sind bank, Branch Chandigarh Road, Nawanshahr and handed over the same to the accused and the accused also received an amount of Rs.25,000/- and the passport of Rajwant Singh, who is the son of the complainant from the shop of the complainant at Chandigarh Road, Nawanshahr with the assurance that the

needful be done at the earlier. However the accused continued putting off the complainant on lame excuses and ultimately came up with the plea that the visa has been refused to Rajwant Singh by the British High Commission Authorities. The complainant then asked for the return of the amount of 3500 GBP and the refund of Rs.25,000/- and passport of Rajwant Singh son of the complainant and kept on making the excuses. The complainant then moved an application with the police of Police Station City, Nawanshahr on 14.02.2011 and during enquiry of the said complaint, the matter was compromised between the complainant and the accused and accused Ajit Singh agreed to pay the amount of 3500 GB Pond to the complainant in the month of April-2011, but the accused failed to honour his commitment. The complainant moved an application bearing no.743- PTM dated 31.05.2011 to the Senior Supdt. of Police, SBS Nagar and the same was marked for enquiry to the E.O. Wing, Nawanshahr, but the police has failed to deliver goods as the police has come under the pressure of the accused and refused to take action and in this manner, the accused has committed offence punishable under Sections 406,420 of IPC and thus made the prayer that accused be summoned, tried and punished according to law.

3. *In order to prove his complaint, complainant Palwinder Singh himself stepped into the witness box as CW1. He also examined Rajwant Singh as CW2, ASI Satnam Singh as CW3*

and thereafter learned counsel for the complainant tendered into evidence documents i.e. Ex.C6 to Ex.C14 and closed the preliminary evidence of the complainant.”

3. Counsel for the petitioner contends that the petitioner had filed complaint against the respondent under Section 406 and 420 of the Indian Penal Code, 1860. The Courts failed to appreciate that it was on the assurance/allurement of the accused that the petitioner parted with his money and also obtained loan from bank. The specific averments and evidence in support thereof has been ignored. It was also not considered that respondent had a number of other cases against him as well of similar nature and despite the said documents being on record, benefit has been given to the accused-respondent. The respondent-accused admitted his liability and agreed to return the money for which the compromise was reduced in writing. The entire overwhelming evidence has been completely ignored, rendering the judgments liable to be set aside.

4. Counsel for the respondent however submits that the evidence and arguments of the petitioner have been considered concurrently by both the Court and it was categorically recorded that offence against him was not made out. High Court, in exercise of the revisional jurisdiction, does not become a Court of appeal and substitute the judgments for its own opinion.

5. I have heard learned counsel for the parties. Before proceeding ahead, it is necessary to examine the judgments under challenge to ascertain whether they suffer from any illegality, perversity or impropriety.

6. Undisputedly, after consideration of the evidence produced

before the Court and testimonies of the witnesses, the trial Court came to a conclusion that the necessary ingredients for commission of offence of cheating were not established. It was recorded that there was neither any express nor implied conduct on the part of the respondent-accused from which the intention/deception could be inferred from the stage of commencement of the relationship between the parties. The nature of the transaction was held, at best, in the nature of breach of a contract and the same would only have civil ramifications and no criminal liability.

7. The operative part of the judgment dated 25.09.2015 passed by the Additional Chief Judicial Magistrate, SBS Nagar, reads thus:-

“9. I have considered the contentions raised by learned counsel for the complainant and have gone through the case file carefully. That so far as the documents i.e. true copies of application dated 03.02.2012 moved by Gurcharan Singh, FIR dated 20.10.2010, orders dated 31.10.2011 passed by the Director, Education Department, statement of Amandeep Singh, statement of Manpreet Kaur, complaint dated 03.02.2011 moved by Manpreet Kaur Mann, complaint dated 21.12.2010, complaint moved by Mohinder Singh and statement of Gurdeep Singh (Ex.C6 to Ex.C14) are concerned, but these are not pertaining to the present matter in controversy as these very complaints pertain to the other persons.

10. That even as per the document i.e. copy of judgment dated 31.01.2013, titled as 'State versus Ajit Singh etc.', bearing FIR No.35 dated 21.02.2004, the present accused

was convicted under Section 323,341,34 of IPC is concerned, that it is pertinent to mention here that the same does not have any kind of bearing upon the present matter in controversy and even the document (Ex.C11 & Ex.C12) are concerned, they are not pertaining to the present matter in controversy and even in that matter, a compromise was effected between them.

11. *That so far as the present controversy is concerned, the present complainant has proved an applications (Ex.C1 & Ex.C3) which were moved before the Senior Supdt. of Police, Nawanshahr and in these applications, a prayer has been made that the accused be directed to return the amount of the complainant and thus another application has been moved and as per application (Ex.C1), a cheque bearing date 29.11.2010 was given to the complainant, but the same was bounced within 40 days and even the complainant has produced photostat copies of the compromise, but the same are not proved through exhibited documents and thus the same can not considered. Further that even perusal of the same shows that accused Ajit Singh has agreed to pay 3500 G.B. Pounds in the month of April-2011 and that in case Ajit Singh has failed to make the said amount to the complainant in the month of April, then Ajit Singh will pay the interest on the same and that if the payment is made in April, then no interest shall be payable.*

12. *Further perusal of the file also shows that the compromise has already been effected whereby the present*

accused has agreed to return the amount of 3500 G.B. Pounds in the month of April, though no year has been mentioned and even this document does not bear any kind of date, so even if the allegations of the complainant is to be considered as such, the compromise has already been effected and whereby the present accused has admitted his own liability to make the payment, failing which the complainant is at liberty to claim the interest, which clearly shows that the matter between the parties is a money transaction and the same is of civil nature. That the matter has already settled between the parties and that if respondent Ajit Singh has failed to honour the compromise, the complainant is at liberty to recourse the civil court for the recovery of the amount.

13. *Further that in order to constitute an offence of cheating, it is well established principle of law that the dishonest intention at the initial transaction must appear to be clear one, but the subsequent conduct of the accused can not make the transaction amounting to cheating. As per the version of the complainant, there is no express or implied conduct by that respondent/accused having any intention of deception right from the time of making promise and thus the complainant has also failed to prove the fact regarding the cheating committed by the complainant from his own testimony as well as from the testimony of the other witnesses examined by the complainant that accused/ respondent is having fraudulent and dishonest*

intention from the very beginning and even the matter in controversy is for the return of the agreed amount, which amount to breach of contract and the matter is of civil nature as a compromise has already been effected between the parties and in such circumstances, the complainant has failed to prove his allegations against the accused and as such, the complaint being devoid of merits, is hereby dismissed.”

8. Pertinently aggrieved thereof, criminal revision bearing No.10 of 2015 dated 03.11.2015 was preferred by the petitioner, which was also dismissed by the Additional Sessions Judge, SBS Nagar vide judgment dated 29.09.2017. The operative part thereof reads thus:-

“11. Before touching the merits of the case, I deem it appropriate to refer to authority M/s Pepsi Food Ltd. Vs. Special Judicial Magistrate (SC) 1998 AIR (SC) 128, which is a guiding star. In the above authority, the Hon'ble Supreme Court of India was pleased to hold :

“26 Summoning of an accused in a criminal case is a serious matter. Criminal law can not be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint who have the criminal law set into motion. The order of Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence

both oral and documentary in support thereof and that would be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinized the evidence brought on record and even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness, of the allegations or otherwise and then examined if any offence is prima-facie committed by all or any of the accused”.

12. *Now, judging the present case on the touchstone of the law laid down in authority M/s Pepsi Food Ltd. Vs. Special Judicial Magistrate (Supra). Let us see whether the revisionist has been able to make a case so as warranting the respondent to be summoned under Sections 406,420 IPC. As per the version of revisionist, he had given 3500 Great Britain Pounds, ₹ 25,000/- and a Passport to respondent Ajit Singh for sending his son Rajwant Singh on study visa abroad. To prove its version, the revisionist is strongly relying on Ex.C2 which is the alleged compromise entered into between the revisionist Palwinder Singh and respondent Ajit Singh. At the first instance, it is observed that only a photocopy of this document has been produced and also this compromise does not bear any date and even otherwise when the contents of this document are perused, then it is mentioned therein that Ajit Singh has agreed*

to pay 3500 Pounds in the month of April on behalf of Vertex Study Abroad Private Limited. This document nowhere proves that Ajit Singh had admitted his liability and does not reflect that Ajit Singh had taken money. Further though it is the case of revisionist that the respondent had taken 3500 Great Britain Pounds, ₹ 25,000/- and a passport but this compromise Ex.C2 is totally silent about passport and ₹ 25,000/- and thus casting a shadow on the truthfulness of the version put forth by the revisionist.

13. *To prove his version, the revisionist is showing relying on Ex.C1 and Ex.C2. When document Ex.C1 relied upon by the revisionist is perused then it is incorporated in this document that the agent had prepared all the documents and submitted in the Embassy but they did not get visa. Even if this version is taken as it is then also granting or not granting visa is the prerogative of respective Embassy. Further it is mentioned in this document that they had asked the agent to get their fees refunded and he demanded amount of ₹ 10,000/- which they gave. It can not be believed that he gave another ₹ 10,000/- knowing that his visa has already been refused. As per Ex.C3, which is an application addressed to SSP, SBS Nagar, the revisionist has sought for refund of money only with interest and that being so the Ld. Trial Court has rightly observed that the liability if any is a Civil one.*

14. *Perusal of Ex.C1 reveals that it mentioned therein*

that he had paid 3500 Pound in the shape of draft. There is nothing to show that he has got it encashed and also that the Vertex Company is owned by the respondent Ajit Singh rather it reflects from the application at page 71 of the trial court file that the Vertex Company is owned by some other person and there is no evidence to connect the respondent Ajit Singh with Vertex Company. The document Ex.C6 to Ex.C-14 relied upon by the revisionist do not pertain to the present complaint and do not come to rescue of revisionist.

15. *Cumulative effect of my above discussion is that the revisionist had failed to prove that the respondent had committed offence under Sections 406 and 420 IPC. Hence, I do not find any illegality and infirmity in the impugned order dated 25.09.2015 passed by the then Ld. ACJM, Shaheed Bhagat Singh Nagar. There is no merit in the revision filed by the revisionist and as such the same is hereby dismissed. Lower court record be sent back with the copy of this judgment and revision file of this court be consigned to record room.”*

9. It is evident from the above that arguments of petitioner have already been considered by both the Courts and the same were rejected.

10. The compromise, relied upon by the petitioner as his star evidence has been reflected upon and yet could not establish the case. It can be held that the conclusions drawn by both the Courts were flawed and could not have been deductible from the plain reading.

11. Once the conclusions are probable from the evidence, it would

not be interfered with ordinarily, merely because any other view may also be possible. Doing so would amount to substituting the judgment by an opinion.

12. Counsel for the petitioner has not been able to point out any illegality, perversity or impropriety in the judgment passed by both the Courts and to establish that the conclusions so drawn are misconceived in law and/or not tenable.

13. The present petition is thus ***dismissed***.

(VINOD S. BHARDWAJ)
JUDGE

09.02.2026

Mangal Singh

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