

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-1689-2019 (O&M)

Reserved on 02.05.2025

Pronounced on 31.08.2025

Harsh Arora

... Petitioner

VS.

State of Punjab & Anr.

... Respondents

CRM-M-60442-2022 (O&M)

Deepak Arora

... Petitioner

VS.

State of Punjab & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Aman Pal, Advocate and
Mr. Japsehaj Singh, Advocate for the petitioner(s)

Mr. Rajiv Verma, DAG Punjab

Mr. RS Dhir, Advocate and
Ms. Simsi Dhir Malhotra, Advocate for respondent No.2

Sandeep Moudgil, J. (Oral)

(1). By this order, I shall dispose of the above-mentioned petitions involving common issues for adjudication. For the purpose of order, CRM-M-1689-2019 is treated as the lead case.

(2). This petition under Section 482 CrPC filed by the petitioner is for quashing the FIR No.34 dated 15.04.2016 under Section 420/506 IPC registered at Police Station Chhabewal, District Hoshiarpur (Annexure P1) as well as the subsequent proceedings arising therefrom.

(3). Learned counsel for the petitioner submits that the allegations made in the FIR regarding the supply of material as well as effecting of

compromise and handing over of cheques are false and fabricated as there existed no such firm with the name of M/s Sidh Yogi Ambica Casting Enterprises, village Daulatpur, PO Alawalpur, as has been mentioned in the FIR by the complainant who allegedly gave cheque to him and that apart, the petitioner even do not know the complainant-Didar Singh nor he ever met him at any point of time. It is further urged that the complainant is not aware as to which firm he has sold the scrap material and where this firm runs its premises as he never met the accused/petitioners or Savita Arora and so far as the business transaction is concerned, the petitioners or their firm never purchased any material as alleged in the FIR from the complainant.

(4). Mr. Aman Pal, Advocate vehemently argued that the complainant had filed a civil suit (Annexure P5) for recovery of Rs.12,73,937.69 along with 12% interest per annum against the petitioners and their mother which itself substantiates the petitioners' claim that the allegations incorporated in the FIR are primarily of civil nature with no criminal element. He vehemently argued that the contents of the FIR do not establish the ingredients of Section 420 IPC, in any manner, for, there was no intention of the petitioners to cheat the complainant right from the beginning of the business transaction. He submits that the criminal breach of trust and cheating are antithetical in nature and cannot co-exist simultaneously and as such, any such contractual breach does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is proved from the very inception. Reliance has been placed on *Naresh Kumar & Anr. Vs. State of Karnataka & Anr. (2024) 3 SCALE 664.*

(5). Learned counsel then exhorted that where a criminal proceedings is maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite him owing to a personal grudge, the Court can exercise its power under Section 482 CrPC and quash the proceedings. It is further urged that a complaint/FIR disclosing civil transactions may also have a criminal texture and as such, this Court is empowered to see whether a dispute which is essentially of civil nature is being given a criminal cloak and in such situation, there should be no hesitation to quash the criminal proceedings to prevent abuse of process of law. He places reliance on *State of Haryana vs. Ch. Bhajan Lal 1991 () RCR (Crl.) 383* and *M/s Zandhu Pharmaceutical Works Ltd. & Ors. vs. MD Sharaful Haque & Ors. AIR 2005 SC 9*

(6). On the contrary, reply dated 08.11.2019 has been filed by Sh. Satish Kumar, PPS, DySP, S/Divn. Garhshankar, District Hoshiarpur wherein it has been pointed out that pursuant to registration of the instant FIR, the petitioners were granted bail and have joined the investigation. He further submits that the FIR was rightly registered against the petitioners and after due enquiry, it has been found that the petitioners have committed the offence as alleged in the FIR as they had purchased scrap from the shop of the complainant and loaded the same in truck bearing registration No.PB-08-DZ-9983.

(7). In another status report dated 22.03.2022, Sh. Narinder Singh, PPS, DySP, S/Divn. Gargshankar, District Hoshiarpur, it has been averred that after completion of investigation, the challan was presented before the trial court on 21.10.2019 and pursuant thereto, the charges have been framed

against the petitioner on 20.12.2019 and out of 14 PWs, one PW1 Santokh Singh has been examined in the present case as on 22.03.2022.

(8). Reply dated 21.03.2022 has also been filed on behalf of respondent No.2, wherein it has been categorically averred that the case is of both civil and criminal liability and as such both the civil and criminal liabilities can go together since both the petitioners played active role in deliberately cheating the respondent No.2. It is submitted that the contents of the FIR are correct as sum of more than Rs. 10 Lakh were standing against the petitioners and due to this reason respondent No.2 was not interested to give more material but it was only due to undue police pressure exerted on respondent No.2, the petitioners took the truck and handed over a cheque of an account which was already closed, knowingly and deliberately which amounts to cheating.

(9). It is further averred that since respondent No.2 had filed a recovery suit as arrears were already standing due against petitioners and their mother Savita, it does not absolve the petitioners from their criminal liability. It is then pointed out that the said *Civil Suit No.CS/949/2016* titled as "*Didar Singh vs Savita Arora & Ors.*", filed by respondent No.2 for recovery of Rs.12,73,937/- along with interest has since been decreed in favour of respondent No.2 on ground that the compromise dated 12.11.2014 Ex.PW4/B has been duly admitted by the petitioners-defendants who conceded that the same bears their signatures as well as the signature of one Inspector Resham Singh PW3. It has been categorically mentioned in the compromise that the petitioner-defendant No.2 had paid Rs.3 lakh to the

respondent No.2-plaintiff and the cheque in question has been issued of the balance payment.

(10). Heard learned counsel for the parties and gone through the record.

(11). Learned counsel for the petitioner has handed over a copy of the cheque dated 13.11.2014 which has been purportedly issued in the name of "Self" by Ambika Concast Pvt. Ltd. which indeed fortifies the stand of the petitioner that the cheque in question was never issued to the respondent No.2. The cheque which has been drawn in the name of "self" cannot be used as a tool to falsely implicate the petitioner in a criminal case and especially in view of the fact that as per the compromise dated 12.11.2014 (Annexure P10), the parties to the lis have been carrying on business with each other from many years and the respondent No.2 has tried to rejuvenate a dispute which had already been resolved between the parties vide compromise dated 12.11.2014.

(12). This all the more gains importance looking at the statement of the respondent No.2 made in the civil suit for recovery filed by him against the petitioner wherein respondent No.2 has categorically admitted that he had been carrying on business with the petitioner for the last several years.

(13). It is of paramount importance 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.

(14). In the case of *State of Kerala v. A. Pareed Pillai and another*, *AIR 1973 SC 326* the Supreme Court ruled that to hold a person guilty of the

offence of cheating, it has to be shown that his intention was dishonest at the time of making the promise and such a dishonest intention cannot be inferred from a mere fact that he could not subsequently fulfill the promise. Similar view has been taken in the case of *S.W. Palanikar and others v. State of Bihar & another (2002) 1 SCC 241* and also in the case of *State of Kerala vs. A. Pareed Pillai and Anr. (1972) 3 SCC 661*.

(15). In *Mariam Fasihuddin v. State, 2024 SCC OnLine SC 58*, the allegations were of forgery and cheating against the appellants, who are the mother and maternal grandfather of a minor child. The charges stemmed from a complaint by the child's father, claiming that his signature was forged on a passport application for the minor child. While addressing the contours of the offence of 'cheating' adverting to the facts involved therein, the Supreme Court underscored that not every unlawful act automatically qualifies as 'deceitful'. Speaking for the Bench, Justice Surya Kant held as under:-

“23. 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) mens rea 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.

24. It is well known that every deceitful act is not unlawful, just as not every unlawful act is deceitful. Some acts may be termed both as unlawful as well as deceitful, and such acts alone will fall within the

purview of Section 420 IPC. It must also be understood that a statement of fact is deemed 'deceitful' when it is false, and is knowingly or recklessly made with the intent that it shall be acted upon by another person, resulting in damage or loss. 'Cheating' therefore, generally involves a preceding deceitful act that dishonestly induces a person to deliver any property or any part of a valuable security, prompting the induced person to undertake the said act, which they would not have done but for the inducement.

25. The term 'property' employed in Section 420 IPC has a well-defined connotation. Every species of valuable right or interest that is subject to ownership and has an exchangeable value - is ordinarily understood as 'property'. It also describes one's exclusive right to possess, use and dispose of a thing. The IPC itself defines the term 'moveable property' as, "intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth." Whereas immoveable property is generally understood to mean land, benefits arising out of land and things attached or permanently fastened to the earth."

(16). In the present case, the allegations made in the FIR do not constitute offence under Section 420/506 IPC as the basic ingredients of fraudulent intention from the very inception has been missing particularly in view of the corroboration of respondent No.2 made in his statement (Annexure P11). So much so, the contents of the FIR is completely incongruous to the report under Section 173 CrPC of framing charges against the petitioner.

(17). Learned counsel for respondent No.2 has placed on record copy of the judgment and decree dated 18.01.2024 vide which the suit for recovery filed by the respondent No.2 has seen been decreed holding him entitled to

recovery an amount of Rs.12,73,937/- along with 9% interest from the date of bills till the filing of suit and with further interest @ 6% per annum from the date of institution of suit till actual realization.

(18). Notwithstanding the above fact of decretal of suit, this Court cannot be oblivious of the fact that the petitioner has approached this Court for quashing of the FIR and this Court has found existence of no material ingredients to constitute offences under Section 420/506 IPC against the petitioner. This Court has just defaded the criminal colour given to a pending civil dispute and since, *pendente lite*, the trial court has already decreed the suit in favour of respondent No.2 the law would take its own course.

(19). In view of the above discussion, this petition is allowed and the FIR No.34 dated 15.04.2016 under Section 420/506 IPC registered at Police Station Chhabewal, District Hoshiarpur (Annexure P1) as well as the consequential criminal proceedings arising therefrom stand quashed.

(20). Ordered accordingly.

31.07.2025

V.Vishal

1. Whether speaking/reasoned?

2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No

Yes/No