



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-16795-2018 (O&M)
Reserved on: 15.01.2025
Pronounced on: 23.01.2025

Jagdish Rai and others

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Naveen Kumar, Advocate for the petitioners.

Mr. Rishabh Singla, AAG, Punjab.

Harpreet Singh Brar, J.

1. The present petition has been preferred under Section 482, Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') seeking quashing of FIR No. 134 dated 15.06.2015 registered under Sections 406, 420, 465, 468, 471, 120-B IPC at Police Station Mandi Gobindgarh, District Fatehgarh, order dated 20.07.2017 passed by the learned Sub Divisional Judicial Magistrate, Amloh whereby charges were framed as well as all subsequent proceedings arising therefrom.

2. Briefly, the facts, as alleged, are that on 02.04.2015, the petitioners approached respondent No.2-complainant and got re-roll-able imported scrap worth Rs.9,17,393/-. A VAT invoice slip dated 02.04.2015 was also prepared in this regard. The petitioners promised to make the payment within a day or two. However, they did not pay the amount even after multiple requests. On 17.04.2015, when respondent No.2 approached them and told them to either make the payment or return the material, the petitioners



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threatened to kill him. Hence, FIR (*supra*) was registered. Subsequently, charges were framed against the petitioners under Sections 420, 406, 465, 467, 468, 471 read with 120-B IPC vide order dated 20.07.2017 (Annexure P-4).

3. Learned counsel for the petitioners *inter alia* contends that no offence is made out against the petitioners. The petitioners have been in business with respondent No.2 since a long time and FIR (*supra*) has been registered because of a misunderstanding. There was no intention to cheat involved as evidenced by the fact that the petitioners have already paid the entire amount to respondent No.2 by means of demand drafts. He further contends that the matter at hand bears a civil nature and there is no occasion to invoke criminal proceedings against the petitioners. Reliance in this regard is placed on the judgments rendered by the Hon'ble Supreme Court in ***Veer Prakash Sharma vs. Anil Kumar Aggarwal(2007) 3 SCC(Cri) 370***, ***Joseph Salvaraj A. Vs. State of Gujarat and others (2011) 7 SCC 59*** and this Court in ***Pardeep kumar Dhingra 2022(1) Law Herald(P&H) 693*** as well as the Madras High Court in ***Shanthi vs. State rep. By its Inspector of Police, Central Crime Branch, Tiruppur, Coimbatore District and another 2007(2) MadWN(Cri) 75***.

4. *Per contra* learned State counsel submits that during the investigation, respondent No.2 moved an application stating that the petitioners have prepared forged documents and sought enhancement. On investigating further, it was found that bill no. 242 and 243 were forged and fabricated. The vehicle carrying the goods weighed 11,900 kg while the bill mentions that 19,885 kg of material was sent. However, as per the slip from Bhushan Computer Weighing Machine, the total weight was 25,450 kg.



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Additionally, he concedes that the petitioners have handed over a demand draft of Rs.3,00,000/- while joining the investigation.

5. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioners have paid the total amount due i.e. Rs.9,17,393/- by means of different bank drafts as detailed in the letter dated 07.07.2018 (Annexure P-5) issued by Oriental Bank of Commerce, Mandi Gobindgarh. Further, the sole test to ascertain whether the initiation of criminal proceedings in a cheating case is merited is to see whether a culpable intention can be attributed to the accused since the very beginning. The dishonest and fraudulent intention at the inception is an essential ingredient of the offence. A mere breach of contract or agreement, in absence of a dishonest intention from the beginning of the transaction, cannot give rise to criminal proceedings. Unless and until the dishonest intention right at the beginning for the performance or the entrustment in terms of any transaction of civil nature is present, the criminal proceedings are totally unwarranted as in the present case, and the remedy lies in civil law.

6. A two Judge bench of the Hon'ble Supreme Court in *Mariam Fasihuddin and another vs. State by Adugodi Police Station and another* **2024 AIR SC 801**, speaking through Justice Surya Kant, opined as follows:

*“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) **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*



*deliver any property to any person, and **dishonest intention must exist from the inception when the promise or representation was made.***”
(emphasis added)

As far as the offence of forgery is concerned, a two Judge bench of the Hon’ble Supreme Court in *Arun Bhandhari vs. State of Uttar Pradesh (2013) 2 SCC 693*, speaking through Justice Dipak Misra, made the following observations:

“20. In *G.V. Rao v. L.H.V. Prasad and others*, 2000(2) RCR (Criminal) 290: (2000)3 SCC 693 this Court has held thus:

“7. As mentioned above, Section 415 has two parts. While in the first part, the person must “dishonestly” or “fraudulently” induce the complainant to deliver any property; in the second part, the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional. As observed by this Court in *Jaswantrai Manilal Akhaney v. State of Bombay*, AIR 1956 Supreme Court 575 a guilty intention is an essential ingredient of the offence of cheating. **In order, therefore, to secure conviction of a person for the offence of cheating, “mens rea” on the part of that person, must be established.** It was also observed in *Mahadeo Prasad v. State of W.B.*, AIR 1954 Supreme Court 724 that in order to constitute the offence of cheating, the intention to deceive should be in existence at the time when the inducement was offered.” (emphasis added)

7. Recently, a two Judge bench of the Hon’ble Supreme Court in *Kunti and Another vs. State of U.P. Criminal Appeal No. 1380 of 2023* decided on 03.05.2023, speaking through Justice Sanjay Karol, observed as follows:

“9. However, we do not find the need to engage with the grounds as urged, because a perusal of the record in no uncertain terms reflects the dispute as being of a civil nature. This court recently, in *Sarabjit Kaur vs. State of Punjab and anr.*, observed that “A breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of



failure to keep up promise will not be enough to initiate criminal proceedings.”

10. A two judge bench of this Court in *ARCI v. Nimra Cerglass Technics (P)Ltd.*, while deliberating upon the difference between mere breach of contract and the offence of cheating, observed that the distinction depends upon the intention of the accused at the time of the alleged incident. If dishonest intention on part of the accused can be established at the time of entering into the transaction with the complainant, then criminal liability would be attached.

11. In *Vijay Kumar Ghai v. State of W.B (2022) 7 SCC 124*, one of us, (Krishna Murari J.,) observed in reference to earlier decisions as under:

“24. This Court in *G. Sagar Suri v. State of U.P. [G. Sagar Suri v. State of U.P., (2000) 2 SCC 636 : 2000 SCC (Cri)513]* observed that it is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process, particularly when matters are essentially of civil nature.

25. This Court has time and again cautioned about converting purely civil disputes into criminal cases. This Court in *Indian Oil Corpn. [Indian Oil Corpn. V. NEPC India Ltd. (2006) 6 SCC 736 : (2006) 3 SCC(Cri) 188]* noticed the prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/ creditors. The Court further observed that: (*Indian Oil Corpn. Case [Indian Oil Corpn. V. NEPC India Ltd. (2006) 6 SCC 736 : (2006) 3 SCC(Cri) 188]* SCC p.749 para 13)

“13. ... Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.”



12. *Having regard to the above well established principles and also noting that the present dispute is entirely with respect to property and more particularly buying and selling thereof, it cannot be doubted that a criminal hue has been unjustifiably lent to a vicil natured issue.”*

8. In view of the discussion above, this Court finds that the issue involved between the parties is purely of civil nature emerging from the business transactions between the petitioners and respondent No.2. Moreover, the ingredients of any of the alleged offences are not made out against the petitioners.

9. Consequently, the present petition is allowed and FIR No. 134 dated 15.06.2015 registered under Sections 406, 420, 465, 468, 471, 120-B IPC at Police Station Mandi Gobindgarh, District Fatehgarh, the order dated 20.07.2017 passed by the learned Sub Divisional Judicial Magistrate, Amloh whereby charges were framed as well as all subsequent proceedings arising therefrom, are quashed qua the petitioners.

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

Reserved on : 15.01.2025
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(HARPREET SINGH BRAR)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>