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DALIP KAUR & ORS.

v.

JAGNAR SINGH & ANR.

(Civil Appeal No. 1135 of 2009)

JULY 7, 2009

B

**[S.B. SINHA AND ASOK KUMAR GANGULY, JJ.]**

*Penal Code, 1860: s.420 – Necessary ingredients – Explained – On facts, FIR alleging cheating on account of breach of contract – Petition u/s.482 CrPC for quashing FIR – Dismissed by High Court – On appeal, held: Breach of contract would not constitute offence of cheating – Dispute between the parties essentially civil in nature – High Court did not apply its mind with regard to this aspect – Matter remitted to High Court for consideration afresh – Code of Criminal Procedure, 1973 – s.482.*

The appellant entered into an agreement for sale of land with the respondent no.2. Respondent no.2 paid an advance amount and also a further sum within 7 months from execution of sale agreement. The appellant executed a deed of sale in favour of another person. Appellant returned the advance amount to respondent no.2 at the time of cancellation of agreement of sale and promised to refund the balance amount received. Respondent no.2 lodged an FIR alleging fraud on the part of appellant. Appellant filed petition for quashing the FIR which was rejected.

In appeal to this Court, appellant contended that the allegations made in the FIR, even if taken to be correct in its entirety, would not constitute an offence under Section 406 and 420 IPC.

Allowing the appeal and remitting the matter to High Court, the Court

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HELD: An offence of cheating would be constituted when the accused has fraudulent or dishonest intention at the time of making promise or representation. A pure and simple breach of contract does not constitute an offence of cheating. The ingredients of Section 420 IPC are (i) deception of any persons; (ii) fraudulently or dishonestly inducing any person to deliver any property; or (iii) to consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit. The High Court should have posed a question as to whether there was any act of inducement on the part of the appellant and whether the appellant had an intention to cheat respondent 2 from the very inception. If the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance the same would not constitute an offence of cheating. Similar is the legal position in respect of an offence of criminal breach of trust having regard to its definition contained in Section 405 IPC. As the High Court did not apply its mind with regard to these aspects of the matter, the impugned judgment cannot be sustained. [Paras 10, 12 and 14] [269-H; 270-A-E; 271-F]

*Ajay Mitra v. State of M.P.* (2003) 3 SCC 11; *R. Kalyani v. Janak C. Mehta & Ors.* 2009 (1) SCC 516; *Hira Lal & Ors. v. State of U.P. & Ors.* 2009 (5) SCALE 418; *Harmanpreet Singh Ahluwalia & Ors. v. State of Punjab & Ors.* 2009 (7) SCALE 85, relied on.

Case Law Reference:

(2003) 3 SCC 11	relied on	Para 12
2009 (1) SCC 516	relied on	Para 13
2009 (5) SCALE 418	relied on	Para 13

A 2009 (7) SCALE 85 relied on Para 13

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
No. 1135 of 2009.

B From the Judgment & Order dated 31.08.2007 of the High  
Court of Punjab & Haryana at Chandigarh in Misc. No. 44056-  
M of 2007.

Sachin Jain and Dr. Kailash Chand for the Appellants.

C Vivek Sharma and Chander Shekhar (for Temple Law  
Firm) for the Respondents.

The Judgment of the Court was delivered by

**S.B. SINHA, J.** 1. Leave granted.

D 2. Whether breach of contract of an agreement for sale  
would constitute an offence under Section 406 or Section 420  
of the Indian Penal Code is the question involved herein.

3. It arises in the following factual background:

E Appellant is the owner of some agricultural lands. He  
entered into an agreement for sale with the respondent No.2  
agreeing to sell 13 acres of land at the rate of Rs.4,70,000/-  
per acre. Allegedly, respondent No.2 is said to be a property  
F dealer. He paid a sum of Rs.7,00,000/- towards advance to the  
appellant. A sum of Rs.14,20,000/- was furthermore paid to the  
appellant within a period of seven months from the date of  
execution of the said sale agreement.

G 4. Inter alia, on the premise that the second respondent  
was unable to pay the balance amount of consideration, the  
appellant executed a deed of sale in favour of Balbir Singh and  
Mohinder Singh. Whereas the case of the appellant is that it  
was at the instance of the respondent No.2, the said deed of  
sale was executed, the latter contends that the appellant did  
H so without calling upon him to pay the balance amount and as

such he committed an offence under Section 406 and Section 420 of the Indian Penal Code. Pursuant to or in furtherance of the agreement dated 12.05.2006, the appellant paid a sum of Rs.7,20,000 to the respondent No.2 at the time of cancellation of agreement of sale. Appellant furthermore stated that another agreement was entered into on or about 10.6.2006 pursuant whereto the parties have agreed to cancel the agreement of sale itself and it was furthermore agreed that in the event the appellant fails to refund the amount, the respondent will take recourse to law.

5. Appellants in this Special Leave Petition, in no uncertain terms, stated that they were ready and willing to pay the amount on due date.

6. Indisputably, the respondent No.2 lodged a first information report on or about 7.9.2006, inter alia, alleging :

"... we got a call from Surjit Singh, who said us to come tomorrow i.e. 12.05.2006 to execute the sale deed and if they could not execute the sale deed they will return our money. We again reached Tapa Mandi on 12.05.2006. The above said accused were called at the home of Shri Harbans Singh & they said that they don't want to sell their land, so you take your money back. After this we & accused persons came at Tapa Mandi where cancellation deed was executed & accused have returned us Rs.7,80,000/- & remaining amount of Rs.14,20,000/- was promised to return till 10.06.2006 & it was also written, if accused persons could not return Rs.14,20,000/- till 10.06.2006, the agreement to sell will remain intact and amount of Rs.7,80,000/- given by the accused will be forfeited in favour of the complainant. The accused persons did not return the money of Rs.14,20,000/- till 10.06.2006, so we reached at their home at village Khokhar on 10.06.2006. The accused has promised us to give that amount on 20.06.2006. But accused still did not return the amount, when we reached on 20.06.2006 to take

A our money, we came to know that accused have sold the  
 land which was subject matter of the agreement, to Balbir  
 Singh, Mohinder Singh sons of Mohar Singh son of Rulia  
 Singh etc. R/o village Tanola, District Sangrur and got the  
 sale deed executed in their favour on 10.05.2006. After  
 B that, we got a copy of registry with the help of an Advocate  
 & we came to know that the land subject matter of  
 agreement with us was sold. After that, one application  
 was given to sub-registrar, Rampura Phul on 23.06.2006  
 to mark my presence and again on 26.06.2006 one  
 C application was given to mark my presence being holiday  
 on 24/25.06.2006 & marked my presence. We have taken  
 the amount with us to get the sale deed executed. Accused  
 neither returned our amount of Rs.22,00,000/- nor  
 executed the sale deed in our favour. Accused has  
 D committed fraud with us and grabbed our Rs.22.0 lacs &  
 rather threatening to kill us if we have taken any action  
 against them.”

7. Appellants filed an application before the High Court of  
 Punjab and Haryana at Chandigarh on 25.8.2007 for quashing  
 E the said first information report No.302 dated 7.9.2006. By  
 reason of the impugned order dated 31.8.2007, the said  
 application has been rejected by a learned Single Judge of the  
 said Court, stating :

F “The petitioners despite the agreement to sell having been  
 cancelled have not returned the earnest money, which is  
 indicative of their dishonest intention leading to registration  
 of the FIR. Nothing has been shown to this Court which  
 could persuade it to exercise its inherent jurisdiction under  
 G Section 482 of the Code of Criminal Procedure.

Dismissed.”

8. Mr. Sachin Jain, learned counsel appearing on behalf  
 of the appellant, would urge that the allegations made in the first  
 H information report, even if given face value and taken to be

correct in its entirety, does not constitute an offence under Section 406 and 420 of the Indian Penal Code. A

9. Mr. Vivek Sharma, learned counsel appearing on behalf of the respondent, on the other hand, supported the impugned judgment contending that the appellants not only sold the land to other persons but also deliberately refused to return a huge amount of Rs.22,00,000/-, despite having made promise therefor. B

10. Sections 405 and 415 of the Indian Penal Code defining 'criminal breach of trust' and 'cheating' respectively read as under: C

"405 - *Criminal breach of trust.*-Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust". D E

"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'. F G

An offence of cheating would be constituted when the accused has fraudulent or dishonest intention at the time of making promise or representation. A pure and simple breach of contract does not constitute an offence of cheating. H

A 11. The ingredients of Section 420 of the Indian Penal Code are :

- (i) Deception of any persons;
- B (ii) Fraudulently or dishonestly inducing any person to deliver any property; or
- C (iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit."

D 12. The High Court, therefore, should have posed a question as to whether any act of inducement on the part of the appellant has been raised by the second respondent and whether the appellant had an intention to cheat him from the very inception. If the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance the same would not constitute an offence of cheating. Similar is the legal position in respect of an offence of criminal breach of trust E having regard to its definition contained in Section 405 of the Indian Penal Code. {See *Ajay Mitra v. State of M.P.* [(2003) 3 SCC 11]}.

F 13. There cannot furthermore be any doubt that the High Court would exercise its inherent jurisdiction only when one or the other propositions of law, as laid down in *R. Kalyani v. Janak C. Mehta & Ors.* [(2009 (1) SCC 516)] is attracted, which are as under:

G "(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a First Information Report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

H (2) For the said purpose, the Court, save and except in

very exceptional circumstances, would not look to any document relied upon by the defence. A

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus. B

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue." C

Yet again, in *Hira Lal & Ors. v. State of U.P. & Ors.* [2009 (5) SCALE 418], this Court held :

"10. The parameters of interference with a criminal proceeding by the High Court in exercise of its jurisdiction under Section 482 of the Code are well known. One of the grounds on which such interference is permissible is that the allegations contained in the complaint petition even if given face value and taken to be correct in their entirety, commission of an offence is not disclosed. The High Court may also interfere where the action on the part of the complainant is mala fide." D E

{See also *Harmanpreet Singh Ahluwalia & Ors. v. State of Punjab & Ors.* [2009 (7) SCALE 85]} F

14. As the High Court has not applied its mind with regard to the aforementioned aspects of the matter, the impugned judgment cannot be sustained. It is set aside accordingly. The appeal is allowed. G

15. The matter is remitted to the High Court for consideration of the matter afresh.

D.G.

Appeal allowed.

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