

**(2015) 09 P&H CK 0183**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : CRM-M-14403-2013**

|                          |    |            |
|--------------------------|----|------------|
| Randhir Singh and Others | Vs | APPELLANT  |
| State of Haryana         |    | RESPONDENT |

**Date of Decision :** 30-09-2015

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 173, 173 (2), 173(2)  
Penal Code, 1860 (IPC) — Section 420, 447

**Citation :** (2015) 09 P&H CK 0183

**Hon'ble Judges :** Rameshwar Singh Malik, J

**Bench :** Single Bench

**Advocate :** Harkesh Manuja, for the Appellant; Ashish Yadav, A.A.G, Advocates for the Respondent

**Final Decision :** Allowed

## Judgement

Rameshwar Singh Malik, J—Petitioners, by way of instant petition under Section 482 of the Code of Criminal Procedure Cr.P.C. for short), seek quashing of impugned FIR No. 269 dated 19.7.2011 registered under Sections 420 and 447 of the Indian Penal Code ("IPC for short) at Police Station Madlauda, District Panipat, as well as the consequential criminal proceedings.

2. Notice of motion was issued and pursuant thereto reply by way of affidavit dated 16.8.2013 of Deputy Superintendent of Police (Headquarters), Panipat, was filed on behalf of respondent-State. Thereafter, instant petition was admitted for regular hearing.

3. Learned counsel for the petitioners submits that even if the allegations levelled in the impugned FIR are taken to be true on their face value, no offence of any kind, whatsoever, is made out against the petitioners. Because of party faction in the village, the Panchayat was not in a position to manage its affairs properly. All the developmental activities in the village had come to a stand still. Faced with that unwarranted situation, a Non Government Organization ("NGO" for short) was formed by a group of upright citizens and respectables of the village. With a

view to maintain transparency in the working of NGO, it was got registered as Gram Sudhar Samiti (village development committee). Some of the panchayat land, with the concurrence of the members of the Gram Sabha and without there being any objection from any resident of the village, was put to public auction so as to fetch maximum lease money, for the optimum use thereof in the development works of the village and for the benefit of every resident of the village.

4. He further submits that when some disgruntled persons objected in handing over the possession of the auctioned land to the lessee for the financial year of 2011-2012, police help was sought and it was provided through the intervention of Deputy Commissioner, Panipat. Possession was handed over to the lessee with the police help provided by the District Administration itself. Lease money was paid by the lessee and was deposited in the bank account of the Gram Sudhar Samiti by the petitioners. However, in the meantime the group of disgruntled persons misguided the Deputy Commissioner and impressed upon him for registration of the impugned FIR, because of which the bank account was seized. Neither the petitioners were permitted to withdraw any amount for the purpose of spending it on the developmental activities of the village nor the Gram Sudhar Samiti was allowed to perform its functions smoothly.

5. He would next contend that although no offence was made out against any of the petitioners yet the investigating agency completed the formality of carrying out an investigation in haste, under the pressure of district administration and presented the police report under Section 173(2) Cr.P.C. before the learned court of competent jurisdiction. Impugning the order of framing charge (Annexure P-2) as well as the revisional order (Annexure P-4), learned counsel for the petitioners submits that the learned courts below have misdirected themselves, while completely ignoring the undisputed factual aspect of the matter. He submits that in view of the peculiar fact situation of the present case, offences alleged against the petitioners under Sections 420 and 447 IPC must have gone hand in hand and once the learned trial Court did not find any prima facie case for framing of the charge for the offence punishable under Section 447 IPC, there was no scope left for framing the charge under Section 420 IPC. The prosecuting agency did not even challenge the impugned order of framing the charge, whereby charge under Section 447 IPC was declined to be framed. However, the learned revisional court failed to appreciate this aspect of the matter as well, while passing the impugned order dated 15.12.2013 and both the impugned orders passed by the learned courts below have resulted in miscarriage of justice.

6. Placing reliance on the judgment of the Hon''ble Supreme Court in Md. Ibrahim and Others Vs. State of Bihar and Another, (2010) CriLJ 2223 : (2009) 11 JT 533 : (2009) 12 SCALE 250 : (2009) 8 SCC 751 : (2009) 9 UJ 4349 , learned counsel for the petitioners submits that not only the impugned FIR and report under Section 173 Cr.P.C. were silent but even the reply filed by a senior officer of the rank of Deputy Superintendent of Police is completely silent about

any of the ingredients of Section 420 IPC. There is not even a whisper anywhere that the petitioners, as a matter of fact, have used even a single penny, out of the lease money, for their personal benefit. He concluded by submitting that continuation of the criminal proceedings arising out of the impugned FIR would amount to abuse of process of court. He prays for quashing the impugned FIR (Annexure P-1), order dated 15.9.2012 passed by the learned trial Court, framing the charge (Annexure P-2) as well as impugned revisional order dated 15.2.2013 (Annexure P-4), by allowing the present petition.

7. Per contra, learned counsel for the State vehemently contended that the only requirement for framing of the charge was a prima facie case and the same was clearly made out against the petitioners. He further submits that even if the investigation was tainted or defected, petitioners cannot get any benefit thereof at this stage of the trial. He also submits that non-disclosure of ingredients of the offence under Section 420 IPC in the police report under Section 173 (2) Cr.P.C. as well as in the reply filed to the present petition would not be a ground for quashing the impugned FIR. He would next contend that the petitioners had no authority in law to deal with the property of the Gram Panchayat. He concluded by submitting that, had the petitioners not been caught at the wrong foot at the appropriate time, when they were intending to misuse the lease money, petitioners would have misused the entire lease money for their personal benefit. He prays for dismissal of the present petition.

8. Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that in the peculiar fact situation obtaining in the case, instant one has been found to be a fit case, warranting interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C. so as to prevent any further abuse of process of court and also to secure the ends of justice. To say so, reasons are more than one, which are being recorded hereinafter.

9. It is a matter of record that there is not even a whisper either in the impugned FIR or in the police report under Section 173(2) Cr.P.C. and also in the reply filed to the present petition, about any alleged misuse of even a single penny out of the lease money, at the hands of the petitioners. It is also not in dispute that when the learned Magistrate did not accept the contention of the prosecution for framing charge against the petitioners under Section 447 IPC vide order dated 15.9.2012 (Annexure P-2), said order was not challenged by the prosecuting agency of the respondent-State, for the reasons best known to it. Having said that, this Court feels no hesitation to conclude that the ingredients for the commission of offence under Section 420 IPC have been found conspicuously missing in the present case, therefore, the impugned FIR as well as consequential criminal proceedings, arising therefrom, including the impugned orders framing charge, cannot be permitted to continue any further, so as to prevent any further abuse of process of court and also to secure the ends of

justice.

10. During the course of hearing, when a pointed question was put to the learned counsel for the State as to how the impugned order framing the charge under Section 420 IPC is sustainable, particularly when ingredients thereof are conspicuously missing, as the impugned FIR, report under Section 173 (2) Cr.P.C., as well as reply filed to the present petition are completely silent in this regard, he had no answer and rightly so, it being a matter of record. In such a situation, continuation of criminal proceedings any further would certainly result in glaring abuse of process of court because there is not even remotest scope of recording the conviction of the petitioners, thus, impugned criminal proceedings cannot be permitted to continue any further.

11. Another equally important aspect of the matter is that the aggrieved party, if any, would have been the Gram Panchayat of the village, however, the instant litigation has never been contested by the Gram Panchayat at any point of time. Under these circumstances, the contention raised by the learned counsel for the petitioners deserves to be accepted that some disgruntled persons misrepresented the facts before the Deputy Commissioner, who wrote letter to the Superintendent of Police for registration of the FIR. Further, had there been any substance in the allegations leveled against the petitioners, the Deputy Commissioner would have got conducted a fact finding enquiry about the mismanagement by the Gram Panchayat.

12. No competent authority ever came to the conclusion that petitioners, as a matter of fact, have ever caused any kind of loss to the Gram Panchayat including the financial loss, as wrongly alleged in the impugned FIR. Under these circumstances, even if the allegations levelled against the petitioners in the impugned FIR are taken to be true on their face value, no offence of any kind, whatsoever, is made out against the petitioners, because of which criminal proceedings arising out of the impugned FIR are liable to be quashed, for this reason also.

13. The above-said view taken by this Court also finds support from the judgment of the Hon"ble Supreme Court in Md. Ibrahim's case (supra). The relevant observations made by the Hon"ble Supreme Court in paras 13, 14 and 16 of its judgment, which aptly to the facts of the preset case, read as under:-

"Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of "cheating" are as follows: (i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission; (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property. To

constitute an offence under section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived (i) to deliver any property to any person, or (ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner. As the ingredients of cheating as stated in section 415 are not found, it cannot be said that there was an offence punishable under sections 417, 418, 419 or 420 of the Code.

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The Penal Code however defines fraudulently", an adjective form of the word fraud", in section 25, as follows:

"A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise". The term "fraudulently" is mostly used with the term "dishonestly" which is defined in section 24 as follows: "Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing "dishonestly". To "defraud" or do something fraudulently is not by itself made an offence under the Penal Code, but various acts when done fraudulently (or fraudulently and dishonestly) are made offences. These include:

- (i) Fraudulent removal or concealment of property (section 206, 421, 424)
- (ii) Fraudulent claim to property to prevent seizure (section 207).
- (iii) Fraudulent suffering or obtaining a decree (section 208 and 210)
- (iv) Fraudulent possession/delivery of counterfeit coin (section 239, 240, 242)

and 243).

- (v) Fraudulent alteration/diminishing weight of coin (section 246 to 253)
- (vi) Fraudulent acts relating to stamps (section 261-261)
- (vii) Fraudulent use of false instruments/weight/measure (section 264 to 266)
- (viii) Cheating (section 415 to 420)
- (ix) Fraudulent prevention of debt being available to creditors (section 422).
- (x) Fraudulent execution of deed of transfer containing false statement of consideration (section 423).
- (xi) Forgery making or executing a false document (section 463 to 471 and 474)
- (xii) Fraudulent cancellation/destruction of valuable security etc. (section 477)
- (xiii) Fraudulently going through marriage ceremony (section 496).

It follows therefore that by merely alleging or showing that a person acted fraudulently, it cannot be assumed that he committed an offence punishable under the Code or any other law, unless that fraudulent act is specified to be an offence under the Code or other law".

14. The Hon"ble Supreme Court in its State of Haryana and others Vs. Ch. Bhajan Lal and others, AIR 1992 SC 604 : (1992) CriLJ 527 : (1990) 4 JT 650 : (1990) 2 SCALE 1066 : (1992) 1 SCC 335 Supp : (1990) 3 SCR 259 Supp laid down broad principles for quashing the criminal proceedings. The relevant guidelines laid down by the Hon"ble Supreme Court in para 102 of its judgment in Bhajan Lal's case (supra), which can be gainfully followed in the present case, read as under:-

- (a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;
- (b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;
- (c) where the uncontroverted allegations made in the FIR or "complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;
- (d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge"

15. The above-said principles of law laid down by the Hon"ble Supreme Court in Bhajan Lal's case (supra) have been consistently followed by the Hon"ble Supreme Court in its later judgments, as well as by this Court in numerous cases, including in the following cases:-

1. ING Vysya Bank Ltd. and Others Vs. State of Rajasthan and Others(2015) 2 RCR(Civil) 504 : (2015) 2 RCR(Criminal) 394 : (2015) 2 SCALE 407 ;

2. Rishipal Singh Vs. State of U.P., AIR 2014 SC 2567 : (2014) AIRSCW 3810 : (2014) 8 SCALE 298 : (2014) 7 SCC 215 ;

3. Rashmi Jain Vs. State of U.P. and Another, (2014) 1 SCALE 415 ;

4. Lokesh Kumar Jain Vs. State of Rajasthan, (2013) 3 JCC 2131 : (2013) 9 JT 360 : (2013) 13 JT 516 : (2013) 3 RCR(Criminal) 763 : (2013) 8 SCALE 455 : (2013) 11 SCC 130 : (2013) 3 SLJ 61 ;

5. Chandran Ratnaswami Vs. K.C. Palanisamy and Others, (2013) 4 ABR 500 : (2013) 5 AD 485 : AIR 2013 SC 1952 : (2013) CriLJ 2938 : (2013) 3 CTC 512 : (2013) 8 JT 42 : (2013) 7 SCALE 50 : (2013) 6 SCC 740 : (2013) 121 SCL 123 : (2013) AIRSCW 2918 ;

6. Prem Chand @ Anu Versus State of Haryana & Anr. 2015 (3) Law Herald 2415; (P & H)

7. Shiv Kumar and Anr. Versus State of Punjab and Anr. 2015 (3) Law Herald 2377; (P & H)

8. Dr. Vandana Malik Versus State of Haryana 2014 (5) Law Herald 4405; (P & H)

9. Harbans Singh Versus State of Punjab and another 2014 (4) Law Herald 3198 (P & H);

10. Ram Lubaya and others Versus State of Punjab and another 2014 (3) Law Herald 2612 (P & H)"

11. Loveleen Saini alias Loveleen Chaudhary and Others Vs. State of Punjab and Another, (2014) 1 RCR(Criminal) 723 "

12. Jarnail Singh and others Versus Ranbir Singh 2014 (7) R.C.R. (Criminal) 2368 (P & H);

13. Sandeep Singh Versus State of Punjab and another 2014 (10) R.C.R. (Criminal) 2424 (P & H);

14. CRM-M-4545 of 2015 (Mr. Rakesh Radheshyam Jhunjuwala Versus State of Haryana and another) decided on 10.9.2015 (P & H);

15. CRM-M-24433 of 2015 (Amandeep Singh and another Vs. State of Punjab and others) decided on 7.9.2015 (P & H).

16. Reverting back to the peculiar fact situation of the present case and respectfully following the law laid down by the Hon''ble Supreme Court as well as this Court, in the judgments referred to hereinabove, it is unhesitatingly held that since the impugned FIR, police report under Section 173 (2) Cr.P.C., as well as reply filed to the present petition are conveniently silent about any misuse of even a single penny of the lease money, at the hands of the petitioners, coupled with the fact that necessary ingredients for commission of offence punishable under Section 420 IPC are conspicuously missing, impugned FIR as well as criminal proceedings arising therefrom including impugned orders Annexures P-2 and Annexure P-4 are liable to be quashed, for this reason as well.

17. No other argument was raised.

18. Considering the peculiar facts and circumstances of the case noted above and for the reasons recorded, this Court is of the considered view that the instant petition deserves to be accepted.

19. Consequently, the impugned FIR and the consequential proceedings arising therefrom including the impugned orders Annexure P-2 and P-4, are hereby ordered to be quashed so as to prevent any further abuse of process of court and also to secure the ends of justice.

20. Resultantly, with the above-said observations made, the present petition stands allowed, however, with no order as to costs.