
(1991) 11 P&H CK 0050

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 10233-M of 1990

Romesh Chand and ors.

APPELLANT

Vs

State of Punjab and anr.

RESPONDENT

Date of Decision : 27-11-1991

Acts Referred:

Citation : (1992) 1 AICLR 56 : (1992) 1 BC 275 : (1992) 1 BLJ 275 : (1992) ISJ 416 : (1992) 1 RCR(Criminal) 167

Hon'ble Judges : J.B.Garg, J

Advocate : N S. Boparai, S.N. Chopra, Advocates for appearing Parties

Judgement

J. B. Garg, J.

1. Om Parkash, a partner of the firm M/s Kewal Ram Bhiwani Ram, Sirhind, was in need of money and he allegedly obtained a loan of Rs. 12,500/ on 2761985 from Bakshish Singh Gill resident of Kothi No. 5, Rajwaba Road, Lehl, Patiala. On 341989 Bakshish Singh Gill desired that Om Parkash should return the loan. On the aforesaid demand Om Parkash handed over a cheque of Rs. 10,000/ on 341989 but it was dishonoured and on these allegations a complaint was addressed on 151989 to SHO Police Station Sirhind and a case under section 420 of the Indian Penal Code was registered on 951989 by Shri Gurmit Singh Head Constable at the aforesaid Police Station." Subsequently, Section 138 of the Negotiable Instruments Act, has also been added and a report under Section 173 of the Code of Criminal Procedure has been prepared and besides Om Parkash other partners such as Romesh Chand, Megh Raj and Bhiwani Ram are also proposed to be presecated. The Judicial Magistrate I Class, Fatehgarh Sahib has ordered framing of the charge under Section 420 of the Indian Penal and also under Section 138 of the Negotiable Instruments Act on 1451991; and aggrieved against it, the present petition under Section 482 of the Code of Criminal Procedure had been moved by the accused against State of Punjab and also against Bakshih Singh Gill complainant.

2. On behalf of the petitioners, it has been argued that a perusal of the complaint

(Annexure P1) on which the FIR is based, itself shows that the money in question was `lent on account of friendly relations as specifically mentioned in the complaint itself. Even if it was a transaction of loan its mere breach could not give rise to criminal prosecution. There appears to be nothing in the complaint to show that the petitioners had any dishonest or fraudulent intention at the time the complainant parted with the money in question. Similarly, there is nothing to indicate that the petitioners induced the complainant to pay the amount in question by any deceitful means. In the absence of these essential requirements reliance has been placed by the learned counsel for the petitioners on *Hari Prasad Chamaria v. Bishun Kumar Surekha and others*, AIR 1977 SC 301 and it has been substantiated that the ingredients of the offence under section 420 of the Indian Penal Code have not been established.

3. It has further been argued that there was no allegation that the complainant was deceived to part with the amount in question. The requirements of Section 415 of the Indian Penal Code were wanting as observed in *Ramesh Chander and others v. Kailash Chander*, 1982 PLR 564 referred to by the learned counsel for the petitioners. Here reliance has also been placed on *Rajpal v. The State of Punjab and another*, 1977 PLJ Cr. 263 where a cheque of Rs. 4,000/ was dishonoured subsequent to the lending of the amount of the cheque and it was observed that it could not convert the civil liability into a criminal one. As regards the provisions of Sections 138 and 142 of the Negotiable Instruments Act, 1881. which have been added in the year 1988 the cognizance of the alleged offence, by police is not free from doubt and in this regard attention has been invited to *H. Mohan v. State of Karnataka*, 1991(3) Recent Criminal Reports 343 : 1991 ISJ (Banking) 237 and The conclusion is that the present `petition under Section 482 of the Code of Criminal Procedure is hereby accepted and the proceedings pending against the petitioners arising out of the report under Section 173 of the Code of Criminal Procedure initiated at Fatehgarh Sahib, District" Patiala are hereby quashed.