
(1983) 07 P&H CK 0031

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 1703-M of 1983

Romesh Chander

APPELLANT

Vs

Harbans Singh Sethi

RESPONDENT

Date of Decision : 29-07-1983

Acts Referred:

Citation : (1983) 07 P&H CK 0031

Hon'ble Judges : S.C.Mital, J

Advocate : A.S. Sekhon, N.S. Gujral, R.S. Bindra, J.P.S. Bindra, Advocates for appearing Parties

Judgement

S.C. Mital, J.

1. Romesh Chander, authorised insurer, United India Insurance Co. Ltd., Jullundur, has filed this petition under section 482 of the Code of Criminal Procedure for quashing of proceedings under sections 420/34 Indian Penal Code, launched by Shri Harbans Singh Sethi, against him and Shri T.N. Makhija, Divisional Manager of the said company.

2. The sum and substance of Shri Harbans Singh Sethi's complaint filed in the Court of Judicial Magistrate, Garh Shankar is as follows : The Complainant insured his Fiat Car No. PJQ 8533 with the United India Insurance Co. Ltd., Jullundur, hereinafter referred to as the Company, comprehensively at the value of Rs. 72,000/. Certification was accordingly issued on 27th January, 1982. The two accused induced the complainant to get the car insured comprehensively and promised : that in case of accident either full payment to the tune of Rs. 72,000/ would be made or the car would be replaced with a new one. On 5th April, 1982, the car met with an accident. A report was lodged in this regard at Police Station, Balachaur. The accusedpersons, when asked, again promised, that either Rs. 72,000/ would be given to the complainant or the car would be replaced within 15 days. The accusedpersons dishonestly and with fraudulent intention did not fulfil the promise and put off the matter on one pretext or the other. Then in December 1982 registered notices were served on the accusedpersons. As the

complainant had to get the car repaired at his own costs, wrongful loss was caused to them by the accused persons.

3. Before, proceeding further it deserves mention that their Lordships of the Supreme Court have ruled in *R.P. Kapur v. State of Punjab*, AIR 1960 SC 866 that where the allegations in the complaint even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged, in such cases no question of appreciating evidence arises : it is a matter merely of looking at the complaint to decide whether the offence alleged is disclosed or not.

Attention of the learned counsel for the complainant was drawn time and again to the definition of cheating set out in section 415, Indian Penal Code. Suffice it to say that he was unable to satisfy the essential ingredients thereof. It need hardly be said that apart from the issuance of insurance certificate to the complainant, policy in his favour too must have been drawn up, meaning thereby that there was direct contract between the complainant and the Company. If thereby any breach of the terms of the contract the complainant obviously has remedy under the law. IN the situation, learned counsel for the complainant was unable to show how the two accused persons who allegedly induced the complainant to get his car insured with the Company can be said to have committed the offence of cheating. A very glaring feature of the case, which also deserves mention, is that in the complaint there is no allegation at all that the accused persons deceived the complainant to pay them anything.

4. For the foregoing reasons, I allow this petition and quash the impugned proceedings.