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**(1988) 02 P&H CK 0009**

**In the Punjab And Haryana At Chandigarh**

**Case No : Criminal Miscellaneous No. 5167 M of 1986**

Shri Vijay Jawa and others

APPELLANT

Vs

National Fertilizers Limited

RESPONDENT

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**Date of Decision : 18-02-1988**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 482

**Citation : (1988) 1 RCR(Criminal) 515**

**Hon'ble Judges : J.V. Gupta, J**

**Bench : Single Bench**

**Advocate : J.N. Kaushal, with Mr. P.C. Mehta, for the Appellant; H.L. Sibal with Mr. T.S. Doabia, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

J.V. Gupta, J.—This is a petition u/s 482, Code of Criminal Procedure, for quashing the complaint u/s 420 read with Section 34, Indian Penal Code, (hereinafter called the Code), dated October 31, 1984, Annexure P.6, filed on behalf the respondent National Fertilizers Ltd. against the petitioners. It has been alleged in the complaint that the accused had approached the complainant for being appointed as its dealer for the distribution of fertilizers and an agreement was entered into by him with the company, vide copy, Annexure P. 1, dated December 1, 1981. The accused had represented that the price of the fertilizers supplied would be duly made by means of cheques and the facility for making the payment through cheques may be given. The first accused was supported by his representation by accused No. 2, who was present all along at the time when the said agreement was entered into and also on his own held out assurance that the representations made to Dr S.N. Pandey, the then Marketing Manager were true. It was further alleged that the accused were believed and that accused No. 2 gave an undertaking in writing that the company will not suffer any harm if the facility by payment by cheque is given to accused No. 1, i.e., Shri Vijaya Jawa. The company, acting upon the representations made by the two accused,

supplied fertilizers to accused No. 1 who gave nine cheques during the period from June, 1982 to October, 1983, for various amounts drawn of his bankers favouring the company, but none of the cheques was honoured by the bankers of accused No. 1. The accused never intended to make any payment to the company, but only wanted the supplies to be made for the purpose of making a wrongful gain and the accused have by making false representations, cheated the company. The intention of the accused was to defraud the company. The acts and conduct of the accused attracted the penal provisions of section 420 read with section 34 of the Code. The learned Chief Judicial Magistrate, after recording the statements of Sohan Lal Bali, P.W. 1 and Mohinder Singh, P.W. 2, came to the conclusion that prima facie offence u/s 420 read with section 34, of the Code, was made out against Vijay Jawa and Harbhajan Lal Gugnini, who had stood surety for the recovery of the money from accused No. 1. Consequently, both the accused were ordered to be summoned vide order dated August 22, (sic), copy Annexure P. 7. However, proceedings before the Chief Judicial Magistrate were stayed by this Court vide order dated October 9, 1986.

2. The learned counsel for the petitioner submitted that in clause 3 of the agreement, copy vide Annexure P.1, it was clearly provided that in case the cheque is dishonoured, the dealer would immediately make payment on receipt of the information from the National Fertilizers Limited. The dealer shall also pay interest at the rate of 20 per cent, from the date of the cheque to the date the payment is actually made failing which the National Fertilizers would be entitled to take civil and criminal action in a Court of Law. Again in clause 9 of the said agreement, it is provided that it will be open to the National Fertilizers Limited to take possession of the unsold goods supplied by it and lying with the dealer in the event of the cheque being dishonoured at the expense and cost of the dealer. This clause would be resorted to in addition to the remedies which are available to the National Fertilizers Limited in the ordinary civil and criminal Courts in view of these provisions in the agreement, argued the learned counsel, it was a civil liability and no criminal offence could be said to have been made out against the accused. In support of the contention, the learned counsel relied upon *Hari Prasad Chamaria Vs. Bishun Kumar Surekha and Others*, and *Sardar Trilok Singh and Others Vs. Satya Deo Tripathi*,

3. After hearing the learned counsel for the parties, I find force in the contention raised on behalf of the petitioners.

4. Section 415 of the Code defines the offence of cheating. It reads as follows:-

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".

Explanation.-A dishonest concealment of facts is a deception within the meaning of this section.

Illustration (g) appended thereto reads as follows:-

A intentionally deceives Z into a belief that A meant to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery A cheats; but if A at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

It is, therefore clear from the said illustration that in the present case, the accused are liable to civil action only for the breach of the contract in the absence of any intentional deception on their part inducing the respondent to deliver the goods. Not only that admittedly, the company has already filed a suit against the accused-petitioners under Order XXXVII of the Code of Civil Procedure, for the recovery of the amount prior to the institution of the complaint, which is still pending. The mere fact, that the cheques were dishonoured was not sufficient to hold that an offence u/s 420, of the Code, was prima facie made out against them, in the facts and circumstances of this case; particularly when in the agreement, vide copy. Annexure P 1, it was provided that in case the cheque is dishonoured, the dealer shall also pay interest at the rate of 20 percent, from the date of the cheque to the date the payment is actually made. Thus, reading the agreement, Annexure P. 1, as a whole, it is quite evident that the accused are liable only to the civil action for the breach of the contract for which a civil suit has already been filed by the complainant against the petitioners.

5. In Hari Prasad Chamaria's case (supra), a complaint was filed u/s (sic) of the Code on the allegations that the appellant was running business at Samastipur in Bihar and Calcutta. The accused-respondents were known to the appellant and he had full faith in them. The appellant wanted to start some business and in that connection talked to the respondents. The respondents then stated that they would start transport business under the name and style of Drang Transport Corporation. They also represented that the appellant would be the proprietor of the said Corporation and they would work as his agents. Later on he found that the accused were doing transport business but the appellant was not shown as the proprietor of that business. When the respondents were asked to render the accounts they stated that the transport business was being carried on in Nepal and that as and when the money would be received, the accounts would be gone into. Thereafter, the appellant asked for the refund of his money and when the accused failed to comply with the said demand, he filed the complaint. The said complaint was quashed by the High Court. That said order of the High Court was maintained by the Supreme Court with the observations,-

There is nothing in the complaint to show that the respondents had dishonest or

fraudulent intention at the time the appellant parted with Rs. 35,000/-. There is also nothing to indicate that the respondents induced the appellant to pay them Rs. 35,000/- by deceiving him. It is further not the case of the appellant that a representation was made by the respondents to him at or before the time he paid the money to them and that at the time the representation was made, the respondents knew the same to be false. The fact that the respondents subsequently did not abide by their commitment that they would show the appellant to be the proprietor of Drang Transport Corporation and would also render accounts to him in the month of December might create civil liability for them, but this fact would not be sufficient to fasten criminal liability on the respondents for the offence of cheating.

Similarly, in Trilok Singh's case (supra), there was a dispute between the hire-purchaser of a truck with the financier. The hire-purchaser launched criminal prosecution against the financier as his truck was forcibly taken away by the financier. In these circumstances, it was held by the Supreme Court that the dispute raised was purely of a civil nature and the launching of the criminal proceedings was an abuse of the process of Court and deserved to be quashed.

6. As regards the present case, as observed earlier, the complainant has already filed a civil suit against the accused which is still pending. The petitioner's liability is purely of a civil nature and, therefore, the complaint is liable to be quashed.

7. Consequently, this petition succeeds and is allowed. The complaint, copy. Annexure P6, pending in the Court of the Chief Judicial Magistrate, Chandigarh, is quashed.