

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE
SINGLE BENCH : Hon'ble Shri Justice Ved Prakash Sharma
M.Cr.C. No.9612/2015

Gurjeet Singh S/o Shri Bhagat Singh Chhabra & 2 others
Vs.

M/s. United Project Construction Ltd.

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Shri V.K. Jain, learned counsel for the petitioners.

Shri Vivek Dalal, learned counsel for the respondent.

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ORDER

(Passed on 01st day of December, 2016)

This petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code') has been preferred for setting aside order dated 12.08.2015 passed by XII Additional Sessions Judge, Indore in Criminal Revision No.684/2014, whereby order dated 20.06.2014 passed by learned Judicial Magistrate First Class, Indore (Shri Shailesh Bhadkaria) in unregistered complaint case (M/s. United Project Construction Ltd. vs. Gurjeet Singh & 2 Ors.) has been maintained. A further prayer has been made for quashment of criminal proceedings initiated on the basis of criminal complaint preferred by M/s. United Project Construction Ltd. (respondent) against the petitioners.

02. Relevant facts, as emerging from the record, briefly stated, are that sometimes in April-May, 2000, M/s

United Project Constructions Limited – a company, incorporated under the Companies Act, engaged in construction business, entered into an oral agreement with Prabhojot Kaur (petitioner No.2) to carry out construction work at the plot belonging to respondent No.2 situated at Scheme No.94-C, Ring Road, Indore. The construction work was completed sometimes in January 2001. The petitioner No.2 from time to time paid a sum of Rs.28 lacs to the respondent/Company. Finally, on 10.01.2001 demand for total sum of Rs.43,76,354/- was made by the respondent towards construction and after adjusting Rs.28 lacs, already paid by petitioner No.2, vide notice dated 13.03.2004, she was requested to pay the balance amount of Rs.15,76,354/-.

03. It is further not a matter of dispute that prior to the issuance of this notice, a cheque bearing No.708660 for a sum of Rs.2,90,000/- in favour of the respondent/Company was dishonoured by the banker, therefore, the respondent-company through its Director Hemant Gupta filed a criminal complaint on 30.09.2002 against Smt. Prabhojot Kaur for offences under Section 138 of Negotiable Instruments Act (for short 'N.I. Act') and Section 420 of Indian Penal Code (for short 'IPC), averring therein that the respondent-company has carried out construction work for Rs.42,50,000/-, out of which payment of Rs.28 lacs has already been made by cheque; that against balance sum of Rs.14,50,000/-, which was promised to be

paid in installments, a cheque for Rs.2,90,000/- was issued by Prabhajot Kaur which was eventually dishonoured and that the amount under the cheque was not paid despite demand notice.

04. It further transpires that Prabhajot Kaur (petitioner No.2), in the aforesaid criminal complaint case, raised an objection that she is not the drawer of the cheque in question; pursuant to which, the learned Magistrate, vide order dated 11.10.2007 passed in Criminal Case No.4389/2002 (Hemant Gupta Vs. Smt. Prabhajot Kaur) dismissed the complaint.

05. Thereafter, the respondent-Company on 07.07.2004 filed a private complaint against the petitioners alleging commission of offences under Section 420 & 120-B 'IPC' with the averments that though the plot, known as 'Karan Garden', situated at Scheme No.94-C, Indore was owned by Prabhajot Kaur (petitioner No.2) only, however, Gurjeet Singh (petitioner No.1) – her husband and Preetam Singh (petitioner No.3)– her nephew were involved in the said project. It was further averred that the estimated cost of the construction project was approximately Rs.47 lacs; the construction work commenced in June, 2000 and on completion thereof, a bill for Rs.43,76,343/- was raised; till 10.01.2001, only a sum of Rs.28 lacs paid against the aforesaid amount, therefore, the petitioners were liable to

pay the balance amount of Rs.15.76 lacs which was not being paid by them despite repeated requests and that ultimately in June, 2004 when respondent met with Gurjeet Singh (petitioner No.1) at Sayaji Club, Indore, he expressed that he or his wife are not going to pay the balance amount of Rs.15.76 lacs, because right from the very inception, they had no intention to pay more than Rs.30 lacs. It was further averred that thereupon the complainant/company realised that it has been defrauded and cheated by the petitioners to the tune of Rs.15.76 lacs.

06. The learned Magistrate, vide order dated 20.06.2014 registered a case for offence under Section 420 r/w Section 120-B 'IPC' against the petitioners and directed the issuance of notice for their appearance. The order passed by the learned Magistrate was challenged before the revisional Court on the ground that a dispute, which is purely of civil nature, is being given shape of criminal case, which amounts to blatant abuse of the process of law. The learned revisional Court, vide order dated 12.08.2015 rendered in Criminal Revision No.684/2014 declined to interfere with the order passed by the learned Magistrate, therefore, the petitioners have approached this Court under Section 482 of 'the Code'.

07. The learned counsel for the petitioners, in support of the plea raised in the instant petition, has contended that

the order passed by the learned Judicial Magistrate First Class as well as the order passed by the learned revisional Court are contrary to law and facts of the case. It is submitted that from the bare perusal of the complaint and the documents, an offence under Section 420 read with Section 120-B 'IPC' is not made out against the petitioners because necessary ingredients to constitute an offence of 'cheating' are totally absent. It is contended that the Courts below have failed to consider that there was nothing to presume, even *prima facie*, that the petitioners had any dishonest or criminal intention of cheating at the time when oral agreement was made between the parties, otherwise the petitioner No.2 would not have paid a huge sum of Rs.28 lacs to the respondent-company. It is further contended that the dispute between the parties is purely a civil dispute and that criminal process cannot be allowed to be misused for coercing the petitioners to pay the amount claimed by the respondent and that in any case non-payment or failure to pay a part of the amount cannot be considered an act of cheating. Lastly, it is submitted that the agreement for construction was made between Prabhajot Kaur (petitioner No.2) and the respondent-company, therefore, alleged expression by Gurjeet Singh (petitioner No.1) that right from the very inception of the agreement, they had no intention to pay more than Rs.30 lacs was a pure concoction, hence, the charge framed against the petitioner is liable to be quashed and the orders passed by the learned

Magistrate as well as the learned revisional Court are liable to be set aside.

08. Reliance has been placed by the learned counsel for the petitioners on *The State of Kerala vs A. Pareed Pillai & another, AIR 1973 SC 326, Hari Prasad Chamaria vs. Bishun Kumar Surekha and others, AIR 1974 SC 301, G. Sagar Suri and another vs. State of U.P. and others, AIR 2000 SC 754, Anil Mahajan vs. Bhor Industries Ltd. and another, (2005) 10 SCC 228, Murari Lal Gupta vs. Gopi Singh, (2005) 13 SCC 699, Ajay Kumar Keshwani and another vs. Helena D' Souza and others, 2003(5) MPLJ 557, Anil Ritolla Alias AK Ritolia vs. State of Bihar and another, (2007) 10 SCC 110, Inder Mohan Goswami and another vs. State of Uttaranchal and others, (2007) 12 SCC, Makson Food (Private) Ltd vs. Sterling Agro Industries Ltd, Gwalior and another, 2009(I) MPWN 57 and Ramdev Food Products Private Limited vs. State of Gujarat, (2015) 6 SCC 439* to bolster his submissions.

09. Per contra, learned counsel for the respondent-company has submitted that a cheque for Rs.2,90,000 was issued by Mr. Preetam Singh (petitioner No.3) which was dishonoured. This belies the stand taken by Prabhajot Kaur (petitioner No.2) that she had no business relation with Preetam Singh (petitioner No.3). It is further contended that

against a total sum of Rs.43,76,345/- only an amount of Rs.28 lacs was paid by petitioner No.2. The respondent had made several requests to respondent No.2 for payment of balance amount of Rs.1576374/-, however, finally in June – 2004 Gurjeet Singh (petitioner No.1) in a meeting held at Sayaji Club, Indore, disclosed his intention in clear terms that he and his wife Prabhajot Kaur right from the very beginning, never had an intention of paying the respondent anything more than Rs.30 lacs and that precisely for that reason they had refused to enter into a written contract with the respondent, therefore, it is submitted, that the petitioners had dishonest intention to defraud and cheat to the respondent right from the very inception, hence, the learned Magistrate has not committed any error in taking cognizance for offence under Section 420 r/w Section 120-B 'IPC' and summoning the petitioners. It is further submitted that the learned revisional Court has rightly declined to interfere with the order passed by the Magistrate.

10. Heard the learned counsel for the parties and perused the record.

11. As regards factual position, it is not a matter of dispute that the respondent, pursuant to dishonour of cheque for a sum of Rs.2,90,000/- filed a criminal complaint on 30.09.2002 against Prabhajot Kaur (petitioner No.2) para-8-A & B of the complaint, which are relevant, run as under:-

“अ. यह कि, आरोपी ने परिवादी से करण गार्डन का कन्स्ट्रक्सन का कार्य करवाया इस हेतु आरोपी ने परिवादी को रूपये 42,50,000/- भुगतान करना था उक्त रूपये में से आरोपी ने परिवादी को रूपये 28,00,000/- का भुगतान चेक के द्वारा कर दिया था तथा शेष राशि रूपये 14,50,000/- का भुगतान आरोपी अपनी सुविधा के अनुसार किस्तों में करने का परिवादी को वचन दिया था। इस प्रकार परिवादी को आरोपी से रूपये 14,50,000/- लेना बाकी है।

ब. यह कि, इस हेतु आरोपी ने परिवादी को उक्त कन्स्ट्रक्सन कार्य पेटे शेष 14,50,000/- में से रूपये 2,90,000/- का भुगतान कराने के लिये देना बैंक पलासिया शाखा, इन्दौर का चेक क्रमांक 708660 दिनांक 20.08.2002 रूपये 2,90,000/- का दिया और कहा कि चेक बैंक में डालने पर चेक राशि आपको प्राप्त हो जायेगी एवं शेष रूपये 11,60,000/- का एवं 18 परसेण्ट ब्याज का भुगतान इस चेक के भुगतान के एक माह बाद कर दुंगा।”

12. In this connection, we can further refer to the notice dated 13.03.2004 issued to Smt. Prabhajot Kaur on behalf of the respondent, relevant parts whereof runs as under:

“1. That, an agreement was made you and my client to carry out the construction work at your Plot, situated at Scheme No.94-C, Ring Road, Indore in the name and style of “Karan Garden”.

2. That, the payment terms were decided as under:

part-payments were to be made as per the progress of the work and the final payment was to be made within one and half year of completion of the construction, including interest @ 14% PA.

3. That, the Bill for the total construction work amounting to Rs.43,76,354.06 dated 10.01.2001 duly agreed in the name of Smt. Prabhjyot Kaur Chhabra was given by my client on your behalf and under your instructions to State Bank of Indore, Phadnis Colony Br., Indore, in connection with the loan facility as per arrangement made by

you with the said Bank.

4. That, as against the total amount of the bill i.e. Rs.43,76,354.06, the said Bank has paid a sum of Rs.25 Lacs to my client by way of crediting the same to the CC account of my client with the said bank and 3 lacs has paid on 24.07.2002 by cheque No.708659 from Dena bank, Palasia Branch, Indore (For Khalsa Cr. Co. S. Ltd.) account Pritam Singh Chhabra (your nephew in relation).

5. That, the balance payment of Rs.15,76,354/- was to be made by you to my client as per the agreement.

6. That, one more cheque No.708660 dt. 23.08.2002 for Rs.2,90,000/- was given by you to my client, which was also issued by S. Pritamsingh Chhabra on the above Bank. This cheque was not honoured by the bank and the case is already in litigation u/S.138 of Negotiable Instruments Act and 420 IPC.”

13. The criminal complaint preferred after dishonour of the cheque as well as the notice issued by the respondent on 13.03.2004 simply refer to an agreement between the respondent-company and petitioner No.2 for carrying out construction. These two documents further disclose that there is a dispute between the parties with regard to payment of Rs.15,76354/- claimed by the respondent against the construction work, something which is denied by petitioner No.2. The complaint dated 30.09.2002 or the notice dated 13.03.2004 does not make any reference to any dishonest intention on the part of the Prabhajot Kaur (petitioner No.2)

or on the part of Gurjeet Singh (petitioner No.1) and Preetam Singh (petitioner No.3) at the inception of the agreement to defraud or cheat the respondent.

14. It further transpires that in reply notice dated 24.03.2004, sent on behalf of Prabhajot Kaur in response to notice dated 13.03.2004 issued by the respondent, Prabhajot Kaur (petitioner No.2) denied her liability to pay the balance amount, pursuant to which the present criminal complaint was filed sometimes in July 2004 averring therein that petitioner No.1 in a meeting held with respondent in June 2004 had stated that he or his wife petitioner No.2, right from the very outset of the agreement never had intention of paying to the respondent anything more than Rs.30 lacs. Here it is noticeable that with regard to the aforesaid meeting, allegedly held in June 2004, even the date and time has not been disclosed, which indicates that a bald and omnibus allegation has been made in this behalf. Further, it is noticeable that till issuance of notice dated 13.03.2004 by the respondent, the respondent had taken the plea that agreement was made between his company and Prabhajot Kaur (petitioner No.2) and that the liability, as per agreement, to pay the balance amount of Rs.15,76,000/- was with Prabhajot Kaur (petitioner No.2). Involvement of Gurjeet Singh (petitioner No.1) and Preetam Singh (petitioner No.3) has been made on the basis of following averments in para 7 of the notice.

“That, S.Pritamsingh Chhabra are residing with you in the same premises and, while entering into the agreement S.Gurjitsingh Chhabra and S.Pritamsingh Chhabra, were present and while carrying out the construction work either of them used to look after the work in progress. Moreover, the above 2 cheques were also issued by S.Pritamsingh Chhabra on your behalf.”

15. Simply, because petitioner No.1 & 3 were assisting the petitioner No.2 in construction work or residing with her cannot be a ground to infer that they had any legal responsibility as regards performance of the contract made between Prabhojot Kaur and respondent-company.

16. From the aforesaid, it is clear that the element of dishonest intention to defraud and cheat has been brought for the first time by way of allegation that a meeting was held in June 2004, wherein Gurjeet Kaur (petitioner No.1) expressed that he and his wife Prabhojot Kaur right from the very inception had no intention to pay more than Rs.30 lacs for the construction something which was totally missing in the earlier correspondence

17. As regards offence of 'cheating' under Section 420 of IPC, we can profitably refer to some authorities on the point. In *The State of Kerala vs A. Pareed Pillai & another, AIR 1973 SC 326*, a case relied upon by the

learned counsel for the petitioner, it has been held as under in para 16 of the case:-

“16.....The fact that more than 5,000/- oil tins were despatched on behalf of the firm of the accused to the various stations during the above period is hardly consistent with a dishonest intention on their part. It may be that the accused could not keep up the delivery of the oil tins to the railways and no tins could be despatched in respect of the said thirteen railway receipts but that fact can give rise only to a civil liability of the accused. It is not sufficient to fasten a criminal liability on them. **To hold a person guilty of the offence of cheating, it has to be shown that his intention was dishonest at the time of making the promise. Such a dishonest intention cannot be inferred from the mere fact that he could not subsequently fulfil the promise.**”

(Emphasis supplied)

18. In *Anil Mahajan vs. Bhor Industries Ltd. and another*, (2005) 10 SCC 228, it has been held as under:-

“6.Reliance has been placed, in that order, on various decisions of this Court holding that from mere failure of a person to keep up promise subsequently, a culpable intention right at the beginning, that is, when he made the promises cannot be presumed. A distinction has to be kept in mind between mere breach of contract and the offence of cheating. It depends upon the intention of the accused at the time of inducement. The subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating **unless fraudulent,**

dishonest intention is shown at the beginning of the transaction.

8. The substance of the complaint is to be seen. Mere use of the expression "cheating" in the complaint is of no consequence. Except mention of the words "deceive" and "cheat" in the complaint filed before the Magistrate and "cheating" in the complaint filed before the police, there is no averment about the deceit, cheating or fraudulent intention of the accused at the time of entering into MOU wherefrom it can be inferred that the accused had the intention to deceive the complainant to pay."

(Emphasis supplied)

19. In the case of *Uma Shankar Gopalika vs. State of Bihar and Another*, Hon'ble the apex Court has held as under:

"6. It is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In the present case it has nowhere been stated that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC."

20. Considering the effect of non-performance of promise under a contract, the apex Court in *Nagawwa v. Veeranna Shivalingappa Konjalgi*((1976) 3 SCC 736, has held as under:-

"10.When somebody suffers injury to his person, property or reputation, he may have remedies both under civil and criminal law. The injury alleged may form the basis of civil claim and may also constitute

the ingredients of some crime punishable under criminal law. When there is dispute between the parties arising out of a transaction involving passing of valuable properties between them, the aggrieved person may have a right to sue for damages or compensation and at the same time, law permits the victim to proceed against the wrongdoer for having committed an offence of criminal breach of trust or cheating. Here the main offence alleged by the appellant is that the respondents committed the offence under Section 420 IPC and the case of the appellant is that the respondents have cheated him and thereby dishonestly induced him to deliver property. To deceive is to induce a man to believe that a thing is true which is false and which the person practising the deceit knows or believes to be false. **It must also be shown that there existed a fraudulent and dishonest intention at the time of commission of the offence.** There is no allegation that the respondents made any wilful misrepresentation. Even according to the appellant, the parties entered into a valid lease agreement and the grievance of the appellant is that the respondents failed to discharge their contractual obligations. In the complaint, there is no allegation that there was fraud or dishonest inducement on the part of the respondents and thereby the respondents parted with the property. **It is trite law and common sense that an honest man entering into a contract is deemed to represent that he has the present intention of carrying it out but if, having accepted the pecuniary advantage involved in the transaction, he fails to pay his debt, he does not necessarily evade the debt by deception.”**

(Emphasis supplied)

21. The apex Court in *Inder Mohan Goswami and another vs. State of Uttaranchal and others, (2007) 12 SCC*

I, dealing with the ingredients necessary to constitute an offence of 'cheating', has held as under:-

“40. Firstly, we shall deal with the section 420 IPC. Cheating is defined in section 415 IPC and is punishable under section 420 IPC. Section 415 is set out below:

"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.

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

41. Section 415 IPC thus requires 1. deception of any person. 2. (a) fraudulently or dishonestly inducing that person- (i) to deliver any property to any person; or (ii) to consent that any person shall retain any property; or (b) intentionally inducing that person 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.

42. On a reading of the aforesaid section, it is manifest that in the definition there are two separate classes of acts which the person deceived may be induced to do. In the first class of acts he may be induced fraudulently or dishonestly to deliver property to any person. The second class of acts is

the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but need not be fraudulent or dishonest. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had a fraudulent or dishonest intention at the time of making the promise. From his mere failure to subsequently keep a promise, one cannot presume that he all along had a culpable intention to break the promise from the beginning.”

22. The facts and circumstances in the present case when considered in the light of the aforesaid legal position, reveal that there is purely a civil dispute between Prabhjot Kaur (petitioner No.2) and the respondent-company with regard to payment of Rs.15,76,000/- which is being claimed by respondent-company towards cost of construction. Whether the claim is correct or not and whether the petitioner No.2 is liable to pay the same is yet to be determined? From the material which is available on record, it cannot be said by any stretch of imagination that at the inception of the agreement, petitioner No.2 had any intention to defraud or cheat respondent-company. Had it been so, she would not have made a payment of Rs.28 lacs to the respondent-company. The alleged incident of June, 2004 to the effect that petitioner No.1 expressed in so many words that he and his wife right from the very inception had no intention to pay more than Rs.30 lacs towards the construction, has simply been made to prepare turf

for prosecution with regard to offence under Section 420 'IPC'.

23. In *Indian Oil Corpn. v. NEPC India Ltd. and Others, (2006) 6 SCC 736*, the apex Court while dealing with the increasing tendency in the business circles to settle scores with regard to civil disputes by resorting to criminal prosecution has deprecated the same in no uncertain terms. Following observation made by the apex Court in this regard is apposite:

“13. ... Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.”

24. Again in the case of *Inder Mohan Goswami and Another vs. State of Uttaranchal and Others, (2007) 12 SCC 1*, Hon'ble the apex Court has observed thus;

“46. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused.”

25. In the instant case, it is abundantly clear that the criminal complaint filed against the petitioner is an attempt to convert a civil dispute into a criminal case in order to pressurize the petitioners to pay the amount claimed by the respondent-company towards construction work which clearly in the light of the aforesaid pronouncements amounts to abuse and misuse of the process of law and hence, cannot be allowed to continue.

26. In view of the aforesaid, the order passed by the learned Magistrate issuing process against the petitioners and the impugned order passed by the learned revisional Court do not stand the scrutiny of law and, therefore, liable to be set aside and are, accordingly, hereby set aside. Consequently, the proceedings in the criminal complaint case No.45/2005 before the Court of Judicial Magistrate, First Class, Indore are also hereby quashed in exercise of the powers under Section 482 of the Cr.P.C. Accordingly, the petition stands allowed.

(Ved Prakash Sharma)
Judge

soumya