IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-35867-2018 (O&M)
Reserved on: 04.08.2026
Pronounced on: 17.08.2026
Uploaded on: 18.08.2026

RAM PAL KAMBOJ AND ANOTHER

PETITIONERS

VERSUS

STATE OF HARYANA AND ANOTHER

RESPONDENTS

CORAM: HON'BLE MS. JUSTICE SHALINI SINGH NAGPAL

Argued by: Mr. Keshav Pratap Singh, Advocate,
Mr. Bharat Singh, Advocate,
Mr. Rajat Singh, Advocate,
Mr. Sukhsandesh Singh Chahal, Advocate and
Mr. Ekteshwar Sidhu, Advocate for the petitioners.

Mr. Vikas Bhardwaj, AAG Haryana.

Mr. Parminder Singh, Advocate for the complainant.

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Shalini Singh Nagpal, J.

1. Vide this petition under Section 482 Cr.P.C., petitioners seek quashing of FIR No.104 dated 06.04.2018 under Sections 120-B, 406, 420 and 506 IPC, Police Station Taraori, District Karnal and all consequential proceedings arising therefrom.

2. FACTUAL MATRIX:

Complainant Sucha Singh lodged FIR against the petitioners alleging that Ram Pal Kamboj s/o Molu Ram, in collusion with Ashok Kumar s/o Dharam Pal both residents of Village Bubka, Tehsil Radaur, District Yamunanagar, presently residing in House No.602, Parth Society, Sector 55, Gurugram borrowed a sum of ₹45,00,000/- from him. After repeated demands and *Panchayats*, the matter was compromised with Ram Pal Kamboj in the sum of ₹35,00,000/-. Ram Pal Kamboj paid him a sum of ₹30,00,000/- on different dates. In order to grab the remaining amount of ₹5,00,000/-, Ram Pal Kamboj, in collusion and conspiracy with Ashok Kumar issued Cheque

No.167 dated 20.02.2018 for a sum of ₹5,00,000/-. At the time of issuing the cheque Ram Pal Kamboj and Ashok Kumar assured that the cheque would be encashed on presentation. However, the same was dishonoured with the remarks *'Funds insufficient'* vide Memo dated 26.03.2018. Thereafter, complainant approached Ram Pal Kamboj and Ashok Kumar and asked them about the cheque. Both accused refused to pay the cheque amount and threatened him with dire consequences, claiming that they had saved and grabbed a sum of ₹15,00,000/- by compromising the matter in ₹35,00,000/- Thus, Ram Pal Kamboj and Ashok Kumar, in collusion and conspiracy with each other deceived the complainant on the assurance that the money would be repaid and threatened him with dire consequences.

3. SUBMISSIONS OF LEARNED PETITIONER COUNSEL:

Learned counsel for the petitioners submits that a case under Section 138 of the Negotiable Instruments Act, 1881 was lodged by respondent No.2 against petitioner No.1 with respect to cheque of ₹45,00,000/-. In that case, petitioner No.1 was declared a proclaimed person on 31.08.2017. A compromise was later effected between the parties. In pursuance thereof, petitioner No.1 was to pay a sum of ₹35,00,000/- to the complainant. ₹10,00,000/- was paid to the complainant on the date of compromise and three post-dated cheques were given to him. The first two cheques of ₹10,00,000/- were encashed on the due dates but the third cheque of ₹5,00,000/- was dishonoured. Before presentation of the third cheque, petitioner No.1 made a request to the complainant to present the cheque after 27.03.2018. The cheque was, however, presented on 25.03.2018. Thereafter, respondent No.2 served legal notice dated 28.03.2018 to petitioner No.1. On 11.04.2018, petitioner No.1 sent reply stating that he was ready and willing to make payment. Photocopy of Demand Draft No.061957 dated 10.04.2018 of

₹5,00,000/- was appended with the reply, asking respondent No.2 to collect the draft from the office of the counsel. For the disputed amount of ₹5,00,000/-, respondent No.2 initiated proceedings under Section 138 of Negotiable Instruments Act, 1881. Learned counsel further submits that the dispute was purely civil in nature and no offence under Section 420, 406, 506 and 120-B IPC was made out against the petitioners. There was no criminal intent to cheat or deceive the complainant. Moreover, the amount of ₹5,00,000/- had also been paid up to respondent No.2 in the complaint under Section 138 of Negotiable Instruments Act, 1881 and continuation of the criminal proceedings against the petitioner was abuse of the process of law.

4. SUBMISSIONS OF LEARNED COUNSEL FOR THE RESPONDENTS:

Learned State counsel submits that accused Ram Pal Kamboj borrowed ₹45,00,000/- from respondent No.2 and under a compromise, he agreed to pay him ₹35,00,000/-, but repaid only ₹5,00,000/-, which he never intended to pay up. When respondent No.2 approached petitioners, they refused to pay the cheque amount, thus, reflecting their dishonest intention. The matter was duly investigated by the police and challan was presented against the petitioners. Charges had been framed in the criminal case. Respondent No.2 also filed a complaint under Section 138 of Negotiable Instruments Act, 1881 against petitioner No.1, who did not put in appearance and was declared a "proclaimed person". Case under Section 174-A IPC was then registered against him. Petitioner No.2-Ashok Kumar stood guarantor of petitioner No.1-Ram Pal Kamboj and both petitioners committed criminal offences punishable under Sections 420, 406, 506 and 120-B IPC. They were rightly challaned, having failed to repay the amount. Since, dishonest intention of the petitioners was implicit, it was not a fit case to quash the FIR.

The matter required a full-fledged trial. Prayer was made for dismissal of the petition.

5. Learned counsel for respondent No.2 has argued that even though, payment of ₹5,00,000/- made by the petitioners was accepted by respondent No.2, he reserved his legal right to prosecute the petitioners. Petitioners had dishonest intention from the very beginning of the transaction when they made the compromise in the previous complaint under Section 138 of Negotiable Instruments Act, 1881. Petitioner No.1 was involved in numerous other cases. The story that petitioner No.1 requested respondent No.2 not to present the cheque was cooked and made up. FIR could not be quashed because there was a civil element involved. He prayed for dismissal of the petition.

6. ANALYSIS:

In ***State of Haryana and Others Vs. Chaudhary Bhajan Lal and Others, 1992 AIR 604***, after considering all the earlier precedents, Hon'ble Supreme Court laid down principles which the High Courts must consider while exercising jurisdiction under Section 482 Cr.P.C. for quashing the proceedings. It gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the Court or otherwise to secure the ends of justice:

> *"(1) 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 make out a case against the accused.*
>
> *(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR 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.*

(3) 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.

(4) 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.

(5) 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.

(6) 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.

(7) 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."

7. Both petitioners are facing proceedings under Section 420, 406 506 and 120-B IPC.

8. In ***Delhi Race Club (1940) Limited and Others Vs. State of Uttar Pradesh and Another (2024) 10 SCC 690***, Hon'ble Supreme Court examined the difference and the specific ingredients of the offences of criminal breach of interest (Section 406 IPC) and cheating (Section 420 IPC) as under:

"In order to constitute a criminal breach of trust (Section 406 IPC):

(1) There must be entrustment with person for property or dominion over the property, and

(2) The person entrusted:

(a) Dishonestly misappropriated or converted property to his own use, or

(b) Dishonestly used or disposed of the property or wilfully suffers any other person so to do in violation of:

(i) Any direction of law prescribing the method in which the trust is discharged; or

(ii) Legal contract touching the discharge of trust (see: ***S.W. Palanitkar Vs. State of Bihar (2002) 1 SCC 241****)*

Similarly, in respect of an offence under Section 420 IPC, the essential ingredients are:

(1) Deception of any person, either by making a false or misleading representation or by other action or by omission;

(2) Fraudulently or dishonestly inducing any person to deliver any property, or

*(3) The consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit (****see: Harmanpreet Singh Ahluwalia Vs. State of Punjab 13(2009) 7 SCC 712).”***

9. It was further observed that if it is a case of the complainant that offence of criminal breach of trust as defined under Section 405 IPC, punishable under Section 406 is committed by the accused, then in the same breath, it cannot be said that the accused has also committed the offence of cheating as defined and explained in Section 415 punishable under Section 420 IPC.

10. The distinction between the two provisions was further clarified as under:

“41. The distinction between mere breach of contract and the offence of criminal breach of trust and cheating is a fine one. In case of cheating, the intention of the accused at the time of inducement should be looked into which may be judged by a subsequent conduct, but for this, the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the

beginning of the transaction i.e. the time when the offence is said to have been committed. Therefore, it is this intention, which is the gist of the offence.

42. Whereas, for the criminal breach of trust, the property must have been entrusted to the accused or he must have dominion over it. The property in respect of which the offence of breach of trust has been committed must be either the property of some person other than the accused or the beneficial interest in or ownership of it must be of some other person. The accused must hold that property on trust of such other person. Although the offence i.e. the offence of breach of trust and cheating involve dishonest intention, yet they are mutually exclusive and different in basic concept.

43. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e. since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriated the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously."

11. Thus, the legal position which emerges is that the offences under Section 406 and 420 IPC cannot co-exist simultaneously being antithesis to each other.

12. In the case in hand, case of respondent No.2/complainant is that despite a compromise to pay up ₹35,00,000/-, petitioner No.1 only paid ₹30,00,000/- and failed to pay ₹5,00,000/-. There is nothing in the FIR to show that that any property was entrusted to respondent No.1 which he dishonestly converted to his own use, thus, no offence under Section 406 IPC could be made out.

13. Ingredients of the offence under Section 420 IPC are also not made out in the given facts and circumstances of the case as fraudulent or

dishonest intention is to be shown right at the beginning of the transaction. Mere failure to keep up a promise would not be enough to initiate the proceedings. This is the settled legal position. Non-payment of a certain sum of money after a compromise, which was later paid up cannot constitute an offence under Section 420 IPC.

14. Annexure P-2 is order dated 02.01.2018 of learned Judicial Magistrate Ist Class, Karnal in the first complaint under Section 138 of Negotiable Instruments Act, 1881 relating to dishonour of cheque amounting to ₹45,00,000/- filed by respondent No.2 against petitioner No.1. The complaint was withdrawn after recording statements of the parties. The relevant portion of the order reads as under:

> *"….Ld. Counsel for the accused has suffered a statement that the accused has compromised the matter with the complainant for Rs. 35 Lakhs, though the cheque amount is of Rs. 45 Lakhs. He has further stated that the accused has already paid Rs. 10 Lakhs cash to the complainant and for remaining amount of Rs. 35 Lakhs today. He has giver two cheques bearing No. 000165 & 000166 dated 20.02.2018 and 20.01.2018 of Rs. 10 each and a cheque bearing No. 000167 dated 20.02.2018 of Rs. 5 Lakhs, on behalf of the accused, to the complainant today.*
>
> *Besides this, complainant has suffered a statement duly identified by his counsel whereby he has submitted that he has compromised the matter with the accused for Rs. 35 Lakhs, though, the cheque amount is of Rs. 45 Lakhs. He has further stated that out of the compromise amount, he has already received Rs. 10 Lakhs cash from the accused and today he has received two cheques bearing No. 000165 & 000166 dated 20.02.2018 and 20.01.2018 of Rs. 10 each and a cheque bearing No. 000167 dated 20.02.2018 of Rs. 5 Lakhs from the counsel for the accused in the court, It has been further stated by him that the cheque bearing No. 000167 of Rs. 5 Lakhs dated 20.02.2018 would be presented by him for encashment on 20.03.2018. In the end, it has been stated that nothing remains due towards the accused, (hence, he does not want to proceed further with the present complaint and withdraws the same. Heard. In view of the statements*

above said, the complaint in hand is dismissed as withdrawn. File be consigned to the record room after due compliance."

15. Undisputedly, the amount of ₹30,00,000/- out of ₹35,00,000/- was paid up by petitioner No.1 and for the balance, a cheque of ₹5,00,000/- was issued, which was dishonoured. Petitioner No.1 having paid up substantial amount out of ₹35,00,000/-, his dishonest intention to deceive and cheat the complainant cannot be readily inferred. Subsequent conduct of petitioner No.1 is also a relevant circumstance to determine whether he had the fraudulent intention at the beginning of the transaction. When respondent No.2 sent legal notice to petitioner No.1 under Section 138 of Negotiable Instruments Act, 1881 in respect of dishonour of cheque of ₹5,00,000/-, petitioner No.1 sent reply to the legal notice on 11.04.2018 (Annexure P-5), wherein his counsel conveyed that petitioner No.1 was still ready to pay ₹5,00,000/- and had issued demand draft which he could collect from his office. The copy of demand draft was appended with the complaint. Respondent No.2 opted to file complaint under Section 138 of Negotiable Instruments Act, 1881 during pendency of which, remaining sum of ₹5,00,000/- was also paid up. All these facts illustrate a clear intention of petitioner No.1 to honour his commitment under the compromise and mere delay in making payment cannot translate into "dishonest intention" at the beginning of the transaction.

16. Petitioner No.2-Ashok Kumar has been roped with the aid of Section 120-B IPC on the allegation that he had been colluding with petitioner No.1-Ram Pal Kamboj in borrowing the amount and thereafter. The liability, if any, in respect of the amount borrowed, the compromise made subsequently in the criminal complaint under Section 138 of the Negotiable Instruments Act, 1881 and failure to pay up the amount under the compromise was solely

of petitioner No.1 and no case is made out against petitioner No.2 on the bald allegation that he had been conspiring with the co-accused. When no offence under Section 420 IPC or 406 IPC is made out against petitioner No.1, petitioner No.2 also cannot be held culpable.

17. Petitioners have also been booked under Section 506 IPC. Section 503 IPC defines criminal intimidation. The offence has the following essentials:

> ***"1) Threatening a person with any injury;***
> *(i) to his person, reputation or property; or*
> *(ii) to the person, or reputation of any one in whom that person is interested.*
> ***2) The threat must be with intent;***
> *(i) to cause alarm to that person; or*
> *(ii) to cause that person to do any act which he is not legally bound to do as the means of avoiding the execution of such threat; or*
> *(iii) to cause that person to omit to do any act which that person is legally entitled to do as the means of avoiding the execution of such threat."*

18. Hon'ble Supreme Court in ***Rikhab Birani and Another Vs. State of Uttar Pradesh and Another 2025 SCC OnLine SC 823*** has observed that:

> *.....39. This Court in **Manik Taneja v. State of Karnataka**, had referred to Section 506 which prescribes punishment for the offence of 'criminal intimidation' as defined in Section 503 of the IPC, to observe that the offence under Section 503 requires that there must be an act of threating another person with causing an injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested. This threat must be with the intent to cause alarm to the person threatened or to do any act which he is not legally bound to do, or omit to do an act which he is entitled to do. Mere expression of any words without any intent to cause alarm would not be sufficient to bring home an offence under Section 506 of the IPC. The material and evidence must be placed on record to show that the threat was made with an intent to cause alarm to the complainant, or to cause them to do, or omit to do an act. Considering the statutory mandate, offence under Section 506 is not shown even if we accept the allegation as correct."*

19. In the case in hand, allegations that petitioners threatened the complainant with dire consequences are vague, general and ambiguous in nature. Neither the date, time or place where the alleged threats were extended have been mentioned in the FIR nor the exact words with which respondent No.2 was threatened are forthcoming. No criminal offence either under Section 420/406 or under Sections 506 and 120-B IPC are made out against the petitioners. The case is squarely covered within the parameters of ***Bhajan Lal's case (supra)*** and cannot be allowed to proceed, being abuse of the process of law.

20. The petition, accordingly, stands allowed. FIR No.104 dated 06.04.2018 under Sections 120-B, 406, 420 and 506 IPC, Police Station Taraori, District Karnal and all consequential proceedings arising therefrom are quashed, qua the petitioners.

21. Pending applications, if any, stand disposed of.

(SHALINI SINGH NAGPAL)
JUDGE

17.08.2026
HS.CHAUHAN

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No