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*Before Satish Kumar Mittal, J.*

VED PARKASH,—*Petitioner*

*versus*

BHANA @ JAI BHAGWAN,—*Respondent*

*Crl. M. No. 3285/M OF 2003*

24th February, 2004

*Indian Penal Code, 1860—Section 420—Seeds Act, 1966—Sale of certified peas as seed by a registered dealer of a Company—Criminal complaint filed by purchasing agriculturist against the dealer for selling poor quality and substandard seeds—Trial Court summoning the dealer for committing offence of cheating—Dealer selling only certified seeds of a Company at the prescribed rate—Neither any dishonest intention of the dealer to cheat the respondent nor there was any wrongful gain to the dealer—Offence of cheating is not made out against the dealer—Summoning of the dealer by the trial Court is totally unjustified and is a clear abuse of the process of the Court—Complaint as well as summoning order liable to be quashed.*

*Held*, that the petitioner is only a registered dealer and he sold the certified seeds to the respondent at a fixed price. When the seeds were sold by the petitioner to the respondent, there was no dishonest intention. The petitioner purchased the certified seeds from the licensed company and sold the same to the respondent at the fixed price. At that time, there was no dishonest intention to cheat the respondent or to have any wrongful gain. Merely if the seed does not give proper yield, it cannot be presumed that there was any cheating on the part of the petitioner, who supplied the certified seed to the respondent.

(Para 6)

*Further held*, that the trial Court has not recorded any reason as to how the petitioner, *prima facie*, has committed offence under section 420 IPC. From the bare reading of the complaint, the basic ingredients of the offence under section 420 IPC have not been made out. Merely because in the complaint it has been mentioned that the offence of cheating has been committed, it

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cannot be *prima facie* said that the offence was committed by the accused. The summoning of the petitioner in the complaint is totally unjustified and is a clear abuse of the process of the Court. This Court has the inherent power under section 482 of the Code to quash the criminal proceedings at the summoning stage, when the same are an abuse of the process of law.

(Para 8)

R. K. Jain, Advocate, for the petitioner.

Rajesh Arora, Advocate for the respondent.

### JUDGMENT

**SATISH KUMAR MITTAL, J.**

(1) The petitioner Ved Parkash, who is proprietor of M/s Saini Beej Bhandar, Opposite New Grain Market, Kurukshetra, has filed this petition under section 482 of the Code of Criminal Procedure for quashing the complaint dated 14th March, 2001 (Annexure P-1) filed under Section 420 IPC by the respondent against him as well as the summoning order dated 20th February, 2002 (Annexure P-2).

(2) The Petitioner is a registered dealer who sells the certified seeds of various companies. The respondent, describing himself as an agriculturist, filed the complaint dated 14th March, 2001 (Annexure P-1) under section 420 IPC against the petitioner in the Court of Chief Judicial Magistrate, Kurukshetra, by alleging that in the month of September, 2000, the petitioner along with some company officials took out a wide publicity in his village and informed the farmers including the respondent that the quality of the seeds of peas supplied by the petitioner is of good quality. It was further alleged by the respondent that on 18th September, 2000 he had purchased 30 Kgs. of seeds of peas from the petitioner, which were sown by him in his fields, but the same were not germinated. It was alleged that the seeds were of poor quality. The respondent further alleged that on 3rd October, 2000, he again visited the shop of the petitioner and purchased another peas seeds for a sum of Rs. 1,500 weighing 40 Kgs. The same were also sown in the field but they too did not yield proper crop. In the complaint (Annexure P-1), respondent further alleged that he made a complaint in this regard to the Deputy Commissioner, Kaithal

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as well as to Krishi Vidyan Kendra and on inquiries by the Experts and Scientists, it was informed that the seed was of poor quality and sub standard. Therefore, by supplying the poor quality of seed, the petitioner has cheated the respondent for his wrongful gain and wrongful loss to the respondent. The respondent further alleged that in this regard, he has also filed a complaint before the District Consumers Disputes Redressal Forum, Kurukshetra for damages, which is still pending.

(3) On the basis of the said complaint (Annexure P-1), the petitioner has been summoned by the trial court,—*vide* order dated 20th February, 2002 (Annexure P-2) without application of mind, while observing as under :—

“Heard. A careful perusal of the complaint as well as preliminary evidence and the documents placed on the record of the case go to *prima facie* show that the accused at the present case has committed an offence punishable Under Section 420 IPC. No detailed reasons are required to be given for summoning of the accused. In view of the case law laid down by Hon’ble Supreme Court in U.P. Pollution Control Board versus M/s Mohan Meakins Limited and other 2000 (2) RCR 421. The accused be summoned to face the trial of the aforesaid offence for 25th March, 2002 on filing at R.F. summons forms and copy of complaint etc.

(4) Learned counsel for the petitioner submitted that from the bare reading of the complaint (Annexure P-1) and even by taking the allegations made therein as true, no offence is made out for summoning the petitioner under Section 420 IPC. While referring to the definition of ‘cheating’ as defined under Section 415 IPC, learned counsel submitted that neither there was any dishonest intention on the part of the petitioner to deceive the respondent nor there was any wrongful gain to the petitioner. He further submitted that the petitioner is only a distributor of the certified seed of Arkal Company. He purchased the certified seed for the purpose of sale from the said company,—*vide* cash memo dated 6th September, 2000 (Annexure P-3) and sold the same seed to the respondent,—*vide* case memo dated 3rd October, 2000 (Annexure P-4). Since the seed sold by the petitioner were certified seed under the Seeds Act, 1966, therefore, there cannot be

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any dishonest intention on the part of the petitioner to deceive the respondent. It is not the case of the respondent that the seeds supplied by the petitioner were not the certified seeds. The only allegation against the petitioner is that the seed sown by the respondent did not generate due to poor quality thereof. Learned counsel for the petitioner contends that there may be many reasons for failure to generate the seeds to the prescribed extent. But for that, it cannot be said that the petitioner was responsible for the same and he has committed an offence of cheating.

(5) On the other hand, learned counsel for the respondent submitted that the seeds supplied by the petitioner were of poor quality. On the application of the respondent, his field was inspected by Dr. C. P. Mehla, Assistant Professor, who made the following observations :—

- (i) All the plants are not uniform in their growth and development.
- (ii) There is great complication in the crop with respect to plant height.
- (iii) The taller plants are in the shape of long mini growth which is abnormal type appearance of the plants.

Therefore, the petitioner was having the knowledge of the fact that the seeds were not of good quality. Learned counsel for the respondent submitted that all the ingredients of cheating are present in the instant case and therefore, the complaint filed by the respondent is not liable to be quashed.

(6) After hearing the arguments of learned counsel for the parties and perusing the record of the case, I am of the opinion that this petition deserves to be allowed. The petitioner is only a registered dealer and he sold the certified seeds to the respondent at a fixed price. When the seeds were sold by the petitioner to the respondent, there was no dishonest intention. The petitioner purchased the certified seeds from the licensed company and sold the same to the respondent at the fixed price. At that time, there was no dishonest intention to cheat the respondent or to have any wrongful gain. The allegation

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of the respondent is that the seeds purchased by him were sown in the field, but they did not properly germinate. They did not give proper yield. In this regard, the report of Dr. C. P. Mehla, Assistant Professor, relied upon by the respondent is of no help to him. There may be variety of reasons for not germinating the plant in a uniform manner like not giving water at the appropriate time or giving excess water and not using specific fertiliser at a specific time etc. But merely if the seed does not give proper yield, it cannot be presumed that there was any cheating on the part of the petitioner, who supplied the certified seed to the respondent. The respondent has already filed a complaint before the District Consumers Disputes Redressal Forum, Kurukshtra for damages, which is still pending. In case, it is found that the seed did not give the crop as prescribed by the Company, then the respondent will get compensation. But as far as the offence of cheating is concerned, in my opinion, the same is not made out from the facts alleged in the complaint (Annexure P-1). The instant complaint is nothing but a severe abuse of the process of law. The petitioner was neither having any dishonest intention to cheat the respondent nor there was any wrongful gain to him. He had only sold the certified seed of peas to the respondent at the prescribed rate.

(7) In the instant case, the trial court has passed the impugned summoning order (Annexure P-2) wholly without application of mind. Neither any reason has been recorded nor it has been disclosed as to how the offence under Section 420 I.P.C. has been made out against the petitioner. It has only been observed that the preliminary evidence and the documents placed on record *prima facie* show that the accused has committed an offence punishable under Section 420 I.P.C. Regarding recording of the reasons, it has been mentioned that no detailed reasons are required to be given for summoning of the accused. In this regard, reliance has been placed by the trial Court on the decision of the Hon'ble Apex Court in **U.P. Pollution Control Board's case versus Mohan Meakins Limited and others (1)**. In my opinion, the approach adopted by the trial Court in the instant case is wholly erroneous and not sustainable. Before issuing the summoning order in a private complaint, the trial court is required to apply its mind and then on the basis of the preliminary evidence and the

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(1) 2000 (2) R.C.R. 421

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documents on the record, it has to form an opinion that *prima facie* the person summoned has committed a cognizable offence. In **M/s Pepsi Foods Limited and another versus Special Judicial Magistrate and others, (2)** the Hon'ble Supreme Court has observed as under :—

“.....Summoning of an accused in a criminal case is a serious matter. Criminal Law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused.”

(8) The judgment mentioned by the trial court in its order is not applicable in the instant case. In that judgment, it was nowhere laid down that the Magistrate is not required to pass a speaking order while summoning the accused in a private complaint. In the instant case, the trial court has not recorded any reason as to how the petitioner, *prima facie*, has committed offence under Section 420 I.P.C. From the bare reading of the complaint, in my opinion, the basic ingredients of the offence under Section 420 I.P.C. have not been made out. Merely because in the complaint, it has been mentioned that the offence of cheating has been committed, it cannot be *prima facie* said that the offence was committed by the accused. In my opinion, the summoning of the petitioner in the complaint (Annexure P-1) is totally unjustified and is a clear abuse of the process of the Court. This Court has the inherent power under Section 482 of the Code of Criminal Procedure to quash the criminal proceedings at the summoning stage, when the same are an abuse of the process of law.

(9) In view of the aforesaid discussion, the instant petition is allowed. Accordingly, the complaint dated 14th March, 2001 (Annexure P-1) and the order dated 20th February, 2002 (Annexure P-2) passed by the trial court are quashed.

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**R.N.R.**