



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**Reserved on: 22<sup>nd</sup> July, 2025**

**Pronounced on: 09<sup>th</sup> September, 2025**

+ **CRL.M.C. 1958/2012**

SURAJ GARG

.....Petitioner

Through: Mr. Rajat Bhalla, Advocate with  
Petitioner in person.

versus

STATE & ANR

.....Respondent

Through: Mr. Hemant Mehla, APP for State  
with Mr. Satish Kumar, SI, PS-  
Prashant Vihar.

Mr. Tushar Sannu, Ms. Ishika Jain  
and Ms. Priyankan Tiwary,  
Advocates for R-2.

**CORAM:**

**HON'BLE MR. JUSTICE SANJEEV NARULA**

**JUDGMENT**

**SANJEEV NARULA, J.:**

1. The present petition filed under Sections 482 and 483 of the Code of Criminal Procedure, 1973<sup>1</sup> seeks setting aside of the order dated 1<sup>st</sup> December, 2011, passed by the Metropolitan Magistrate, Rohini Court, Delhi, in the proceedings arising from FIR No. 297/2008 dated 20<sup>th</sup> May, 2008, registered under Sections 406 and 420 of the Indian Penal Code, 1860<sup>2</sup> at P.S. Prashant Vihar, Delhi, as well as all consequential proceedings emanating therefrom. By the impugned order, the Metropolitan Magistrate,

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<sup>1</sup> "CrPC"



while rejecting the cancellation report filed under Section 173 of CrPC, summoned the Petitioner for the offence punishable under Section 420 of IPC.

**Factual Matrix**

2. Upon perusal of the record, the facts are summarised as follows:

2.1. A complaint under Section 156(3) of CrPC was filed by Sushila Gupta (the Complainant/Respondent No. 2) before the Metropolitan Magistrate. The Complainant alleged that she had issued a cheque of INR 25,000/- (bearing No. 852507) to Suraj Garg, the Petitioner, a Chartered Accountant, towards professional services, which, she alleges, were never rendered. She further alleged that she had advanced an additional sum of INR 1,00,000/-, by way of two cheques (one bearing No. 852510 dated 1<sup>st</sup> September, 2005 and the other bearing No. 852511 dated 2<sup>nd</sup> September, 2005) drawn on Bank of Punjab, each of INR 50,000/-, to the Petitioner for his assistance in financial matters and for investment in shares through MLB Capital Pvt. Ltd., a broker of the National Stock Exchange; however, neither were the shares credited in her DEMAT Account, nor was the amount returned.

2.2. On 17<sup>th</sup> April, 2006, a notice was sent to the Petitioner, with a copy thereof to MLB Capital Pvt. Ltd., but no response was received. Subsequently, MLB Capital Pvt. Ltd. clarified that the Petitioner was neither a director of the company nor associated with M/s Share-in-Shares.

2.3. On 14<sup>th</sup> May, 2008, on the basis of the 156(3) complaint, the Magistrate directed registration of an FIR under Sections 406 and 420 IPC at P.S. Prashant Vihar, Delhi. During investigation, the Complainant and her

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<sup>2</sup> “IPC”



husband, Mukesh Gupta, were examined. They stated that they had been investing in shares through the Petitioner and, in that connection, the aforementioned three cheques were issued in 2005. The Petitioner, when interrogated, admitted to having received the cheque of INR 25,000/- as professional fees, but denied receipt of the two cheques of INR 50,000/- each. It later emerged that the two cheques in question had been credited to the account of M/s Share-in-Shares, a proprietorship concern of late Brij Lal Garg, father of the Petitioner.

2.4. During investigation, late Brij Lal Garg, proprietor of M/s Share-in-Shares, stated that one Narayan Kumar Jha, a supervisor in his firm, was the authorised signatory of the concern. On 28<sup>th</sup> May, 2010, Narayan Kumar Jha was interrogated. He disclosed that the business of M/s Share-in-Shares had closed in 2007, but prior to that, the Complainant and her husband had been transacting with the firm in shares. According to him, on 1<sup>st</sup> September, 2005, two cheques of INR 50,000/- each were received towards the Complainant's Margin Deposit Account, and the amounts were duly credited. However, by the close of the financial year 2005–06, the funds stood transferred to the Complainant's running account. By that stage, the firm had ceased trading in shares. He further stated that, at the time of closure, amounts of INR 6,078.45 and INR 92,188.35 were due from the Complainant and her husband respectively, against which certain shares remained withheld. The investigation, therefore, indicated that the Complainant and her husband had in fact invested through M/s Share-in-Shares, suffered losses, and left their shares with the firm.

2.5. In view of these findings, and the absence of sufficient evidence to proceed against the Petitioner, the Investigating Agency filed a 'cancellation



report' under Section 173 of CrPC before the Metropolitan Magistrate.

2.6. While the cancellation report was pending, the Complainant moved an application on 1<sup>st</sup> April, 2011 seeking further investigation. The Magistrate directed the filing of a status report. Pursuant thereto, the Investigating Officer submitted a report dated 31<sup>st</sup> May, 2011, recording that when he attempted to examine the Complainant and her husband, they refused to cooperate, insisting that the investigation be carried out strictly in accordance with their instructions. The incident was contemporaneously recorded *vide* DD No. 22 dated 27<sup>th</sup> May, 2011, and the IO sought appropriate directions from the Court to secure their cooperation.

2.7. Pursuant to directions of the Magistrate, further investigation was carried out and a fresh status report was filed on 18<sup>th</sup> August, 2011. In this report, the Investigating Officer reported that:

- (i) The Complainant had invested voluntarily in shares through M/s Share-in-Shares.
- (ii) She had suffered losses and left her shares with the firm.
- (iii) No cognizable offence is disclosed.
- (iv) The firm 'M/s Share-in-Shares', is not registered with SEBI, and any violation in this respect fell under the SEBI Act, not the IPC.

The IO, therefore, reiterated his conclusion that while there may have been regulatory violations, no offence under IPC was disclosed.

2.8. The Magistrate, however, by order dated 1<sup>st</sup> December, 2011, declined to accept the cancellation report, took cognizance of the offence, and summoned the Petitioner for trial under Section 420 of IPC. Aggrieved by the said order, the Petitioner has invoked the inherent jurisdiction of this Court under Sections 482 and 483 CrPC, seeking quashing of the impugned



order and all consequential proceedings emanating therefrom.

**Contentions of the Petitioner**

3. In support of his prayer, the Petitioner submits as follows:

3.1. The impugned summoning order is based on a misreading of facts. The Magistrate records that the Complainant was induced into parting with a sum of INR1,25,000/- with the Petitioner; however, this finding is contrary to the Complainant's own allegations. As per her complaint, INR 25,000/- was paid to the Petitioner towards professional services, while the sum of INR 1,00,000/- was advanced for assistance in financial matters and for purchase of shares. The allegation is inherently improbable, for if the Petitioner had indeed failed to render professional services despite receiving INR 25,000/- on 6<sup>th</sup> August, 2005, there was no reason for the Complainant to subsequently issue two further cheques aggregating INR 1,00,000/- in September 2005.

3.2. The Petitioner is a practising Chartered Accountant and not a share broker. He candidly admits receipt of INR 25,000/- towards professional services but categorically denies having received any other cheque. On the contrary, it is the Complainant and her husband who were engaged in share trading and broking activities. They were Directors of CMS Securities (P) Ltd., a registered broker of the NSE, which itself was declared a defaulter for cheating and fraud. The Complainant was even summoned by the Commissioner of Income Tax, Kanpur in relation to bogus financial accommodation transactions worth approximately INR 18.79 crores undertaken by her company.

3.3. The Complainant and her husband had been purchasing shares through M/s Share-in-Shares, the sole proprietorship of late Brij Lal Garg,



father of the Petitioner. The two cheques of INR 50,000/- each were admittedly issued in favour of M/s Share-in-Shares, and not to the Petitioner personally. These cheques were credited to the Complainant's Margin Account on 2<sup>nd</sup> September, 2005, and at the close of the financial year on 31<sup>st</sup> March, 2006, the balances were duly transferred to her running account. Thus, the transactions were purely between the Complainant and M/s Share-in-Shares, and the Petitioner had no role therein.

3.4. The account statements of M/s Share-in-Shares together with the statement of Narayan Kumar Jha, recorded on 27<sup>th</sup> May, 2010, confirm that the two cheques of INR 50,000/- each were duly accounted for in the firm's books. As on 31<sup>st</sup> March, 2006, after transfer from the Margin Account, the Complainant's account reflected a debit balance of INR 6,078/-, while that of her husband showed a debit balance of INR 92,188/-, totalling INR 98,266/-. By 7<sup>th</sup> April, 2006, when they ceased dealing with M/s Share-in-Shares, the market value of their withheld shares was INR 87,120/-, leaving a net balance of INR 11,146/- payable by them to the firm. These facts establish beyond doubt that the Complainant and her husband were active investors with M/s Share-in-Shares, suffered losses in share trading, and left their shares with the firm. At best, therefore, the dispute is of a civil or regulatory nature, not criminal. In fact, this position was noticed by the Sessions Court while granting pre-arrest bail to the Petitioner.

3.5. There is no material whatsoever to suggest that the Petitioner harboured any dishonest intention at the inception of the transaction, which is a *sine qua non* for the offence of cheating under Section 420 of IPC. The entire dispute has been deliberately given a criminal complexion to pressurise the Petitioner and extract money from him. Such misuse of the



criminal process ought not to be countenanced.

**Contentions of the Complainant**

4. Counsel for the Complainant/Respondent No. 2, while opposing the petition, makes the following submissions:

4.1. The present petition is an abuse of the process of law. The order of the Magistrate summoning the Petitioner for the offence punishable under Section 420 of IPC is fully supported by facts, documentary evidence, and material gathered during investigation.

4.2. The inherent jurisdiction of this Court under Section 482 CrPC is narrow and circumscribed. Interference with an order of summoning is warranted only if it is shown that the Magistrate acted arbitrarily, capriciously, or on the basis of no evidence. In the present case, the summoning order was passed after careful consideration of the complaint and the material on record, and no infirmity can be demonstrated.

4.3. At this preliminary stage, it is not for this Court to embark on a meticulous analysis of the evidence or weigh its sufficiency. Once the allegations disclose the ingredients of an offence, the matter must proceed to trial in accordance with law. Reliance is placed on the judgment of the Supreme Court in *M/s Medchl Chemicals & Pharma (P) Ltd. v. M/s Biological E. Ltd. & Ors.*<sup>3</sup>, wherein it was held that quashing of a complaint or charge-sheet under Section 482 CrPC is an exception, not the rule, and must be exercised sparingly only in exceptional circumstances. The Court observed that at the stage of summoning, the allegations in the complaint are to be taken at face value without entering into their correctness or conducting a critical analysis:



*“14. Needless to record however and it being a settled principle of law that to exercise powers under Section 482 of the Code, the complaint in its entirety shall have to be examined on the basis of the allegation made in the complaint and the High Court at that stage has no authority or jurisdiction to go into the matter or examine its correctness. Whatever appears on the face of the complaint shall be taken into consideration without any critical examination of the same. But the offense ought to appear ex facie on the complaint...”*

4.4. The Petitioner was actively engaged in the business of shares. He was operating as a sub-broker with MLB Capital Pvt. Ltd., under the name of ‘M/s Share-in-Shares’, a proprietorship concern of his father. The business was under his direct supervision and control, including not only the share transactions but also the firm’s banking operations. The bank account was directly linked to the Petitioner’s personal email ID and mobile number, as reflected in the account opening documents of IDBI Bank, thereby establishing his direct involvement.

4.5. The summoning order was passed with due application of mind, as the material on record *prima facie* discloses that the Petitioner, with fraudulent intent from the inception, induced the Complainant to part with her savings under the guise of purchasing shares, without any genuine intention of doing so. The essential ingredients of Section 420 IPC are, therefore, satisfied.

4.6. Merely because the offence was committed during the course of a commercial transaction would not be sufficient to hold that the complaint, which is criminal in nature, did not warrant a trial.

### **Analysis**

5. The FIR had been registered under Sections 406 and 420 of IPC. The cancellation report submitted by the police dealt with both provisions,

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<sup>3</sup> (2000) 3 SCC 269.



whereas the impugned order takes cognizance only under Section 420 of IPC. The scope of scrutiny before this Court is, therefore, confined to examining whether the allegations and the material collected during investigation, accepted at their face value, disclose the offence of cheating under Section 420 of IPC.

6. The line of demarcation between a mere breach of contract or a civil dispute on the one hand, and a criminal offence of cheating on the other, has been consistently emphasised in several Supreme Court decisions discussed later in the judgment. It is against this legal backdrop that the correctness of the Magistrate's order requires a closer examination. The Magistrate has recorded satisfaction that a *prima facie* case of cheating was disclosed and, on that basis, directed issuance of summons to the Petitioner. It is not in dispute that a Magistrate is empowered to take cognizance and issue process even in cases where the police, upon investigation, has filed a cancellation report under Section 173 of CrPC. The conclusions drawn by the investigating agency are not binding on the Court. The Magistrate may, upon independent application of mind, either accept or reject such a report. However, this power, though wide, is not unbridled. The Magistrate's satisfaction must be premised on the material available on record and must reflect a conscious consideration thereof, to form a *prima facie* opinion. As held in *Pepsi Foods Ltd. v. Special Judicial Magistrate*<sup>4</sup>, the summoning of an accused is a serious matter and cannot be reduced to a mechanical exercise. The Supreme Court, in this regard, observed:

***“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course.***

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<sup>4</sup> (1998) 5 SCC 749.



*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. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.*

*29. No doubt the Magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial....”*

[emphasis supplied]

7. The same principles were reiterated by the Supreme Court in ***Sunil Bharti Mittal v. CBI***<sup>5</sup>, where it was emphasised that the process of summoning requires due satisfaction of the Magistrate that sufficient material exists to proceed against a person. Likewise, in ***GHCL Employees Stock Option Trust v. India Infoline Ltd.***<sup>6</sup>, the Court underscored that summoning orders must not be passed in a casual or mechanical manner.

8. In sum, while it is settled that the threshold at the stage of summoning is not proof beyond reasonable doubt, the requirement nonetheless is that the Magistrate must be satisfied that the basic ingredients of the alleged offence are *prima facie* made out from the material on record. The Magistrate is not bound by the conclusions drawn by the police in a cancellation report, yet

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<sup>5</sup> (2015) 4 SCC 609.



the power to summon cannot be exercised without indicating how the material on record, even if taken at its face value, discloses the essential ingredients of the offence. An order bereft of such reasoning risks being characterised as mechanical and contrary to settled law.

9. It must also be emphasized that to constitute an offence under Section 420 IPC, as explained in *A.M. Mohan v. State*<sup>7</sup>, the prosecution must establish the three indispensable elements: (i) deception of a person; (ii) fraudulent or dishonest inducement to deliver property; and (iii) dishonest intention at the very inception of the transaction. Mere failure to keep a promise or a breach of contract, without any dishonest intention at inception, does not constitute the offence. The said position was reiterated in *Delhi Race Club (1940) Ltd. v. State of U.P.*<sup>8</sup>, where the Court emphasised that mere failure to keep a promise or a subsequent breach of contract, absent dishonest intent at inception, does not constitute the offence of cheating. The Court observed:

***“36. ...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 persons 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 v. State of Punjab, (2009) 7 SCC 712 : (2009) Cr.L.J. 3462 (SC))*

***37. Further, in both the aforesaid sections, mens rea i.e. intention to defraud or the dishonest intention must be present, and in the case of cheating it must be there from the very beginning or inception.***

[Emphasis Supplied]

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<sup>6</sup> (2013) 4 SCC 505.

<sup>7</sup> 2024 SCC OnLine SC 339.

<sup>8</sup> (2024) 10 SCC 690.



10. Tested against the settled principles outlined above, the Court finds that the material on record fails to disclose the essential ingredients of Section 420 IPC. Further, the Magistrate's order summoning the Petitioner does not reflect a conscious application of mind, particularly in light of the conclusions drawn by the investigating agency, from which the Magistrate departed without sufficient reasoning. Both the cancellation report and the subsequent status report dated 18<sup>th</sup> August, 2011, clearly record that the Complainant and her husband had invested through M/s Share-in-Shares, a sole proprietorship of the Petitioner's late father; that the two cheques of INR 50,000/- each were credited not to the Petitioner's personal account but to the Complainant's Margin Account with the firm; and that trading activity was indeed undertaken on behalf of the Complainant, which resulted in losses, with certain shares remaining withheld by the firm. These facts are corroborated by account statements and the statement of the firm's authorised signatory, Narayan Kumar Jha. While the Complainant alleges that the Petitioner harboured dishonest intent from the outset, the contemporaneous record does not support such claim.

11. The Complainant's reliance on *Medchl Chemicals* to urge judicial restraint under Section 482 of CrPC is, in principle, well founded. Indeed, quashing at the threshold is an exception and evaluation of evidence at the preliminary stage is ordinarily beyond the High Court's remit. Yet, this proposition does not insulate a summoning order from scrutiny. Where the Magistrate has chosen to differ from a cancellation report, the order must disclose how the material on record, taken at its face value, satisfies the essential ingredients of the alleged offence. Even applying the restraint urged in *Medchl Chemicals*, the allegations here, even if accepted in their



entirety, do not meet the legal threshold for summoning under Section 420 IPC. The cancellation report and subsequent status reports, supported by account statements and the statement of Narayan Kumar Jha, reveal that the two cheques in question were credited to the Complainant's Margin Account with M/s Share-in-Shares; that trading transactions were indeed carried out; that losses occurred; and that certain shares remained with the firm. These facts, on their own showing, negate the indispensable element of dishonest intention at the inception of the transaction, the *sine qua non* of "cheating." At best, the dispute appears to involve business losses or possible regulatory lapses, but falls short of constituting a criminal offence of cheating. In the absence of any reasoning in the impugned order as to how the requisite *mens rea* is disclosed, the issuance of process under Section 420 IPC cannot withstand judicial scrutiny.

12. It must also be underlined, as the Supreme Court held in ***Paramjeet Batra v. State of Uttarakhand***<sup>9</sup>, that where a dispute is essentially civil in nature but is sought to be cloaked with the trappings of criminality in order to exert pressure or harassment, the High Court would be justified in invoking its inherent jurisdiction under Section 482 of CrPC to prevent abuse of process. The present case bears those very features. The gravamen of the dispute lies in trading losses suffered in share transactions undertaken through the proprietorship concern of the Petitioner's late father. No material suggests any dishonest inducement at the inception of the transaction. To permit the criminal law to be set into motion in such circumstances would amount to countenancing harassment under the guise of prosecution. Continuation of proceedings against the Petitioner would,



therefore, amount to an abuse of process, warranting exercise of inherent jurisdiction of this Court.

13. In light of the above discussion, this Court finds that the impugned summoning order dated 1<sup>st</sup> December, 2011, has been passed without due application of judicial mind to the material on record, and in disregard of the settled principles governing Section 420 of IPC. The order, therefore, is unsustainable.

14. Accordingly, the impugned summoning order is set aside. The petition is disposed of in the above terms, along with any pending applications.

**SANJEEV NARULA, J**

**SEPTEMBER 9, 2025/nk**

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<sup>9</sup> (2013) 11 SCC 673.