



April 2023

Breach of contract by a party does not give rise to a criminal case for cheating.

A two-judge bench of the Hon'ble Supreme Court of India ("**Supreme Court**") in the case of *Sarabjit Kaur v. State of Punjab and Another*¹, held that a breach of contract will not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. The Supreme Court also held that criminal courts are not meant to be used for settling scores or pressurizing parties to settle civil disputes.

Brief Facts

1. Sarabjit Kaur had on May 27, 2013 entered into an agreement to purchase a plot of land from Malkir Kaur ("**Subject Land**"). Sarabjit Kaur, on the basis of the same, executed an agreement to sell on November 18, 2013 with the wife of Darshan Singh. The agreement to sell specifically mentioned that Sarabjit Kaur was not the owner of Subject Land at that point in time. Sarabjit Kaur received a sum of INR 5,00,000 (Indian Rupees Five Lakh only) as earnest money. The date of registration of sale deed initially fixed for June 25, 2014 was extended to December 24, 2014 for an additional consideration of INR 75,000 (Indian Rupees Seventy Five Thousand only).
2. Darshan Singh on September 30, 2015 filed a complaint against Manmohan Singh and Ranjit Singh i.e., the property dealers, with respect to the agreement to sell ("**First Complaint**"). The prayer in the First Complaint drew reference to the other transactions entered into by Darshan Singh and demanded a sum of money to be recovered from the property dealers. The First Complaint was investigated and on May 18, 2016 the police stated that no action was warranted at their end, given that the dispute was civil in nature.
3. Thereafter, Darshan Singh on October 5, 2016 filed a second complaint ("**Second Complaint**") with almost identical allegations levelled in the First Complaint. However, Darshan Singh, in the Second Complaint, did not disclose the outcome of the First Complaint. After investigation of the Second Complaint, it was found that no criminal offence was made out and Darshan Singh was at liberty to seek civil remedies.
4. On October 16, 2017, Darshan Singh filed a third complaint against the property dealers however, this time also including Sarabjit Kaur ("**Third Complaint**"). In the Third Complaint, Sarabjit Kaur was accused of cheating. It was on the basis of the Third Complaint that F.I.R No. 430 dated October 16, 2017 was registered against Sarabjit Kaur under Sections 420, 120-B and 506 of the Indian Penal Code, 1860 ("**FIR**").
5. Sarabjit Kaur was compelled to file a petition before the Hon'ble Punjab and Haryana High Court ("**P&H High Court**") seeking quashing of the FIR ("**Quashing Petition**"). The Hon'ble P&H High Court vide its Order dated December 17, 2020 dismissed the Quashing Petition ("**Impugned Order**"). Being aggrieved by the Impugned Order, Sarabjit Kaur preferred an appeal before the Hon'ble Supreme Court.

¹ 2023 SCC OnLine SC 210.

Issues

1. The question which the Hon'ble Supreme Court was called upon to decide was, whether Sarabjit Kaur had incurred any criminal liability in respect of a breach of contract.

Analysis and Findings of the Supreme Court

After appreciating the submissions advanced by the parties, the Hon'ble Supreme Court held as follows:

1. There was nothing no record to even remotely suggest that Darshan Singh had initiated any civil proceedings for execution of the sale deed or alternatively refund of the earnest money. Had there been any civil proceedings, the question of readiness and willingness would have also been examined by the civil court.
2. Darshan Singh initiated criminal proceedings against Sarabjit Kaur to merely pressurize her with a view to get the earnest money back. Thus, it was evident that Darshan Singh intended to convert a civil dispute into a criminal dispute.
3. A breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. It is not enough to initiate criminal proceedings merely on the allegation that there has been a failure to keep up promise.
4. Hence, criminal courts must take cognizance of a case only when ingredients of criminal offence have been established.
5. The Impugned Order was set aside, a result of which was that the FIR and all subsequent proceedings were quashed.

JSA Comment

More often than not, litigants are seen resorting to filing criminal complaints with the oblique motive of trying to pressurize / coerce / compel the counterparty to succumb to their demands. This is an increasing trend in family disputes, despite the parties knowing fully well that the disputes / differences are purely civil in nature. This decision is a step in the right direction, as law enforcement authorities would be circumspect in entertaining dressed up criminal complaints.

Disputes Practice

With domain experts and strong team of dedicated litigators across the country, JSA has perhaps the widest and deepest commercial and regulatory disputes capacity in the field of complex multi-jurisdictional, multi-disciplinary dispute resolution. Availing of the wide network of JSA offices, affiliates and associates in major cities across the country and abroad, the team is uniquely placed to handle work seamlessly both nationally and worldwide.

The Firm has a wide domestic and international client base with a mix of companies, international and national development agencies, governments and individuals, and acts and appears in diverse forums including regulatory authorities, tribunals, the High Courts, and the Supreme Court of India. The Firm has immense experience in international as well as domestic arbitration. The Firm acts in numerous arbitration proceedings in diverse areas of infrastructure development, corporate disputes, and contracts in the area of construction and engineering, information technology, and domestic and cross-border investments.

The Firm has significant experience in national and international institutional arbitrations under numerous rules such as UNCITRAL, ICC, LCIA, SIAC and other specialist institutions. The Firm regularly advises and acts in international law disputes concerning, amongst others, Bilateral Investor Treaty (BIT) issues and proceedings.

The other areas and categories of dispute resolution expertise include; banking litigation, white collar criminal investigations, constitutional and administrative, construction and engineering, corporate commercial, healthcare, international trade defence, etc.

This Prism has been prepared by:



Varghese Thomas
Partner



Yohaann Limathwalla
Principal Associate



Akhil Nene
Associate



17 Practices and
24 Ranked Lawyers



16 Practices and
11 Ranked Lawyers



7 Practices and
2 Ranked Lawyers



11 Practices and
39 Ranked Partners
IFLR1000 APAC Rankings 2022

Banking & Finance Team
of the Year

Fintech Team of the Year

Restructuring & Insolvency
Team of the Year



Among Top 7 Best Overall
Law Firms in India and
10 Ranked Practices

13 winning Deals in
IBLJ Deals of the Year

10 A List Lawyers in
IBLJ Top 100 Lawyer List



Banking & Financial Services
Law Firm of the Year 2022

Dispute Resolution Law
Firm of the Year 2022

Equity Market Deal of the
Year (Premium) 2022

Energy Law Firm of the Year 2021



Ranked #1
The Vahura Best Law Firms to
Work Report, 2022

Top 10 Best Law Firms for
Women in 2022

For more details, please contact km@jsalaw.com

www.jsalaw.com



Ahmedabad | Bengaluru | Chennai | Gurugram | Hyderabad | Mumbai | New Delhi



This prism is not an advertisement or any form of solicitation and should not be construed as such. This prism has been prepared for general information purposes only. Nothing in this prism constitutes professional advice or a legal opinion. You should obtain appropriate professional advice before making any business, legal or other decisions. JSA and the authors of this prism disclaim all and any liability to any person who takes any decision based on this publication.