

*Before Namit Kumar, J.*

**RADHEY SHAM SINGHAL AND ANOTHER—Petitioner**

*versus*

**STATE OF HARYANA AND ANOTHER—Respondent**

**CRM-M No. 46210 of 2022**

December 08, 2022

*Code of Criminal Procedure, 1973—Ss. 439(2), 482—Indian Penal Code, 1860—Ss. 120-B, 406, 420, 467,468, 471, 506—Cancellation of Bail—Fraud vitiates everything—Bail was granted on basis of Compromise on the undertaking that the entire payment be made within a period of six months—The Complainant have approached the Session Court under Section 439(2) Cr.P.C. for cancellation of bail violation of the compromise, bail was cancelled—The petitioner contended that the cancellation by the same court is improper as it would amount to reviewing its own order which is not permissible under the law and further contended that the court did not impose any terms and condition with regard to the factum of compromise that in case of any violation of the said compromise the complainant would be at liberty to file application for cancellation of bail, and petitioner was enlarged on regular bail after considering the merits of the case—Petition dismissed—Held, the petitioner has got regular bail on basis of the compromise with the complainant and played fraud on the complainant as well as with the court below, hence not entitled for any relief.*

*Held*, that as is stated hereinabove, petitioners have played fraud with complainant-Ravi Kumar Gupta as on the pretext of getting treatment of his son, who was permanently disabled, from abroad extracted money from him. Thereafter on the basis of compromise with the complainant they got regular bail from the Court of learned Additional Sessions Judge, Karnal, vide order dated 28.08.2020 but did not fulfil the terms and conditions of the compromise. Moreso, the cheque issued for part payment of Rs.25lacs has also been dishonoured. Petitioners have played fraud with the complainant as well as with the Court below.

(Para 13)

G.C. Shahpuri, Advocate, *for the petitioners.*

Vikrant Pamboo, D.A.G., Haryana.

P.S. Ahluwalia, Advocate, and Deepak Tuteja, Advocate, for respondent No.2.

**NAMIT KUMAR, J.**

(1) This petition has been filed by the petitioners under Section 482 Cr.P.C. for quashing of the order dated 15.09.2022 (Annexure P-8) passed by the Additional Sessions Judge, Karnal, whereby regular bail granted to them vide order dated 28.08.2020 in case FIR No.260 dated 04.08.2020 under Sections 120-B, 406, 420, 467, 468, 471, 506 IPC registered at Police Station Taraori, District Karnal, has been cancelled.

(2) Brief facts of the case are that on 04.08.2020, complainant Ravi Kumar Gupta moved an application before the police alleging therein that his son Akshay aged 20 years had become permanently disabled in a road accident in the year 2017. Sandeep (petitioner No.2) induced the complainant to get his son treated from some big hospital abroad and stated that his brother-in-law Radhey Shyam (petitioner No.1) and Amit Kumar, his partner are having friends and business relations in America and Australia and they would assist the complainant in getting the treatment of his son abroad. Believing petitioner No.2, complainant gave medical report of his son to him and a few days later, petitioner No.2 stated that his son would require treatment in a big hospital situated in New York City, America and he has already talked with the doctors in the hospital who had given assurance that the son of complainant would fully recover. He further stated that the treatment in America would take about one to two years and suggested that the complainant with his entire family goes to America during the said period. He assured that the complainant would only need to get visa issued and the rest of the work shall be undertaken by Radhey Shyam (petitioner No.1) and Amit. He further stated that a sum of Rs.3.5 crores would be expended in the treatment, out of which a sum of Rs.2 crores is to be paid initially, thereafter a sum of Rs.1 crore is to be paid and finally a sum of Rs.50 lacs is to be paid after the treatment is completed. The said amount would include the expenses for a house, job in a company, treatment of son of complainant and issuance of Green Card to the complainant. Thereafter, in furtherance of criminal conspiracy Sandeep (petitioner No.2) introduced complainant to Radhey Shyam (petitioner No.1) and Amit and stated that the three of them were running a big company in the name of S.R. Logistics. Then, all three of them assured the complainant that they were

associated with various trusts and companies in connection with their business and they would use their contacts to get the work of complainant done. The complainant arranged a sum of Rs.2 crores from his business and by borrowing from his family members and relatives and gave the said amount to Amit and Sandeep (petitioner No.2) on 10.10.2019 and receipt of the amount was also issued by said persons in presence of Kunal Chopra. The complainant was given assurance that with the help of a trust situated at Chandigarh and a company Rajesh Exports, New Delhi, belonging to a friend of the accused, they would get the entire work done. On 11.10.2019 Sandeep (petitioner No.2) told the complainant that his work had commenced and all the said persons Radhey Shyam (petitioner No.1), Amit and Sandeep (petitioner No.2) showed him a mail sent by Rajesh Exports and certain papers issued by Canara Bank bearing signatures of one Amit Singh as Branch Manager in which the factum of transfer of funds Rs.3.5 crores in the name of Prachin Shree Shiv Mandir Charitable Trust had been recorded. Thereafter, on the demand of accused the complainant arranged another sum of Rs.1 crore from his business and relatives and handed over the same to the accused on 19.10.2019 and the accused issued a receipt even with respect to the said amount. On 29.10.2019, the visa of complainant and his family members was received and upon asking, the accused assured that the work of complainant would be completed in the month of December, 2019. However, the accused kept delaying the matter and on repeated asking, the accused called the complainant to Mumbai where he was introduced to some persons and they assured to complete the work by 15.03.2020. However, even upto 15.03.2020, the accused did not make any progress on the work of complainant and upon inquiry, it was found that all the documents handed over by the accused to the complainant were forged. Thereafter the complainant demanded his money back from the accused, however, they threatened to kill him. In this manner, it was alleged that all the said persons in criminal conspiracy with each other had cheated him of valuable consideration amount and forged documents in order to support their act of cheating and necessary action be taken against them. On the basis of said application, aforementioned FIR was registered. Police commenced the investigation. Statements of witnesses were recorded. Petitioners-accused were arrested on 05.08.2020 and their disclosure statements were recorded in pursuance to which a sum of 70,000/- and 30,000/- was recovered at the instance of petitioners-accused respectively.

(3) Thereafter, petitioners moved an application before the

Court of learned Additional Sessions Judge, Karnal, for grant of regular bail on the basis of compromise. Consequently, on the statement of complainant-Ravi Kumar Gupta in the Court to the effect that a compromise has been effected between him and the petitioners, whereby petitioners have undertaken to make the entire payment within a period of six months, petitioners were granted regular bail by learned Additional Sessions Judge, Karnal, vide order dated 28.08.2020 (Annexure P-4). However, complainant-Ravi Kumar Gupta approached the Court of learned Additional Sessions Judge, Karnal, by way of an application under Section 439(2) Cr.P.C. for cancellation of bail granted to the petitioner vide order dated 28.08.2020 alleging therein that the petitioners have violated the terms and conditions of the compromise entered into between the parties on the basis of which they secured bail with an dishonest intention. Learned Additional Sessions, Karnal, after satisfying itself that the petitioners have violated the terms and conditions of the compromise and secured bail with an dishonest intention by playing fraud upon the Court, cancelled their bail vide order dated 15.09.2022 (Annexure P-8). Hence, this petition.

(4) Mr. G.C. Shahpuri, learned counsel appearing on behalf of the petitioners submits that the impugned order dated 15.09.2022 (Annexure P-8) is totally wrong and unsustainable as the petitioners had never issued any cheque to the complainant, however, under the garb of compromise dated 13.08.2020 (Annexure P-2), they obtained the cheque from the wife of petitioner No.1 which had been presented by the complainant to the bank and had been dishonoured for which the complainant has filed complaint under Section 138 of the Negotiable Instruments Act. He further submits that the bail has been cancelled by the same Court which granted the bail which is improper as it would amount to reviewing its own order which is not permissible under the law. He further submits that at the time of grant of bail, the Court did not impose any terms and conditions with regard to the factum of compromise that in case of any violation of the said compromise the complainant would be at liberty to file application for cancellation of bail and since there was no such condition in the order granting bail to the petitioners, the impugned order is totally erroneous and is liable to be set aside. He further submits that the petitioners were enlarged on regular bail after the Court considered the merits of the case and, therefore, cancellation of bail is not permissible under the facts and circumstances of the present case. To support his contentions, learned counsel for the petitioners places reliance upon the judgments of the Hon'ble Supreme Court in *Biman Chatterjee versus Sanchita*

***Chatterjee and another*<sup>1</sup>; *Special Leave to Appeal (Crl.) Nos.4202-4203/2020 (G. Selvakumar versus The State of Tamil Nadu etc.) decided on 01.10.2020* and of this Court in *CRM-M- 40903 of 2021 (Suresh Kumar versus State of Haryana and another) decided on 04.10.2021.***

(5) Per contra, Mr. P.S. Ahluwalia, learned counsel appearing on behalf of respondent No.2 submits that the impugned order dated 15.09.2022 (Annexure P-8) cancelling the bail of the petitioners is perfectly legal and valid as the petitioners were granted the concession of regular bail keeping in view the compromise dated 13.08.2020 (Annexure P-2) and since the terms of the compromise have been violated as the cheque of Rs.25.00 lacs given by the petitioners has been dishonoured, therefore, cancellation of bail of the petitioners is fully justified as there was dishonest intention on the part of the petitioners to secure bail from the Court on the basis of compromise and the same amounts to fraud played not only with the respondents herein but with the Court also. In support of his contentions, learned counsel placed reliance upon the judgments in ***Pankaj S. Bansal versus Arun kumar Ramswarup Aggarwal*<sup>2</sup>; *CRM-M-19983 of 2022 – Shraddha Khandelwal versus The State of Haryana and another (P&H)*; *Surjeet Kaur versus State*<sup>3</sup>; *CRM-M-42259 of 2020 – Kumari Juhi Rai versus State of Bihar (Patna)* and *Jai Krishan versus The State of Punjab*<sup>4</sup>.**

(6) I have heard learned counsel for the parties and perused the record.

(7) The petitioners were extended the concession of regular bail by the Court of learned Additional Sessions Judge, Karnal, vide order dated 28.08.2020 and while granting bail, contention of learned counsel for the applicant/accused (present petitioners) was recorded that the complainant-Ravi Kumar Gupta had entered into a compromise with the accused, copy of which was appended with the bail application duly attested by the Deputy Superintendent of Prison, District Prison, Karnal on 13.08.2020. He further submitted that complainant-Ravi Kumar Gupta is present in Court and he is ready to make a statement with regard to the factum of compromise and that he has no objection in

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<sup>1</sup> 2004 (3) SCC 388

<sup>2</sup> 2020 (2) NIJ 102:2021(1) BC 150 (Bombay)

<sup>3</sup> 2015 (5) R.C.R.(Crl.) 798 (Delhi)

<sup>4</sup> 2010 (1) R.C.R.(Crl.) 249 (P&H)

case the applicants-accused are granted the concession of bail. Consequently, complainant-Ravi Kumar Gupta made a statement to the effect that a compromise has been effected between him and the applicants-accused whereby the applicants-accused have undertaken to make the entire payment within a period of six months and in view of the compromise, complainant has no objection in case the applicants-accused are granted the concession of regular bail by the Court. The Court while granting bail to the petitioners has recorded "in view of the aforesaid and having regard to the statement made by complainant-Sh. Ravi Kumar Gupta in the Court in the light of allegations in the FIR, no useful purpose would be served by keeping the applicants-accused further behind bars.

(8) So far as judgment relied upon by learned counsel for the petitioners in *Biman Chatterjee* (*supra*) is concerned, the said judgment has been considered by the Bombay High Court in *Pankaj S. Bansal's case* (*supra*) and it has been observed as under: -

"46. Learned counsel for the respondents has placed reliance upon the judgment of the Apex Court in the case of **Biman Chatterjee v. Sanchita Chatterjee & anr. reported in 2004 CriLJ 1451**, the Hon'ble Supreme Court had observed that-"non-fulfilment of the terms of the compromise cannot be the basis of granting or cancelling a bail. The grant of bail under the Criminal Procedure Code is governed by the provision of Chapter XXXIII of the Code and the provision therein does not contemplate either granting of a bail on the basis of an assurance of a compromise or cancellation of a bail for violation of the terms of such compromise"

In the facts of the case, there was no written compromise and the bail was granted after noticing the fact that there was possibility of compromise. It was pointed out that there was negotiations going on for finalisation of compromise and therefore, question of appellant contravening the terms of compromise did not arise."

(9) The said judgment in the case of *Biman Chatterjee* (*supra*) has also been considered by the Patna High Court in the case of *Kumar Juhi Rai* (*supra*) wherein it has been held as under: -

"17. In the case of *Biman Chatterjee* (*Supra*) the facts were entirely different. In that case neither a compromise was

arrived at between the parties nor was any undertaking given by the accused before grant of bail. In that background it was held that the bail of an accused cannot be cancelled on violation of assurance of entering into a compromise between the parties. In the considered opinion of this Court, the reliance placed by the learned counsel appearing on behalf of opposite Party nos.2 to 4 on the case of *Biman Chatterjee* (*Supra*) is completely misconceived and that will not salvage the opposite party nos.2 to 4 in the present case.”

(10) Therefore, the judgment of the Hon’ble Supreme Court in *Biman Chatterjee’s case* (*supra*) is not applicable to the facts and circumstances of the present case.

(11) Other judgments relied upon by learned counsel for the petitioners are also of no help to him.

### **Fraud vitiates everything**

(12) Petitioners played a fraud with the Court and also with respondent No.2-complainant-Ravi Kumar Gupta by firstly compromising the matter with the complainant vide compromise dated 13.08.2020 (Annexure P-2) and on the basis of the said compromise the petitioners filed an application for grant of regular bail and it was the contention of their counsel before the Court below that since the matter has been compromised and the complainant is ready to give a statement before the Court with regard to settlement and therefore, the petitioners may be granted the concession of regular bail. Considering the compromise coupled with the statement of the complainant before the Court, the Court of learned Additional Sessions Judge, Karnal, extended the concession of regular bail to the petitioners. However, later on petitioners violated the terms and conditions of compromise as the cheque issued in terms of the compromise was dishonoured. This Court in the case of *Jai Krishan* (*supra*) has held that fraud vitiates everything and no person can be beneficiary of his own fraud and the beneficial order secured from the Court by playing fraud being outcome of the fraud has to go. The relevant portion of the said judgment is as under: -

“9. The question whether the accused has misused the concession of bail becomes a secondary question in this case. The primary question is whether the accused has secured the bail by fraud and misrepresentation and on

the basis of the manipulated record. I have referred to the record in detail which clearly establishes that during the period between 2006-07 there was no serious ailment with the petitioner. However, he attempted to approach the doctor. Upto the month of July, 2007, no serious ailment was shown. It was only in July, 2007 that the disease of epilepsy was inserted in the diagnosis and some tablet was prescribed. It appears that this was done by the doctor in connivance with the accused to help him in securing bail from the court. The report of the Board of Doctors comprising of four experts from the PGI, Chandigarh is an indicator in this regard. One fails to understand why four senior doctors from the PGI, Chandigarh should give a wrong opinion and a false report against the accused. It is settled that no person can be beneficiary of his own fraud. Fraud vitiates everything. From the registers produced, it appears that there has been tampering. The report of the doctor was the sole basis for grant of bail. No material has been produced on record that after being granted bail, the accused is under continuous treatment. The medical report was only a device to secure bail. Notwithstanding the fact that whether the accused has misused the liberty of bail or not, he cannot be given the benefit of his fraud. The accused and the doctor had the courage to mislead the High Court. I have no doubt in mind that such a person deserves no sympathy. The mere fact that the bail has been procured with fraud is sufficient to recall the order of bail. It is now the unanimous judicial opinion that fraud vitiates all acts. Even if a beneficial order is procured from a Court by playing fraud, the order itself being outcome of the fraud has to go.

10. It is the constitutional as also social obligation of the Court to prevent the perpetuation of fraud. In the case of **Abhilash Vinod kumar Jain (Smt.) v. Cox & Kings (India) Ltd. and others, 1995(3) RCR (Criminal) 397: 1995(3) RRR 215: (1995) 3 SCC 732**, Hon'ble Supreme Court has observed as under:-

"18.....In interpreting a beneficent provision, the Court must be forever alive to the principle that it is the duty of the court to defend the law from clever evasion and



defeat and prevent perpetration of legal fraud."

**11. Again in the case of *A.V. Papayya Sastry and others v. Government of A.P. and others, 2007(2) RCR (Civil) 431 : 2007(2) RAJ 451 : AIR 2007 Supreme Court 1546, the Hon'ble Supreme Court has observed as under :-***

"39.....Once it is established that the order was obtained by a successful party by practicing or playing fraud, it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is non-existent and non est and cannot be allowed to stand. This is the fundamental principle of law and needs no further elaboration. Therefore, it has been said that a judgment, decree or order obtained by fraud has to be treated as nullity, whether by the court of first instance or by the final court. And it has to be treated as non est by every Court, superior or inferior"

**12. While reiterating the aforesaid settled proposition of law, in the case of *A.V. Papayya Sastry and others v. Govt. of A.P. and others, (2007) 4 SCC 221, the Hon'ble Supreme Court has observed as under :-***

"21. Now, it is well settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed;

"Fraud avoids all judicial acts, ecclesiastical or temporal".

**22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of law. Such a judgment, decree or order by the first Court or by the final Court has to be treated as nullity by every Court, superior or interior. It can be challenged in any Court, at any time, in appeal, revision, writ, or even in collateral proceedings.**

**23. In the leading case of *Lazarus Estates Ltd. v. Beasley, (1956) 1 All ER 341 : (1956) 1 QB 702 : (1956) 2 WLR 502, Lord Denning observed :***

"No judgment of a court, no order of a Minister, can be

allowed to stand, if it has been obtained by fraud."

24. In *Duchess of Kingstone*, *Smith's Leading Cases*, 13th Edn., p.644, explaining the nature of fraud, *do Grey, C.J.* stated that though a judgment would be *res judicata* and not impeachable from within, it might be impeachable from without. In other words, though it is not permissible to shown that the court was 'mistaken', it might be shown that it was 'misled'. There is an essential distinction between mistake and trickery. The clear implication of the distinction is that an action to set aside a judgment cannot be brought on the ground that it has been decided wrongly, namely, that on the merits, the decision was one which should not have been rendered, but it can be set aside, if the court was imposed upon or tricked into giving the judgment.

25. It has been said; Fraud and justice never dwell together (*fraus et jus nunquam cohabitant*); or fraud and deceit ought to benefit none (*fraus et dolus nemini patrocinari debent*).

26. Fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss of another. Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in *rem* or in *personam*. The principle of 'finality of litigation' cannot be stretched to the extent of an absurdity that it can be utilised as an engine of oppression by dishonest and fraudulent litigants.

27. In *S.P. Chengalvaraya Naidu (dead) by LRs. v. Jagannath (dead) by LRs. & Ors.*, 1994(1) RRR 253: (1994)1 SCC 1: JT 1994 (6) SC 331, this Court had an occasion to consider the doctrine of fraud and the effect thereof on the judgment obtained by a party. In that case, one A by a registered deed, relinquished all his rights in the suit property in favour of C who sold the property to B. Without disclosing that fact, A filed a suit for possession against B and obtained preliminary decree. During the pendency of an application for final decree, B came to know about the fact of release deed by A in favour of C. He, therefore, contended that the decree was obtained by playing fraud on the court and was a nullity. The trial court

upheld the contention and dismissed the application. The high Court however, set aside the order of the trial court, observing that "there was no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". B approached this Court.

28. Allowing the appeal, setting aside the judgment of the High Court and describing the observations of the high Court as 'wholly perverse', Kuldip Singh, J. stated:

"The courts of law are meant for imparting justice between the parties. One who comes to the court, approached this Court.

33. Allowing the appeal and setting aside the orders, this Court stated:

"15. It is unrealistic to expect the appellant company to resist a claim at the first instance on the basis of the fraud because appellant company had at that stage no knowledge about the fraud allegedly played by the claimants. If the Insurance Company comes to know of any dubious concoction having been made with the sinister object of extracting a claim for compensation, and if by that time the award was already passed, it would not be possible for the company to file a statutory appeal against the award. Not only because of bar of limitation to file the appeal but the consideration of the appeal even if the delay could be condoned, would be limited to the issues formulated from the pleadings made till then.

16. Therefore, we have no doubt that the remedy to move for recalling the order on the basis of the newly discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No Court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim.

17. The allegation made by the appellant Insurance Company, that claimants were not involved in the accident which they described in the claim petitions, cannot be brushed aside without further probe into the matter, for, the said allegation has not been specifically denied by the

claimants when they were called upon to file objections to the applications for recalling of the awards. Claimants then confined their resistance to the plea that the application for recall is not legally maintainable. Therefore, we strongly feel that the claim must be allowed to be resisted, on the ground of fraud now alleged by the Insurance Company. If we fail to afford to the Insurance Company an opportunity to substantiate their contentions it might certainly lead to serious miscarriage of justice".

(13) As is stated hereinabove, petitioners have played fraud with complainant-Ravi Kumar Gupta as on the pretext of getting treatment of his son, who was permanently disabled, from abroad extracted money from him. Thereafter on the basis of compromise with the complainant they got regular bail from the Court of learned Additional Sessions Judge, Karnal, vide order dated 28.08.2020 but did not fulfil the terms and conditions of the compromise. Moreso, the cheque issued for part payment of Rs.25lacs has also been dishonoured. Petitioners have played fraud with the complainant as well as with the Court below.

(14) In view of the above, present petition is dismissed being devoid of any merit.

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*Ankit Grewal*