

**IN THE COURT OF SH. KEWAL KRISHAN, PCS, ADDL.
CHIEF JUDICIAL MAGISTRATE, PATHANKOT.**

Case Type	IPC Challan No.862 of 2014
Date of Institution	02.09.2014
Date of Registration	02.09.2014
CIS No.	CHI/1322/2014
CNR No.	PBPO030008432014
Date of Decision	20.11.2018.

State

Versus

Deepak Kumar aged 39 year son of Sh. Kishan Chand son of Sh. Khushi Ram, Occupation business, resident of village Bungal, PS Mamun Cantt. Pathankot.

-----Accused

First Information Report	14 dated 08.02.2014
Under Section	420, 406 of Indian Penal Code, 1860
Police Station	Division No.1, Pathankot.

Present	Sh. Aman Sharma learned APP for the State.
	Accused Deepak Sharma is in custody. Sh.Gaurav Sharma Advocate counsel for the accused.

JUDGMENT:

1. The above named accused are facing trial of offence punishable under Sections 420, 406 of Indian Penal Code, 1860
2. Brief facts as purforth by the prosecution are that the complainant Deepti Sharma wife of Sh. Rakesh Sharma,

resident of Arun Nagar, Sujampur, Tehsil and District Pathankot lodged a complaint with the Senior Superintendent of Police, Pathankot for registration and investigation of criminal case against Deepak Kumar son of Kishan Chand resident of village Bungal for fabricating jamabandi knowing it to be false document and using the same as genuine thereby inducing her to deliver advance money of Rs.3 lacs with dishonest intention to deceive her and executing agreement dated 19.04.2012 to sell the property. It was averred in the complaint that said Deepak Kumar agreed to sell 1 kanals 8 ½ marla plot out of khasra No.3027/2664 (4-8) to the extent of 1/5 share i.e. 0-17 ½ marlas, khasra No.3028/2664 (2-1) to the extent of 3/41 share i.e. 0-3 marlas, khasra No.3029/2664 (4-0), 3030/2664 (3-19) to the extent of 8/159 share i.e. 0-8 marlas total measuring 1 kanal 8 ½ marlas situated within revenue estate of village Bungal. At the time of execution of agreement, Deepak Kumar also brought copy of jamabandi for the years 2006-07 alleging to be issued by Patwari Halqa dated 18.04.2012, photocopy of jamabandi was attached. It was averred that certified copy will be provided if and when required. The complainant paid Rs.3 lacs as earnest money duly received by Deepak Kumar and sale deed was to be

executed on or before 19.10.2012. But he did not execute the sale deed. However, due to intervention of respectables, he agreed to execute the sale deed on 23.11.2012 and on that day he did not bring the jamabandi and assured to bring the jamabandi on 26.11.2012 and he took Rs.60,000/- more from the complainant. The complainant apprehending the dishonest intention of Deepak Kumar, her husband collected the certified copy of jamabandi for the years 2006-07 in order to get the sale deed executed and registered. This jamabandi shows that land to be sold is lying mortgaged with State Bank of Patiala, Chakki bank, Pathankot for a sum of Rs.10,36,000/- vide rapat No.115 dated 15.11.2006, whereas in the jamabandi brought by Deepak Kumar issued on 18.04.2012, there is no entry regarding raising of loan by him. He in connivance with Patwari Halqa managed to omit the entry of loan in the jamabandi brought by him. An inquiry of the complaint was conducted by Sh. Varinder Singh, PPS , the then DSP (City), Pathankot. Opinion of D.A (legal) Pathankot was taken and thereafter FIR for the offence punishable under Sections 420, 406 IPC was registered.

3. Thereafter, the investigation was started by the Investigating Officer, who visited the spot and prepared site plan. He

recorded the statement of witnesses. After completion of investigation and other formalities, challan was prepared and presented in the Court for offence punishable under Section 420, 406 IPC.

- 4. Upon appearance of present accused, copies of the report and other documents were supplied to him in compliance of provisions of section 207 of Cr.P.C.
- 5. After hearing Ld. APP for the State and Ld. Defence Counsel, a prima facie case punishable under Sections 420, 406 of IPC was found against the accused and charge was framed accordingly against him to which he pleaded not guilty and claimed trial.
- 6. To prove its case, the prosecution has examined the following witnesses:

PW1:	Subash Chander, Patwari
PW2:	Suresh Kumar, Manager, State Bank of Patiala
PW-3:	Hira Lal son of late Sh.Mulakh Raj,
PW-4:	Baljit Singh son of late Sh.Rattan Singh,
PW-5:	ASI Surjit Raj,
PW-6:	ASI Balwinder Kumar,
PW-7:	Deepti Sharma complainant
PW-8:	Sh.JS Saini, Advocate
PW-9:	ASI Gurmeet Singh,
PW-10:	Rajesh Kumar, Reader to Naib Tehsildar
No other evidence was led by prosecution and same was closed by learned APP for the State by making separate	

statement.

7. After closing the evidence of prosecution, statements of accused under section 313 Cr.P.C were recorded in which entire incriminating evidence was put to him to which he made denial and pleaded innocence and false implication. He opted to lead defence evidence, but he did not lead any evidence and closed the same by making separate statement.
8. Arguments heard. Learned APP for the State has argued that Complainant Deepti Sharma while appearing as PW-7 has deposed in support of pleas taken in the complaint lodged with the police. PW-3 Hira Lal and PW-4 Baljit Singh have corroborated the statement of complainant PW-7. He has further deposed that during inquiry his statement was recorded and his signatures were obtained on statement Ex.PW3/B. PW-1 Subash Chander, Patwari has deposed that jamabandi for the years 2006-07 Ex.P1 is correct as per record, which was issued by him on which there is entry of loan, but he did not issue the jamabandi Ex.P2 nor it bears his signatures. PW-2 Suresh Kumar has deposed that he is posted in State Bank of Patiala. Deepak Kumar and his mother mother Krishna Devi took joint loan from State Bank of Patiala on 15.11.2006 and

mortgaged 8 marlas of land to secure the housing loan which was in the name of Krishna Devi. Lateron, the installments were not paid and notice was issued. He has proved copies of application for loan form Ex.PW2/A, agreement Ex.PW2/B, letter of arrangement Ex.pw2/c, report of Patwari Ex.PW2/D, title deed Ex.PW2/D, mortgage deed Ex.PW2./F, document annexure-VI Ex.PW2/F, copy of statement of accused Ex.PW2/G

9. Learned APP argued that PW-5 ASI Surjit Singh has deposed that on 21.02.2014, he was posted at Police Station Division No.1, Pathankot and inquiry was marked on 28.02.2014. The accused alongwith Ashok Kumar came to him and produced their bail order. On 12.03.2014, Deepti Sharma produced agreement Ex.PW3/A, copy of jamabandi Ex.P1 and Ex.P2, which were taken into possession Ex.PW5/B. During investigation he took the bank record Ex.PW2./A to G into police possession. PW-6 ASI Balwinder Kumar has deposed that on 08.02.2014, inquiry report EX.PW6/A was received and FIR Ex.PW6/B was registered. PW-8 Sh.J.S. Saini, Advocate has deposed that on 19.04.2012 one agreement Ex.PB was executed by the accused in favour of Deepti Sharma, which was attested by him and Baljeet Singh and Hira

Lal put their signatures over it.

10.Learned APP argued that PW-9 ASI Gurmeet Singh has deposed that during the period from 2011 till 2014, he worked as Reader to the DSP. On 05.10.2013, an inquiry on the application of Deepti was conducted by the then DSP, who prepared the report Ex.PW6/A on which this witness has identified the signatures and he had been signed the documents by said DSP. After objections of DA Legal the final report was given by DSP.

11.Learned APP argued that PW-10 Rajesh Kumar, Reader to Naib Tehsildar has deposed that on 19.10.2012, complainant Deepti Sharma got her attendance marked before Sub Registrar. In this regard, he made entry at serial No.140 dated 19.10.2012 in his official register. Learned APP strongly argued that witnesses of prosecution have proved guilt of accused and they are liable to be convicted for offence of which charge has been framed.

12. On the other hand, learned defence counsel argued that the witnesses of prosecution have failed to prove guilt of the accused by leading cogent, reliable and trustworthy evidence. This case was registered on the basis of the complaint Ex.PA lodged by Deepti Sharma w/o Rakesh Sharma. The alleged

agreement is dated 19.04.2012 which does not bear signatures of Deepti Sharma and her husband put his signatures on her behalf. In the complaint it is mentioned that certified copy of Jamabandi allegedly issued by Patwari dated 18.04.2012 will be provided if and when required, meaning thereby original Jamabandi is in the possession of the complainant which has not been produced on the Judicial File.

13. Learned defence counsel also argued that an inquiry of complaint Ex.PA was conducted by DSP (City) Pathankot and his report is Ex.PW6/A. In column no.5 of this report names of Rakesh Sharma s/o Des Raj, Hira Lal Sharma s/o Mulakh Raj and Baljit Singh s/o Rattan Singh are mentioned as witnesses produced by the complainant. Statement of Rakesh Sharma recorded by the DSP is on the file in which he has mentioned that his agreement dated 19.04.2012 was executed. His another statement was also recorded by the DSP (City) Pathankot, in which he stated that their agreement dated 19.04.2012 was executed. This Rakesh Kumar is material witness who has been withheld and has not been examined by the prosecution. The complainant Deepti Sharma PW7 has deposed in her examination in chief that she, Deepak Kumar, Baljit Singh, Surinder Sharma, Hira Lal Sharma signed the

agreement. She has nowhere stated that her husband had put his signatures on her behalf on the agreement. Similar statement has been made by PW-3 Hira Lal and PW-4 Baljit Singh. The prosecution has not produced the agreement which bears the signatures of complainant Deepti.

14. Learned defence counsel also argued that Sh. JS Saini Advocate PW8 has deposed that he is having no record relating to the agreement nor he got it typed nor it was typed in his presence. The parties and the witnesses did not put there signatures in his presence.

15. Learned defence counsel strongly argued that there are material discrepancies in the statement of witnesses of prosecution, which have created doubts. Benefit of doubts always go to the accused. Thus, accused is entitled to be acquitted.

16. This Court has heard the learned APP for the state and Ld. Defence Counsel and have gone through the case file carefully, on which following points for determination were found in this case:-

- i) Whether accused cheated the complainant by producing a jamabandi without having an entry of loan taken by him from the Bank and took an amount of Rs.3,00,000/-?*
- ii) i) Whether accused was entrusted an amount of*

Rs.3,00,000/- and complainant, which he converted for his own use and he misappropriated the same?

iii) Whether there is sufficient evidence of prosecution to prove guilt of accused?

17. According to prosecution, the complainant Deepti Sharma lodged a complaint with the Senior Superintendent of Police, Pathankot stating therein that the accused agreed to sell 1 kanals 8 ½ marla plot out of khasra No.3027/2664 (4-8) to the extent of 1/5 share i.e. 0-17 ½ marlas, khasra No.3028/2664 (2-1) to the extent of 3/41 share i.e. 0-3 marlas, khasra No.3029/2664 (4-0), 3030/2664 (3-19) to the extent of 8/159 share i.e. 0-8 marlas total measuring 1 kanal 8 ½ marlas situated within revenue estate of village Bungal. At the time of execution of agreement, he also brought copy of jamabandi for the years 2006-07 alleging to be issued by Patwari Halqa dated 18.04.2012. She paid Rs.3 lacs as earnest money and sale deed was to be executed on or before 19.10.2012. But he did not execute the sale deed and he agreed to execute the sale deed on 23.11.2012 and on that day, he did not bring the jamabandi and assured to bring the jamabandi on 26.11.2012 and he took Rs.60,000/- more from her. Her husband collected the certified copy of jamabandi for the years 2006-07 in order to get the sale deed executed and registered, which shows that land to be

sold is lying mortgaged with State Bank of Patiala, Chakki bank, Pathankot for a sum of Rs.10,36,000/- vide rapat No.115 dated 15.11.2006, whereas in the jamabandi brought by Deepak Kumar issued on 18.04.2012, there is no entry regarding raising of loan by him. The accused in connivance with Patwari Halqa managed to omit the entry of loan in the jamabandi brought by him. An inquiry of the complaint was conducted by Sh. Varinder Singh, PPS , the then DSP (City), Pathankot and thereafter FIR for the offence punishable under Sections 420, 406 IPC was registered. The complainant Deepti Sharma in her examination in chief has deposed in support of the prosecution version and has proved her complaint Ex.PA, Agreement Ex.PB, Copies of Jamabandis Ex.P1 and Ex.P2. In her examination in chief she has specifically deposed that the agreement bears her signatures as well as signatures of Deepak Kumar and the witnesses. (There is no agreement on the file, which bears the signatures of the complainant Deepti). In her cross-examination she has deposed that the entire deal of sale purchase was made by her husband and she the accused on the day of agreement and her husband was also with her but she has no knowledge about other persons. On the day of getting sale deed executed, her husband accompanied her to Tehsil

Complex. The stamp papers was purchased by her but she does not remember the stamp vendor or whether her signatures were obtained at that time or not. She has also deposed that she does not know that Deepak Kumar has filed a suit against her challenging the agreement. She herself never went to the Patwari to take Jamabandi. She has further deposed that when an amount of Rs.60,000/- was paid, a writing was made, stamp paper of which was purchased by her.

18. PW-3 is Hira Lal s/o Mulakh Raj who is one of the witnesses of the alleged agreement. In his examination in chief he has deposed in support of prosecution version. He has specifically deposed that an amount of Rs.3 Lac was paid by Deepti Sharma in his presence as well as the presence of Baljit Singh and the agreement was signed by Deepak and Deepti Sharma. (The agreement in question does not bear signatures of Deepti Sharma as is clear from photostat copy of the same). He has also deposed that the agreement was scribed by Sh. JS Saini Advocate, which is Ex.PW3/A. He has also deposed that during inquiry his joint statement with Baljit Singh was written, which is Ex.PW3/B. In his cross-examination he has deposed that he reached at the Tehsil Complex in between 2:00pm-3:00pm. He does not remember, who except him had

signed the agreement. He remained with Deepak at Tehsil Premises and he does not know about others who was party to the agreement. At the time of execution of agreement, the property was mortgaged but mortgage amount was not mentioned in the document. Pw-4 Baljit Singh has deposed that on 19.04.2012 he, Hira Lal and Deepti Sharma went there. An agreement Ex.PW3/A was executed, which was signed by Deepti Sharma, Deepak Kumar and witnesses. (Ex.PW3/A does not bear signatures of Deepti Sharma). In his cross-examination he has deposed that on that day (15.09.2015 when his cross-examination was recorded) husband of Deepti Sharma namely Rakesh Sharma had accompanied him to the court. The land was mortgage with bank but mortgage amount was not mentioned in the record. He has further deposed that Rakesh Kumar put him from his office. He does not know Deepak and Hira. He does not remember the name of Deed Writer. He and Hira Lal had signed the agreement and one other person was also present there but he does not know him. An another agreement of Rs.50,000/- or Rs.60,000/- was also scribed but not by deed writer. Police had not recorded his statement in this case. He has further deposed that brother in law of Rakesh Kumar namely Paras Sharma is his fast friend

and neighborer.

19. PW-5 ASI Surjit Singh has deposed that on 21.02.2014, he was posted at Police Station Division No.1, Pathankot and inquiry was marked on 28.02.2014. The accused alongwith Ashok Kumar came to him and produced their bail order. On 12.03.2014, Deepti Sharma produced agreement, copy of jamabandis, which were taken into possession Ex.PW5/B. During investigation he took the bank record into police possession. In his cross-examination, he has deposed that he took photocopies of agreement into possession and affidavit of Deepak Kumar alongwith original Jamabandi. He recorded the statement of Patwari but did not take into possession the original record from him. He did not verify the authenticity of photocopies of agreement to sell and affidavit of Deepak. The jamabandi taken into possession vide memo Ex.PW5/B is not on the Judicial File. He did not prepare any memo at the time taking into possession the documents Ex.PW2/A to Ex.PW2/G on 24.03.2014. He also did not get the Jamabandi compared from handwriting expert. ASI Sukhwinder Kumar PW6 has deposed about registration of FIR on the basis of inquiry report.

20. PW8 Sh. JS Saini Advocate has deposed that agreement

Ex.PB was executed between Deepak Kumar and Deepti Sharma which was attested by him. In his cross-examination he has deposed that he has no record relating to this agreement nor he got it typed. The parties and the witnesses did not singed in his presence. PW-9 ASI Gurmit Singh has deposed that from 2011 to 2014, he worked as a reader to DSP(City) Pathankot. On 05.10.2013 an inquiry was conducted by the DSP (City) Pathankot who prepared the report EX.PW6/A.

21.PW-10 Rajesh Kumar Reader Naib Tehsildar, Sub Tehsil Narot Jaimal Singh has deposed that on 19.10.2012 Deepti Sharma got her attendance mark before Sub Registrar Pathankot by producing an affidavit Ex.PW5/A. In his cross-examination he has deposed that the register brought by him is not page numbered.

22. This case is registered at the instance of Deepti Sharma who had attached photostat copy of Jamabandi dated 18.04.2012 with her complaint lodged with the police stated therein that certified copy will be provided if and when required. She has not produced the original certified copy of that Jamabandi which is material document. Photostat copy has been produced as Ex.P2. This document has not been produced by leading secondary evidence. There is no evidence of the prosecution

that this document was prepared by the accused. The material Rakesh Kumar husband of the complainant has not been examined nor his name is cited in the list of witnesses. He appeared before DSP (City) Pathankot during inquiry and also came in the court premises when cross-examination of PW-4 Baljit Singh was recorded in the Court. Due to withholding this material witness, an adverse inference is drawn against the prosecution.

23. The Jamabandi Ex.P1 shows that the accused had mortgaged his property with State Bank of Patiala as also deposed by PW-2 Suresh Kumar Manager of the Bank. PW-1 Subash Chander Patwari has deposed that jamabandi for the years 2006-07 Ex.P1 is correct as per record, which was issued by him on which there is entry of loan, but he did not issue the jamabandi Ex.P2 nor it bears his signatures.

24. There is no evidence of the prosecution that the Jamabandi dated 18.04.2012 was forged by the accused with an intention to cheat the complainant. There is no evidence of the prosecution that the complainant has ever filed a suit for possession by way of specific performance of the agreement or for recovery of the amount allegedly paid to the accused. However, the copy of a plaint of civil suit titled as "Deepak

Kumar Vs. Deepti Sharma” is on the file, which is related to the suit for declaration to the effect that the agreement to sell dated 19.04.2012 is illegal, null and void, act of cheating, forgery and fabrication.

25. In this case, charge has also been framed against the accused of offence punishable under Section 420 IPC. An offence of cheating would be constituted when the accused has fraudulent or dishonest intention at the time of making promise or representation. Hon'ble Supreme Court has held in '**Md. Ibrahim & Amp; Ors vs State of Bihar & Anr.**' 2009(4) RCR (Criminal) 369 that: 'The essential ingredients of the offence of "cheating" are as follows: i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission; (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.' Section 24 of Indian Penal Code reads as: **“Dishonestly”**—Whoever does anything with the

intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing “dishonestly”. Section 25 of Indian Penal Code reads as: “**Fraudulently**”—A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

26. From the entire evidence, this Court finds that the witnesses of prosecution have failed to prove the necessary ingredients of offence of cheating and misappropriation. The statements of witnesses of prosecute have created doubts. It is settled principle of criminal jurisprudence that benefit of doubt always goes to the accused. The prosecution has failed to prove the guilt of the accused for any offence and there is no other option except to acquit him. Therefore, he is acquitted of offence punishable under Section 420, 406 IPC by giving him benefit of doubt. File be consigned to Judicial Record Room, Pathankot.

**Pronounced in open Court,
On 20.11.2018
Bikram Chugh/JW**

**Kewal Krishan,
Addl. Chief Judl. Magistrate
Pathankot.**

Present	Sh. Aman Sharma learned APP for the State.
	Accused Deepak Sharma is in custody. Sh.Gaurav Sharma Advocate counsel for the accused.

Accused has closed his defence evidence by making separate statement. Arguments heard. Vide my separate detailed judgment of even date, accused has been acquitted of the offence punishable under Section 420, 406 IPC by giving him benefit of doubt.

Accused is directed to furnish his personal bond in the sum of Rs.20,000/- under Section 437A Cr.P.C. Bond is furnished is accepted and attested. In case of filing an appeal by the complainant/ prosecution, the accused shall appear before Ld. Appellate Court failing which bond shall stand forfeited to State. File be consigned to Judicial Record Room, Pathankot.

**Pronounced in open Court,
On 20.11.2018
Bikram Chugh/JW**

**Kewal Krishan,
Addl. Chief Judl. Magistrate
Pathankot.**