2025:AHC:202615

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 482 No. - 7745 of 2016

Manth Lal And Another

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s) : Anil Kumar Verma, P.K. Singh, Prabhakant Singh, Suraj Kumar Singh

Counsel for Opposite Party(s) : G.A.

Court No. - 83

HON'BLE RAJIV LOCHAN SHUKLA, J.

1. As per the office report dated 04.08.2017, notice has been served on the opposite party No.2 through her heir. Despite notice having been served upon opposite party No.2, no one has put in appearance nor has any counter affidavit been filed.

2. As the matter is quite old, the Court is proceeding to decide the application on its own merits, without any further notice to the opposite party No.2.

3. Heard Shri Anil Kumar Verma, Learned counsel for the applicants and Shri Shashi Dhar Pandey, Learned AGA for the State.

4. Shri Verma submits that the entire proceedings of Criminal Case No.1837 of 2015 (State vs. Manth Lal and others), including the Chargesheet No.106/2015 dated 30.06.2015 filed in Case Crime No.103/2015 under Sections 420, 406, 504, 506 IPC, P.S. Shivpur, District Varanasi are illegal and do not make out any cognizable offence against the applicants and deserve to be quashed. He further submits that the offences under Sections 420 and 406 IPC cannot co-exist and filing of a chargesheet against the applicants in the above-mentioned sections is illegal. He further submits that the Learned Magistrate while taking cognizance has also not applied its mind and summoned the applicants without considering the effect of the implication of the applicants under Section 406 and 420 IPC simultaneously. He further submits that this

dispute is essentially a civil dispute, which hinges on non payment of balance amount towards the registered sale deed and the same does not attract any penal provision and the proceedings can be quashed, as no offence is made out.

5. Learned AGA, on the other hand, submits that there is no proof of payment beyond the payments of Rs.2,87,000/- admitted by the informant and the passbooks and affidavits filed by the applicants to support the payment of the balance amount to the opposite party no.2 and her husband cannot be taken into account at this stage and is a matter for consideration before the Trial Court. Such finding of fact cannot be recorded in an Application U/s 482 Cr.P.C. Learned AGA, however, could not dispute the fact that an offence under Section 406 and 420 IPC cannot co-exist.

6. The FIR lodged by the opposite party No.2 in this case, on the basis of an Application under Section 156(3) Cr.P.C. dated 31.03.2015, speaks of the husband of the opposite party No.2 executing a sale deed with respect to property situated in Arazi No.540 amounting to one biswa. It is further stated that an agreement to sell dated 19.12.2011 was executed on payment of Rs.75,000/-, which was duly registered at Bahi No.1, Zild no.5048, Page No.315 to 334 at Serial No.6793 before the Sub Registrar. In the said agreement to sell, the value of the property was shown to be Rs.2 Lakhs. It has further been alleged that the husband of the informant was illiterate and he was promised that the rest of the amount would be paid within seven days from the date of the sale deed.

7. It is further submitted that on 04.02.2014 the accused-applicants took the son and the husband of the informant to the Court where an alleged fake document dated 04.02.2014 was prepared, concealing the earlier agreement to sell for Arazi nos.540, 541, area 291.97 sq. mtrs. and a sale deed was got executed. It is further stated in the FIR that Rs.2,12,000/- was paid and Rs.75,000/- that had been paid earlier, total amounted to Rs.2,87,000/-, the remaining balance amount of Rs.3,48,000/- was to be paid at home to the husband of the informant. It is further alleged that on coming back home, when the husband of the informant asked for the rest of his money, he was told that Rs.75,000/- that had been paid earlier, interest was accruing thereon and the entire money amounted to the

interest accrued and no other amount was left to be paid. It is also alleged that the husband of the informant was abused and sent away. Further allegation is that on the basis of the sale deed, mutation was also made in the revenue records by the accused persons on the strength of their money power. It is further alleged that when the informant inspected the agreement to sell on 28.02.2015, then she found out that forgery has been committed and the husband of the informant was cheated and the sale deed was got executed after concealing the factum of the agreement to sell.

8. Another incident of 12.03.2015 at about 12 PM has been mentioned in the FIR, where the accused persons alongwith two unknown persons, came to the house of the informant, abused her and threatened her to withdraw her objection and give the land to the applicants or else she alongwith her family would be buried on the said land. This incident is said to have been witnessed by certain witnesses mentioned in the FIR itself.

9. On such assertions, the police case came to be registered on the basis of an Application U/s 156(3) Cr.P.C, which was registered as Case Crime No.103 of 2015 under Sections 420, 406, 504, 506 IPC. The Police, after investigation is said to have submitted a chargesheet against the two applicants, who have now been summoned.

10. A perusal of the material filed on the record would also indicate that vide order dated 09.04.2015, the objection filed by the husband of the opposite party No.2 to the mutation of the Applicants name on the property in question was rejected by the Naib Tehsildar, Shivpur, Varanasi under Section 34 of the Land Revenue Act. A copy of the sale deed has also been annexed with the Application U/s 482 Cr.P.C., which indicates that the registered sale deed was executed for a total sale consideration of Rs.6,35,000/-. In the chargesheet, the police have arrayed the son of the opposite party No.2 and Shri Ram Vikas Singh as witnesses for the prosecution, who were also witnesses of the registered sale deed. Imputation in the FIR is to the husband of the opposite party No.2 being slightly mentally disabled. However, no such imputation has been made to the mental capacity of the son of the opposite party No.2.

11. A perusal of the statement of Suraj Sharma, the son of the informant,

would indicate that he also states that he was taken advantage of. However, he attests to the due execution of the sale deed. The other witness is the brother of the applicant No.2. In the entire material on record, it is nowhere denied that the sale deed was duly executed. The only complaint, which is being raised, is that as per the promise, the balance amount of Rs.3,48,000/- has not been paid.

12. I have perused the material on record and I find that the sale deed was executed by the husband of the first informant with his son as one of the witnesses. Such sale deed has quiet belatedly been challenged by filing an original suit for cancellation of the said sale deed on 08.07.2022 through O.S. No.830/2022, in which in paragraph Nos.6 and 7 of the plaint, the following assertions have been made:-

> "6- यह कि प्रतिवादी ने दबंग एवं मायाबी सख्स है साजिश के तहत अपने गोल के अन्य सख्स ज्ञानप्रकाश सिंह को मिला लिया और वादी के साथ दिनांक 31.12.2013 को कचहरी आकर जहाँ प्रतिवादी के लोग ज्ञानप्रकाश के साथ अपने अधिवक्ता के मौजूद रहे अपने साथ मेरे अनपढ़ पुत्र को भी बैठाये रहे।
>
> 7- यह कि गहरी साजिश के तहत मेरी अन्य आराजी नं० 541 रकबा 165.3 वर्गमीटर जो विवादित सट्टे में नहीं थी को आ०न० 540 रकबा 126.4 में मिलाकर कुल 291.97 वर्गमीटर का पत्र बहक प्रतिवादीगण बिना वादी को बताये तहरीर करवाकर बिक्रय मूल्य मवलिग 635000/- दिखाकर बिक्रय पत्र पर वादी का हस्ताक्षर करा लिया और रजिस्ट्री कार्यालय आकर धोखा धड़ी करके पंजीकरण करा लिया और वादी को कोई रकम बरवक्त बैनामा नहीं दी गयी थी और न ही वादी ने कोई रकम प्राप्त किया था। सम्पूर्ण कार्यवाही बिना जानकारी वादी हुई।"

13. The above suit Shri Verma submits is barred by limitation. However that is not a question for this Court to decide. Still, while considering the challenge to the proceedings under Section 482 Cr.P.C., pleadings filed by the husband of the informant before the Civil Court, alleging the same cause of action as is the subject matter of the police investigation, can be taken note of by this Court in exercise of its powers under Section 482 Cr.P.C. Once due execution of the sale deed is not denied, a presumption is raised in favour of a registered document.

14. Furthermore, diminished mental capacity is being set up as a ground for cheating the informant's husband whereas no material to substantiate such diminished mental capacity has been brought on record. The fact that the son of the informant is a witness to the sale deed and has made his signatures shows that he is not illiterate. In his statement under Section 161 Cr.P.C., he has not denied making the said signatures nor does he

state that he can only make his signatures and otherwise cannot read. The material relating to diminished mental capacity has not been brought on record, the literacy or otherwise of the witness, who is the son of the vendor has also not been clearly brought forward by the police in its investigation. In such circumstances, the presumption in favour of a duly executed sale deed, which is a registered document, is enforced.

15. Shri Verma by referring to certain bank statements has contended that payment has already been made prior to the execution of the sale deed, for which he refers to the statement of accounts annexed as Annexure no.1 to the supplementary affidavit filed in the Court today, in which two transactions of Rs.1,50,000/- and Rs.1,40,000/-, which have been obtained by the applicant No.1 from his account in cash, are said to have been withdrawn, which led to payment of cash amount on 10.06.2013 and 11.06.2013 to the husband of the opposite party No.2.

16. Learned AGA, on the other hand, contends that these documents, which have been filed by the accused cannot be taken into consideration as the same is part of the defence of the accused, which at the time of quashing of proceedings may not be looked into by this Court.

17. Be that as it may, this Court is not embarking upon a finding whether sale consideration was duly paid or not. It, however, is clear from the material on record that the sale deed was duly executed. The only dispute, which is being raised, is of non-payment of the balance amount, which, as per the recital in the sale deed, had already been paid. This to my mind would not constitute a criminal offence much less an offence under Section 406 or 420 IPC. Furthermore, Hon'ble the Supreme Court in **Arshad Neyaz Khan Vs. State of Jharkhand & Another** reported in **2025 Live Law SC 950** and in **Delhi Race Club (1940) Ltd. & Others vs. State of Uttar Pradesh & another** reported in **(2024) 10 SCC 690** has clearly held that an offence of 'criminal breach of trust' and 'cheating' cannot co-exist. By no stretch of imagination, non payment of balance amount towards a sale consideration can be said to be an entrustment to attract the provisions of Section 406 IPC.

18. The Hon'ble the Supreme Court in ***M/s Shikhar Chemicals vs. The State of U.P. and others, Special Leave to Appeal (Crl.) No.11445 of 2025*** on 04.08.2025, in paragraphs No.11, 12, 13 and 14 has clarified the

Law as under:-

"*11. The case of the respondent no.2 as a complainant, is plain and simple. He claims to be an unpaid seller. According to him, he delivered goods in the form of thread to the petitioner herein worth Rs.52,34,385/- out of which an amount of Rs.47,75,000/- came to be paid to the complainant by the petitioner herein, however, the balance amount has not been paid, till this date.*

12. It is for the recovery of the balance amount that he thought fit to file a criminal complaint and institute criminal proceedings. It appears that the complainant in the first instance tried to lodge a FIR but the police declined to register the FIR saying that it was purely a civil dispute.

13. The Magistrate unfortunately remained unmindful of the fact that even as per the complainant's own say the case is one of sale of goods and recovery of some balance amount."

14. It was expected of the Additional CJM to know that in a case of sale transaction where is the question of any entrustment of goods so as to bring the case within the ambit of criminal breach of trust punishable under Section 406 of the IPC. This position of law came to be explained by this Court almost six decades back in the landmark decision titled "State of Gujarat vs. Jaswantlal Nathalal" reported in 1968 (2) SCR 408, wherein this Court stated that a mere transaction of sale cannot amount to an entrustment. We quote the relevant observations made by this Court as under:-

> "*8. The term "entrusted" found in Section 405 IPC governs not only the words "with the property" immediately following it but also the words "or with any dominion over the property" occurring thereafter — see Velji Raghvaji Patel v. State of Maharashtra [(1965) 2 SCR 429] . Before there can be any entrustment there must be a trust meaning thereby an obligation annexed to the ownership of property and a confidence reposed in and accepted by the owner or declared and accepted by him for the benefit of another or of another and the owner. But that does not mean that such an entrustment need conform to all the technicalities of the law of trust — see Jaswantrai Manilal Akhaney v. State of Bombay [[1956] SCR 483, 498-500] . The expression "entrustment" carries*

with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. Further the person handing over the property must have confidence in the person taking the property so as to create a fiduciary relationship between them. A mere transaction of sale cannot amount to an entrustment. It is true that the Government had sold the cement in question to BSS solely for the purpose of being used in connection with the construction work referred to earlier. But that circumstance does not make the transaction in question anything other than a sale. After delivery of the cement, the Government had neither any right nor dominion over it. If the purchaser or his representative had failed to comply with the requirements of any law relating to cement control, he should have been prosecuted for the same. But we are unable to hold that there was any breach of trust.

9. A case somewhat similar to the one before us came up for consideration before a Division Bench of the Calcutta High Court in Satyendra Nath Mukherji v. Emperor [ILR [1947] 1 Cal 97] . These are the facts of that case. One Satya Sunder Mitra was a contractor. He was granted a permit by the Executive Engineer, A.R.P. (Shelters), construction division, to purchase seven tons of cement from Balmer Lawrie and Company. The permit was granted on the condition that the cement was to be used in the work connected with the construction of shelters, which work he had contracted to do for the Executive Engineer. The finding in the case was that with the help of an employee of Mitra and Chaudhuri who were banians of Balmer Lawrie and Company, six tons of cement were diverted and disposed of for another purpose. The trial court convicted Satya Sunder Mitra under Section 406 IPC and another for abetting the offence committed by Satya Sunder Mitra. The High Court allowed their appeal, holding that there was no entrustment of the cement in question within the meaning of the term as used in Section 405 of Indian Penal Code. In the course of the judgment it was observed:

"*The permit was granted in accordance with the system of control*

established under the Defence of India Rules, under which an order has been issued by the Government of India preventing selling agents such as Balmer Lawrie and Company from delivering any cement except under instructions from the Government or from the Cement Adviser. The transaction, so far as the contractor is concerned, was one of purchase and the property in the cement clearly passed to him. No doubt he could not have obtained the permit through the Executive Engineer if it had not been intended that the cement should be used for the purpose directed by the Engineer, but, in our opinion, in no sense can it be said that there was any entrustment either of the property or of any dominion over the property."

We are of the opinion that the legal position is as explained in that decision.

10. The decision of the Kings Bench Division in King v. Grubb [[1915] 2 KB 683] relied on by Mr Dhebar learned counsel for the appellant does not bear on the question under consideration. Therein, the factum of entrustment was not in dispute. The only question of law that arose for decision in that case was whether when a property is entrusted to a company, and the person directing and controlling the company, by whose instructions the property had passed into the possession of the company, had converted the same fraudulently, that person can be said to have committed an offence under Section 1 of the Larceny Act, 1901. The court answered that question in the affirmative.

11. ln view of our conclusion that the prosecution has failed to prove the entrustment pleaded, it is unnecessary to consider whether on the material on record it can be concluded that the respondent had misappropriated 40 bags of cement referred to earlier."

(Emphasis supplied)"

19. Furthermore, for there to be an element of cheating, there must be deception. Section 415 of the IPC speaks as under :-

*"**415. Cheating-** "Whoever, by deceiving any person, fraudulently or dishonestly induces*

the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat'."

20. Section 420 IPC speaks as under:-

*"**420. Cheating and dishonestly inducing delivery of property.—**Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*

21.The Hon'ble the Supreme Court in the case of ***Radheyshyam and others vs. State of Rajasthan and another, Criminal Appeal No.3020 of 2024***, while considering the ingredients of Section 420 and 406 IPC has held as under:-

*"**7.** Section 420, IPC provides that:*

> *"Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*

For an offence under Section 420, IPC, the following ingredients must be present:

i. Cheating as defined under Section 415, IPC, that is, there should be a fraudulent or dishonest inducement of a person;

ii. An intention to deceive; and

iii. The person cheated must be dishonestly induced to

a. Deliver property to any person; or

b. Make, alter or destroy valuable security or anything signed or sealed

and capable of being converted into valuable security.

8. *Thus, cheating forms an essential ingredient to constitute and offence under Section 420, IPC. Further, to constitute cheating as defined under Section 415, IPC, it is necessary that a fraudulent or dishonest inducement is done and the deceived person is made to deliver any property owing to the fraud. Section 415, IPC, defines 'cheating', as:*

> *"Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"."*

11. *For an offence punishable under Section 406, IPC, the following ingredients must exist:*

> *i. The accused was entrusted with property, or entrusted with dominion over property;*
>
> *ii. The accused had dishonestly misappropriated or converted to their own use that property, or dishonestly used or disposed of that property or wilfully suffer any other person to do so; and*
>
> *iii. Such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust."*

22. Cheating by inducing delivery of property would entail deception being practised. The son of the informant being a witness to the sale deed and the averments made in the FIR being at variance to the statement made in the civil suit in paragraphs referred to above clearly indicate that the son of the opposite party No.2 was aware of the transaction and had witnessed the sale deed. As has been observed above diminished mental capacity has not been demonstrated. Although the civil suit does mention that the O.P. No.2's husband was illiterate but diminished mental capacity has not been pleaded therein. Furthermore, given the fact that a belated

suit for cancellation of deed being filed in which assertions at variance to the complaint being made clearly demonstrate that no deception was practised.

23. In such circumstances, I find that no offence much less an offence of cheating or criminal breach of trust is made out.

24. Learned AGA has stressed that apart from the offences under Sections 406 and 420 IPC, the offences under Sections 504 and 506 IPC are also made out against the applicants.

25. The Hon'ble the Supreme Court in ***Mohd. Wajid vs. State of U.P., reported as 2023 SCC OnLine SC 951*** made the following observations:-

> *"At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance*

out of private or personal grudge as alleged."

26. Thus, even though the offences under Sections 504, 506 IPC may be disclosed in the complaint, this Court can always go behind the allegations and look at all attending circumstances including reading between the lines to conclude that a genuine allegation has been made or one which has been made only to suit the prosecution version and enhance the gravity of the offence.

27. From the entire facts and circumstances discussed above, I find that the allegations under Sections 504 and 506 IPC have been made only to increase the gravity of the offence.

28. Considering all the circumstances, the material on the record and the law as discussed above, I find that the entire proceedings ofCriminal Case No.1837 of 2015 (State vs. Manth Lal and others), including the Chargesheet No.106/2015 dated 30.06.2015 and cognizance order dated 07.08.2015 passed by the Additional Chief Judicial Magistrate, Court No.6, Varanasi in Case Crime No.103/2015 under Sections 420, 406, 504, 506 IPC, P.S. Shivpur, District Varanasi, deserve to be quashed and are hereby quashed.

29. The Application is ***allowed***.

(Rajiv Lochan Shukla,J.)

November 14, 2025
A. Pandey

Digitally signed by :-
ANAND PANDEY
High Court of Judicature at Allahabad