

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

CRMC No. 247/2014

Mrs. Tahseena Mufti
Wife of Fayooz Ahmad Kirmani
D/o Late Ghulam-ud-Din Mufti
R/o Parraypora, Srinagar

..... Appellant/petitioner(s)

Through: -

*Mr. Altaf Haqani, Sr. Advocate with Mr. Shakir Haqani, and
Mr. Aasif Wani, Advocates*

V/s

1. State of J&K through
Incharge Police Station, Shaheed Ganj,
Srinagar

2. Sajad Muzaffar Bhat,
S/o Abdul Rehman Bhat
R/o Kursoo, Rajbagh-Srinagar.

..... Respondent(s)

Through: -

*Mr. Sajad Ashraf, GA for 1
None for respondent 2*

CORAM:

HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE

(ORDER)

21.12.2023

1. The petitioner herein, has invoked inherent power of this Court enshrined under Section 561-A Cr.PC (now 482 Cr.PC), for quashment of FIR No. 70/2014, registered with Police Station Shaheed-Gunj, Srinagar, for offences under Section 420, 467, 468 and 471 RPC (for short the impugned FIR).

2. The facts emerging from the record would reveal that petitioner herein while working as Director Finance, Sheep and Husbandry Department, Srinagar, received a Phone call from respondent 1 herein, in connection with

some investigation and upon reporting there in the Police Station, petitioner came to know that impugned FIR has been registered against her, upon a complaint filed by respondent 2 herein, in which complaint, the respondent 2, herein had alleged that he has a Bank Account No. CB-2766 in J&K Bank, Branch Residency Road, Jammu and was carrying two cheques bearing Nos. 161643 and 161644, amounting to Rs. 5.00 lacs each of the said account, signed by him to be furnished to one of his friends namely Zahoor Ahmad Wani S/o Ghulam Mohammad Wani R/o Peerbagh Hyderpora, Srinagar and that the said two cheques were lost by him and on 04.08.2014, he came to know that an amount of Rs. 5.00 lacs covered by one of the cheques has been encashed/deposited fraudulently and dishonestly by the accused/petitioner herein in her Bank Account bearing No. SB-92993.

3. Record reveals that in pursuance of the complaint, the respondent 1 herein, registered the impugned FIR on 06.08.2014 and set the investigation into motion.

4. The petitioner herein, has questioned the impugned FIR supra in the instant petition *inter alia* on the grounds that the FIR is absurd and activated with malice being abuse of process of law, as no cognizable offence justifying the investigation of the same is made out and that the impugned FIR has been got registered by respondent 2 herein malafidely with an ulterior motive, for coercing the petitioner to return the money, as was legitimately and bonafidely received by the petitioner covered under the cheque in question as an advance from respondent 2 in respect of the sale of a plot of land measuring 07 Marlas situated at Bhatindi, Jammu owned by her and when the respondent 2 despite an oral agreement entered into with

the petitioner herein *qua* the sale of the said plot failed to pay the agreed sale consideration to the petitioner, advance amount came to be forfeited by the petitioner. It is further alleged in the grounds of challenge by the petitioner herein that the allegations in the complaint and the impugned FIR essentially constitute a civil dispute between the petitioner herein and respondent 2 herein even being testified by the fact that the respondent 2 herein, after registration of impugned FIR on 06.08.2014, filed a civil suit on 19.12.2014 for recovery of an amount of Rs. 5.00 lacs covered under the cheque in question.

5. The respondents though in response to the notice issued by this Court in the instant petition, have entered their appearance, yet respondent 1 herein alone has filed response to the petition in the shape of a status report on 10.02.2015, followed by a latest status report dated 16.08.2022, whereas, respondent 2 has chosen to remain absent on the previous date of hearing as also today.

6. Be that as it may, in the first status report filed by respondent 1, it is being stated that upon registration of impugned FIR investigation was set into motion and the credit/debit statement of the petitioner's Bank Account No. SB-92993 from J&K Bank, Branch Hari Singh High Street, Srinagar, was obtained and also two original cheques which had been credited in the Account of the petitioner, came to be seized in presence of the Executive Magistrate, Srinagar and sent to FSL for verification/comparison, wherefrom positive opinion came to be received and also statement of the accused petitioner was recorded.

7. In the latest status report, the version pleaded in the earlier status report is reiterated, however, in respect of two missing cheques, one bearing No.

161644, is stated to have been got credited into the Account of petitioner herein, and the said cheque is stated to have been seized for FSL examination.

In both the reports supra, the respondents have summed up that the petitioner has been found to have committed offence covered under the impugned FIR.

Heard learned counsel for the parties and perused the record.

8. Before proceeding to deal with the grounds urged in the petition in hand it would be appropriate and advantageous to refer to the ambit and scope of inherent power of this Court enshrined in Section 482 Cr.PC.

Law is no more *res integra* and stands settled that in exercise of the wholesome power vested in the High Courts under Section 482 Cr.PC., the High Court has power to quash an FIR/proceeding, if it comes to the conclusion that allowing the same to continue would be an abuse of process of the Court or that the ends of justice require FIR/proceedings ought to be quashed.

A reference in this regard to the Judgment of the Apex Court passed in case titled as *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335, would be germane herein, wherein following have been illustrated as cases in which FIR/complaint can be quashed:-

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

- (4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.
- (7) Where a criminal proceeding is manifestly attended with *mala fide* and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

9. Keeping in mind the aforesaid position and principles of law and reverting back to the case in hand, it is deemed appropriate to refer to the offence covered under impugned FIR, which are alleged to have been committed by the petitioner.

Section 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.”

The aforesaid Section postulates that for constituting an offence of cheating following ingredients must be present:-

- (I) there should be fraudulent or dishonest inducement of a person by deceiving him (II) (a) the person so deceived should be induced to deliver any property to any person or to consent that

any person shall retain any property or (b) the person so deceived should be intentionally induced to do or omit to do anything, which he would not do or omit, if he were not so deceived and (III) in cases covered by (II) (b) the act of omission should be one, which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

Thus, it would emanate from aforesaid Section 420 RPC, that it has to be established not only that the accused has cheated someone, but also that by doing so, he has dishonestly induced the person, who was cheated to deliver any property and that the complainant parted with his property, acting on a representation, which was false to the knowledge of the accused and that the accused had a dishonest intention **from the outset**.

Section 467, Forgery of valuable security or a will etc.:-

“ Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to received or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

What emerges from bare perusal of Section 467 supra, is that for constituting the said offence, following essentials must exist:-

(i) that the accused committed forgery (ii) that such forgery was committed in relation to a document which passports be, (a) a valuable security; or (b) a will; or (c) an authority to adopt a son; or (d) which passports to give authority to any person to make or

transfer any valuable security; or (e) to receive the principal, interest or dividends thereon; or (f) to receive or deliver any money movable property or valuable security or any document purporting to be an acquittance or receipt acknowledging the payment of money; or (g) an acquittance or receipt for the delivery of any movable property or valuable security.

Section 468 Forgery for the purpose of cheating.

“Whoever commits forgery, intending that the document [or electronic record] forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

From the plain reading of Section 468 supra, in order to constitute the said offences, the following essential ingredients must exist:-

- (i) that the accused committed forgery; (ii) that he did so intending that the document or electronic record forged shall be used for the purpose of cheating.

Section 471 using genuine forged document [or electronic record].

“ whoever fraudulently or dishonestly uses as genuine any document [or electronic record] which he knows or has reason to believe to be a forged document, [or electronic record] shall be punished in the same manner as if he had forged such document [or electronic record].

What emerges from bare perusal of Section 471 supra, is that for constituting the said offence, following essential ingredients must exist:-

- (i) fraudulent or dishonest use of a document as genuine; (ii) the persons using it must have knowledge or reason to believe that the document is a forged one.

10. Having regard to the aforesaid provisions of the Penal Code relating to the offences, alleged to have been committed by the petitioner herein and coming back to the facts of the case, the complaint filed by respondent 2 as also the impugned FIR would manifestly reveal that the complainant/respondent 2 alleged to have lost two cheques signed by him without filling up name of the bearer/s or the date/s therein intended to be provided by him to one of his friends namely Zahoor Ahmad Wani.

A closure examination of the complaint and the impugned FIR would however, demonstrate that the complainant/respondent 2 herein has been silent as to when did he lost the cheques, where did he lost them, when did he came to know about the losing of said cheques and what steps did he take thereon to secure the said cheques from being misused, in that, such a conduct on the part of complainant/respondent 2 herein manifestly is unusual inasmuch as highly improbable as ordinarily a person, who has signed blank cheques and has lost them would in the first instance inform the concerned Bank about the same for securing the said cheques. The complainant/respondent 2 instead has contended in the compliant/impugned FIR that he came to know about the lost cheques only on 04.08.2014, when the cheque in question had been encashed by the accused/petitioner herein, by getting the same credited into her Saving Bank Account in the J&K Bank Account.

11. In view of the aforesaid undisputed version of the complainant/respondent 2 herein, and having regard to the essential ingredients of the offences covered in the impugned FIR alleged to have been committed by the petitioner herein, it becomes manifestly evident that none of the said offences are made out or so much so it is also manifest that the allegations made in the complaint and impugned FIR are so absurd and inherently

improbable on the basis of which it can safely be said that there is no sufficient ground for proceeding against the accused/petitioner herein.

The plea of the petitioner herein, that the cheque in question in fact had been furnished to her by the complainant/respondent 2 herein as an advance consideration against sale of plot of land owned by her at Bhatandi Jammu and on account of the failure of the complaint/respondent 2 to complete the deal of sale qua the said plot on agreed terms the petitioner herein forfeited the amount of cheque upon agreed terms, cannot be overlooked moreso when the complainant/respondent 2 has failed to controvert the said plea of the petitioner.

12. Viewed thus, what has been observed, considered and analyzed hereinabove, the case of the petitioner manifestly falls within illustration 1, 5 and 7 of the illustrations laid down by the Apex Court in *State of Haryana v. Bhajan Lal supra case* as a consequence whereof the instant petition deserves to be allowed.

13. Accordingly, petition is allowed and resultantly, impugned FIR is quashed.

Disposed of.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR
21.12.2023
"Mohammad Yasin Dar"

Whether judgment is speaking Yes/No
Whether judgment is reportable Yes/No