

Court No. - 92

Case :- APPLICATION U/S 482 No. - 22226 of 2023

Applicant :- Krishna Gopal

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Shahabuddin

Counsel for Opposite Party :- G.A.,Bharat Singh

Connected with

Case :- APPLICATION U/S 482 No. - 32895 of 2022

Applicant :- Krishna Gopal

Opposite Party :- State Of U.P.And Another

Counsel for Applicant :- Syed Mohammad Nawaz,Shahabuddin

Counsel for Opposite Party :- G.A.,Bharat Singh

Connected with

Case :- APPLICATION U/S 482 No. - 22090 of 2021

Applicant :- Krishna Gopal

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Shahabuddin,Satya Dheer Singh Jadaun,Syed Mohammad Nawaz

Counsel for Opposite Party :- G.A.,Bharat Singh

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Shahabuddin and Sri Syed Mohammad Nawaz, learned counsel for the applicant, Sri Bharat Singh, learned counsel for opposite party no.2 and Sri Sandeep Chaudhary, learned A.G.A. for the State.

2. In the instant case, all these three petitions are filed at different stages of the case. The first one is the Application u/S 482 no.22090 of 2021, wherein the applicant has prayed for quashing of cognizance/summoning order dated 09.09.2021 as well as the charge-sheet dated 27.07.2021 and the entire proceedings of the Case No.7784 of 2021 (State vs. Krishna Gopal), arising out of Case Crime no.344 of 2021 u/S 420 I.P.C. and 66-D of the Information Technology Act, 2000 (hereinafter referred as '*the IT Act*'), P.S.- Civil Lines, District- Moradabad, pending in the Court of Chief Judicial Magistrate, Moradabad.

3. The subsequent petition being an Application u/S 482 No. 32895 of 2022 has been filed challenging the order dated 19.09.2022, whereby the discharge application of the applicant herein has been rejected by the Chief Judicial

Magistrate, Moradabad.

4. Another Application u/S 482 No. 22226 of 2023 is, wherein the applicant has challenged the order dated 16.05.2023, whereby the charges under Section 420 I.P.C. & Section 66-D of the IT Act, has been framed against the applicant in Case No.7784 of 2021. Since, all these three petitions are arising out of the same case crime number at different stages, the same have been heard and are being decided together.

5. The brief facts of the case are that the applicant herein is the husband of the sister of the opposite party no.2. There was a matrimonial discord between the applicant and the sister of the opposite party no.2 and the case u/S 498-A I.P.C. etc., out of the said matrimonial discord was lodged by the sister of the opposite party no.2 on 06.12.2020 being Case Crime no.149 of 2020 u/S 498-A, 323, 504, 506, I.P.C. and Section 3/4 of D.P. Act, 1961. The applicant herein is a Custom Inspector. The allegation against the applicant is that on 20.03.2021, the applicant herein has generated a false complaint purported to have been made by the sister of the opposite party no.2, from the Email ID generated through the mobile of the applicant herein. From the perusal of the said complaint it appears that no sensible person could have made such a complaint against herself and her family members as has been stated to have been made by the sister of the opposite party no.2, which have been made by the applicant herein in the name of the sister of the opposite party no.2. During the investigation, it has been proved that the Email ID, from which the said complaint was lodged, was generated from the mobile of the applicant herein and after due investigation charge-sheet was filed against the applicant herein.

6. Learned counsel for the applicant has submitted that in the instant case the applicant has been charged u/S 420 I.P.C. However, from the plain reading of the allegations made in the F.I.R., no offence u/S 420 I.P.C., is made out. As per Section 420 I.P.C., the cheating must be with intention to dishonestly inducing delivery of property. Learned counsel for the applicant further submits in the instant case that there is no allegation of delivery of any property to any person in the entire F.I.R. and the charge-sheet. Therefore, no offence u/S 420 I.P.C., is made out against the applicant herein. Therefore, he has claimed that charge-sheet u/S 420 I.P.C. as well as cognizance/summoning order dated 09.09.2022, the order dated 19.09.2022 rejecting the discharge application and the order dated 16.05.2023, framing the charge u/S 420 I.P.C., against the applicant are illegal and are liable to be quashed.

7. Learned counsel for the opposite party no.2 submits that by way of the false online complaint raised by the applicant herein, by using the Email Id generated from his mobile, purporting to be the complaint on behalf of his wife with whom the applicant had the strange relationship and by the said complaint the applicant has tried to disrepute not only to his strange wife but the entire family members of his wife.

8. Learned counsel for opposite party no.2 further submits that the reputation of a person is also a valuable property within the meaning of Section 420 I.P.C. and

by the act of the applicant, the reputation of the opposite party no.2 and his family members has been jeopardized and compromised. Therefore, the act of the applicant herein is covered within the definition of the property, which has been taken away by the applicant, by his act of cheating with a dishonest intention of forcing the opposite party no.2 and his sister to withdraw the criminal cases lodged against the applicant herein due to the matrimonial discord between the applicant and the sister of the opposite party no.2. Therefore, the offence u/S 420 I.P.C., is very well made out in the current circumstances of the case. Therefore, there is no illegality either in the charge-sheet or in the cognizance/summoning order or in the order dated 19.09.2022, rejecting the application for discharge and the order dated 16.05.2023, framing the charges u/S 420 I.P.C. and 66-D of the IT Act, against the applicant herein.

9. Learned Counsel for the State submits that the instant case is the glaring example of the retaliation to the matrimonial discord by the applicant herein, causing disrepute not only to the wife of the applicant but to the entire family members of the opposite party no.2. The reputation of a person is a valuable security to his Right to Life as guaranteed under the Constitution of India. By the act of the applicant herein, the reputation of the sister of the opposite party no.2 as well as the entire family members of the opposite party no.2 has been put at stake by the applicant. Therefore, after due investigation the charge-sheet has been filed against the applicant u/S 420 I.P.C. and Section 66-D of the IT Act and the learned Magistrate after considering the relevant material available before him, has taken cognizance in the matter and has issued summons. The applicant had filed an application for discharge, which was duly considered by the learned Trial Court and by a detailed order, the said application filed by the applicant was rejected by the Trial Court and subsequently, the charges have been framed against the applicant vide order dated 16.05.2023, with due consideration to the material available before the Trial Court. Therefore, there is no illegality either in the charge-sheet or cognizance/summoning order or the order rejecting the application for discharge and the order framing the charges against the applicant herein.

10. Having considered the arrival submissions made by the learned counsels for the parties, this Court has carefully perused the record of the case. For deciding the instant case, it will be proper to refer to Sections 415, 416, 417 and 420 of the I.P.C. and 66-D of the IT Act, which are read as under:-

Sections 415, 416, 417 & 420 of the IPC

"[s 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".

[s 416] Cheating by personation.-A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one

person for another, or representing that he or any other person is a person other than he or such other person really is.

[s 417] Punishment for cheating.-Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

[s 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.

Section 66-D of Information Technology Act, 2000

66-D. Punishment for cheating by personation by using computer resource.-Whoever, by means of any communication device or computer resource cheats by personation, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to one lakh rupees."

11. As per Section 415 I.P.C., any act or omission which causes or likely to cause damage or harm to that person in body, mind, reputation or property is said to cheat that person. Therefore, the reputation of a person is equivalent to the property of a person. Therefore, any act which causes loss to reputation to a person is covered under the offence of cheating.

12. Section 416 I.P.C., refers to the cheating by personation, if a person pretends to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

13 Section 417 I.P.C., provides for the punishment for cheating itself to which may extend to one year or with fine or with both.

14. Section 420 I.P.C., provides that whosoever cheats and thereby dishonestly induces the person to deceive to deliver any property or any part of 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. Therefore, if any loss is caused by any act of a person who has committed cheating any loss to the valuable property, then the offence u/S 420 I.P.C. is made out.

15. In the instant case, as per the allegations which are prima facie established against the applicant herein are that, that the applicant had generated an email account from his mobile and from that email account he has raised an online complaint pretending that the same is being raised by the sister of the opposite party no.2, who was eventually the wife of the applicant herein and from the allegations made in such complaint the reputation of not only the sister of the opposite party no.2 but the entire family members of the opposite party no.2 has been put at stake. Thereby, by the act of the applicant, the opposite party no.2

and the entire family members have suffered the loss of reputation, which is a valuable security guaranteed under the Right to Life as guaranteed under the Constitution of India. Therefore, the applicant in the considered opinion of this court has committed the offence u/S 420 I.P.C.

16. Therefore, since the prima facie case is made out against the applicant u/S 420 I.P.C. and 66-D of the IT Act, therefore, there is no illegality in the charge-sheet as well as the cognizance/summoning order dated 09.09.2022 and the order dated 19.09.2022, rejecting the application for discharge of the applicant herein and also in the order dated 16.05.2023 whereby the charges have been framed against the applicant herein. Therefore, all the three applications filed by the applicant are devoid of merits and are hereby ***dismissed***, having regard to the decisions of the Apex Court in state of ***Zandu Pharmaceutical Works Ltd. vs. Mohd. Saraful Haque : (2005) 1 SCC 122, Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and Others : 2021 SCC OnLine SC 315 and State of Haryana & Ors. vs. Bhajan Lal : 1992 SCC (Cri) 426.***

Order Date :- 26.10.2023

Shubham Arya