

Court No. - 84

Case :- CRIMINAL APPEAL No. - 6506 of 2022

Appellant :- Vivek Verma

Respondent :- State of U.P. and Another

Counsel for Appellant :- Shailendra Kumar Singh

Counsel for Respondent :- G.A., Ashish Goyal

Hon'ble Mrs. Sadhna Rani (Thakur), J.

Heard learned counsel for the appellant, learned counsel for opposite party no.2 and perused the record.

This is an appeal filed by the appellant against order dated 04.08.2022 passed by the Special Judge (SC/ST Act) District Agra in Special Session Trial No.115 of 2021 (State Vs. Anil & another) arising out of Case Crime No.461 of 2020, under Sections 420, 504, 506 I.P.C. and 3(2) (va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Police Station Jagdishpura, District Agra, U.P.

By impugned order, the discharge application moved by the appellant Vivek Verma was rejected by the trial court.

As per FIR version the allegation against the appellant is that on 03.12.2016 opposite party no.2- Gajendra Singh purchased jewellery of Rs. 2,04,645/- from the shop of the appellant. The amount received by the appellant and his father Anil Verma was regarding 24 carat gold (ornaments) but when the opposite party no.2 came to sale back jewellery the appellant and his father claimed the jewellery to be of 16 to 18 carat and asked for the bill. Again on 10.08.2020 at about 2:25 p.m. when the first informant and his brother Devendra Singh met the appellant at his shop and showed the bill and asked for the return the cost of 24 carat of gold (ornaments) the appellant and his father got angry and started hurling wild abuses, gave threat of life, used caste based words and said that the first informant can do whatever he wants but the appellant was not going to give back the amount.

It is argued by the learned counsel for the appellant that in the impugned order there is nowhere mentioned that how the ingredients of offence under Section 420 of IPC are made out against the appellant. The alleged receipt does not bear the name of

the shop of the appellant, any signatures of the appellant or any of the employee of his shop or the stamp of the shop. The said receipt is not a final receipt. It is only an estimate, wherein the amount shown is Rs.2,04,645/- and the balance of the same amount has also been shown, which makes it clear that nothing was paid to the appellant through this receipt. This document not being a valid receipt is not a document admissible in the eyes of law. This bill does not belong to the shop of the appellant also. There is no eye witness of the incident. No CCTV footage of the incident has been placed before the Court. The statement of any nearby shopkeeper has also not been recorded. Witness Suresh has not stated in his statement that the jewellery, which was checked by him was purchased from the shop of the appellant. Witness Rajni is not the witness, whose name is mentioned in the charge-sheet. In fact, the opposite party no.2 with the help of Mayank Vashisth, Rajni and her husband Suryabhan Singh was enforcing the appellant to enter into a compromise. They also received Rs.1,50,000/- as a price of settlement, but the settlement was refused and the opposite party no.2 further started demanding Rs.20,00,000/-. Again it is submitted that the offence under Section 3(2) (va) of SC/ST Act also cannot be said to be made out against the appellant because as per opposite party no.2 himself he was mere a customer of the shop of the appellant and how a shopkeeper could know the caste of the customer, hence, prayer is made accordingly.

Learned counsel for opposite party no.2 opposed the prayer and submitted that in his statement under Section 161 Cr.P.C. the opposite party no.2 has stated that he is an old customer of the appellant. There were family relations between the parties. When the appellant, who is having family terms with the opposite party no.2 could cheat the opposite party no.2 then his conduct with other customers could be imagined. In the statement under Section 161 Cr.P.C. one of the customer of the appellant, Rajni, has stated that the appellant used to give the same type of bills to his customers and used to say that by such type of bills both the parties are benefited as the shopkeeper has not to pay the income tax and the customer has to pay a less price. It is further submitted that in the purity check of the jewellery purchased from the appellant, it was found there was only 73 percent gold in the jewellery. In this regard the statement of Suresh Morey, the person who checked the purity is on record. It is also argued that if the jewellery is of 24 carat gold there must be 99.9% gold in the jewellery and not mere 73 percent gold as founded in the jewellery sold by the appellant. Further, the attention of the Court is drawn towards the various photocopies of the photographs placed with

the counter affidavit and it is claimed that all the Jewellery purchased from the appellant bears the stamp (mark) of the shop of the appellant, hence, the prayer is made accordingly.

This appeal has been filed against the order of rejecting discharge application of the appellant by the trial court, wherein the trial court mentioning the facts of the discharge application and the objections of the opposite party no.2 found that as per the various judgments of the Apex Court at the stage of charge the Court has to look into a prima facie case only as to whether there is sufficient evidence on record to frame charge against accused or not and the court finding sufficient evidence on the record in this regard rejected the discharge application of the appellant moved under Section 227 of Cr.P.C.

The attention of the Court is drawn towards the judgment ***Samir Sahay Vs. State of U.P. and another, 2018 (102) ACC 996 Supreme Court***, wherein in paragraph-22 the Apex Court hold that the Chief Judicial Magistrate concerned while rejecting the application seeking discharge has not even referred to any allegation or evidence on the basis of which it can be said that ingredients of Section 420 IPC were made out. On the basis of this paragraph, it is further argued by the learned counsel for the appellant that in the impugned order the trial court has not mentioned the ingredients of Section 420 of I.P.C., hence, the order impugned is erroneous.

If we go through this paragraph-22 it can be said that it is not the law laid by the Apex Court rather it was just the finding of fact mentioned by the Apex Court that the Chief Judicial Magistrate concerned had not mentioned the ingredients of Section 420 IPC in the order placed before the Apex Court and, hence, the appeal was allowed.

If we go through the impugned order, the facts mentioned by both the parties have been very well mentioned in the first part of the order, wherein it has been clearly alleged by the first informant that he was cheated at the hands of the appellant and in place of 24 carat jewellery he was supplied 16 to 18 carat jewellery, thus, offence of cheating was committed with him and the trial court also mention in its order that on the basis of the allegations in the FIR a prima facie case to frame charge under alleged sections is made out. Otherwise also, if we go through Section 420 of IPC, it is regarding cheating, which runs as follows:-

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.

Cheating is defined in Section 415 of IPC 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".

In the present case, there is allegation that the jewellery purchased from the appellant was said to be of 24 carat and value of 24 carat was received from opposite party no.2 at the time of purchase, while jewellery supplied was only of 16 to 18 carat having 73 percent gold as per the person giving receipt after checking the purity of that jewellery. This act of the appellant prima facie proves that he deceived the opposite party no.2 to deliver him money by selling him gold of less purity than the purity of gold assured by him.

So far as the version of the appellant is concerned that this jewellery was not purchased from his shop it is the clear version of the opposite party no.2 that jewellery was purchased from the shop of appellant and in this regard the receipt is produced by him, though, it does not contain the name of the shop of the appellant. The pouches, the gifts given by the appellant in the name of his shop to the opposite party no.2 and also the photocopy of the photographs of the jewellery, on which, stamp (mark) of the appellant's shop is claimed to be printed, have also been produced by way of counter affidavit.

Otherwise also, in the rejoinder affidavit it has been mentioned by the appellant that as opposite party no.2 was harassing and blackmailing the appellant and his father and demand of one and a half lakh rupees was being made by the opposite party no.2 through one Manish Kumar and after taking the amount of Rs.1,50,000/- the settlement was refused. Later on, a further demand of Rs. 20,00,000/- was being made by opposite party no.2. Thus as per learned counsel for the appellant to get settle their dispute they paid Rs.1,50,000/- to the opposite party no.2 but in this respect no receipt has been produced by the appellant before

the Court. Otherwise also, the matter is to be decided on merit by the trial court itself. At this stage only a prima facie case is to be seen against the appellant and on the basis above discussion a prima facie case under Section 420 IPC can be said to be made out. No argument has been placed before the Court with regard to rest sections of IPC i.e. 504, 506 IPC, so the appeal of the appellant rejecting the discharge application with regard to Section 420, 504, 506 I.P.C. fails.

So far as the Section 3 (2) (va) of SC/ST Act is concerned, caste based words have been mentioned in the FIR. On the basis of this allegation after investigation the charge-sheet has been filed against the appellant under Section 3(2) (va) of SC/ST Act. If we go through the Section 3(2) (va) of SC/ST Act, according to this section, an offence must be committed against a person or property knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member.

The Apex Court in judgment *Hitesh Verma Versus The State of Uttarakhand and Another, Criminal Appeal No.707 of 2020 (arising out of SLP (Criminal) No.3585 of 2020*, dated 05.11.2020 held that an offence under the Act of SC/ST is not established merely on the facts that the informant is a member of scheduled caste unless there is intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste.

Thus it can very well be said that offence under Section 3(2) (va) of SC/ST can only be said to be made out against the appellant if the offence is committed by him against opposite party no.2 only because of the reason that the opposite party no.2 belongs to the SC/ST community.

In the case in hand the matter in dispute is the supply of impure gold jewellery by the appellant to opposite party no.2. This allegation clearly reflects that the caste based words were allegedly hurled by the appellant not because that the opposite party no.2 belonged to the SC/ST community rather the words were said to be used by the appellant because he did not want to return the money alleged to be cheated by him.

Thus, in the opinion of the Court, the rejection of discharge application with regard to section 3(2) (va) of SC/ST Act is against the mandate of the Apex Court held in above judgment.

The appeal of the appellant is, thus, **allowed** partly. The impugned

order dated 04.08.2022 is confirmed with regard to Sections 420, 504, 506 I.P.C. and the order is set aside with regard to Section 3(2) (va) of SC/ST Act. The charge under Sections 420, 504, 506 IPC be framed against the appellant.

Order Date :- 12.10.2023

Radhika