

Court No. - 86

Case :- APPLICATION U/S 482 No. - 37449 of 2023

Applicant :- Subhash Prasad

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

Counsel for Applicant :- Santosh Kumar Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Rajiv Gupta,J.

1.Heard learned counsel for the applicant, learned AGA for the State and perused the record.

2. This application under Section 482 CrPC has been filed by the applicant with the prayer to quash the charge-sheet dated 21.02.2019 and cognizance/ summoning order dated 03.02.2022 as well as entire proceedings of Case No. 941 of 2022 (State Vs. Virendra Kushwaha and Others), arising out of Case Crime No. 0170 of 2018, under Sections 419, 420, 406 IPC, Police Station Salempur, District Deoria, pending in the court of Additional Chief Judicial Magistrate, Room No. 19, Deoria.

3. As per the allegations made in the FIR, it is alleged that opposite party no.2 Haidar Ali is the resident of Village Satraon, Police Station Barhoj, District Deoria and about three years back, one Virendra Kushwaha along with Ram Bharat reached at his house and he introduced Ram Bharat as senior officer of his company and further stated that these days, the bank investments are giving meagre interest, as such, it is more beneficial to invest the money in some company. Virendra Kushwaha also informed that along with Subhash Prasad (applicant) and some other nominated persons, he had been running a company in the name and

style of "Welcost Multi Project Limited", offices of which are spread all over State of U.P. and one of its offices is situate in Sonbarsa, Salempur Crossing. He further informed that if money is deposited in Welcost Company, it would be double in six years, triple in nine years and would multiply five times in twelve years and ten times in fifteen years. He further introduced him to Sushil Kushwaha, Managing Director of the Company. Having faith and trust in their inducement, the opposite party no.2 deposited a huge sum of money in the Welcost Company, for which, requisite certificates were issued by the company, however on maturity when on 23.10.2017, the opposite party no.2 had gone to collect the payment of maturity amount, no such payment was made by the company and when opposite party no.2 had raised his grievance regarding their illegal act and conduct, the nominated accused persons started hurling abuses and extended death threats to him, which incident is said to have been witnessed by number of persons. Thus, the applicant along with other nominated persons by making false representation to the opposite party no.2 had surreptitiously swindled his invested amount, as such, an FIR was lodged against the applicant along with five other accused persons.

4. The police, after concluding the investigation and collecting cogent evidence and material, submitted charge-sheet against the applicant and other nominated accused persons, on the basis of which, learned Magistrate has taken cognizance and summoned the applicant to face trial under Sections 419, 420, 406 IPC vide order dated 03.02.2022.

5. Being aggrieved and dissatisfied by the said order dated 03.02.2022, the present application under Section 482 CrPC

has been filed.

6. Learned counsel for the applicant has submitted that even taking the entire allegations made in the FIR and the statement of the witnesses recorded during the course of investigation, no offence is disclosed against the applicant and the present criminal case has been instituted against the applicant with a malafide intention for the purpose of harassment.

7. Learned counsel for the applicant has further submitted that the applicant is merely an agent of the Welcost Company and money collected by him has been deposited with the said company, who had assured to make the requisite payment on its maturity, however subsequently, the company had failed to make such payment, for which, the instant criminal case has been instituted against the applicant and only on account of being an agent of the company, the applicant is not at all responsible for non-payment of maturity amount and he has illegally been dragged in criminal court for offences under Sections 406, 419, 420 IPC, though no such offence is made out against the applicant and therefore, the entire proceedings based on the charge-sheet is wholly illegal and liable to be quashed.

8. In order to buttress his arguments, learned counsel for the applicant has placed reliance upon the decision of the Hon'ble Apex Court, reported in **(2022) 7 SCC 124 Vijay Kumar Ghai Vs. State of West Bengal**.

9. Per contra, learned AGA has vehemently opposed the said prayer and has supported the impugned summoning order and has further submitted that even as per the

allegations made in the FIR as well as statement of the witnesses recorded during the course investigation, it is crystal clear that applicant was in fact an agent in the Welcost Company and had also fraudulently and dishonestly, along with other nominated accused persons, had induced the opposite party no.2 to invest his money in the said company, which shall be paid back to him on its maturity and on his representation, the opposite party no.2 had deposited different amount on different dates with the said company, however subsequently, on its maturity, the company refused to pay the maturity amount to opposite party no.2 and on being insisted to pay the maturity amount, the applicant hurled abuses and extended death threats to the opposite party no.2. Thus, from the allegations made in the FIR and the statement of the witnesses recorded during the course of investigation, prima facie offence, complained of, is clearly made out against the applicant and at the stage of taking cognizance and summoning the applicant, a deep roving inquiry as to the ingredients constituting the offence is not required to be made.

10. Moreover, the applicant being the agent of the company had in fact fraudulently and dishonestly induced the opposite party no.2 to deposit the amount with the assurance that on maturity, the amount would be returned back to him along with interest and on his false representation, the said amount has been deposited by the opposite party no.2 and therefore, at this stage, prima facie it can not be said that no offence is disclosed against the applicant and as such, the entire proceedings can not be quashed.

11. Having considered the rival submissions made by

learned counsel for the parties and taking into consideration the material collected during the course of investigation, at this stage it can not be said that prima facie no offence is disclosed against the applicant.

12. Admittedly, the applicant has been working as an agent in the Welcost Company and on his fraudulent and dishonest inducement, the money was invested by the opposite party no.2 in the said company on the assurance that on its maturity, the entire amount along with interest would be paid by the company, however subsequently, at the time of maturity, the company did not pay his maturity amount and instead, when he insisted upon to make the payment of maturity amount, he was abused by the accused persons nominated in the FIR, who also extended death threats to the first informant/ opposite party no.2.

13. It is well settled principle of law that at this stage only prima facie case is to be seen against the applicant and the Court is not required to make a roving inquiry as to the genuineness/ reliability of the allegations made in the FIR as well as statement of the witnesses.

14. At this stage, prima facie from the allegations made in the FIR and the statement of the witnesses, it is evident that the applicant being the agent of the company had fraudulently and dishonestly induced the opposite party no.2 to make investment in the company on the assurance that on its maturity, the entire amount along with interest would be paid to him, however subsequently, the company refused to pay back maturity amount and had surreptitiously swindled the said amount, thereby causing wrongful loss to the opposite party no.2 and wrongful gain to the company.

Thus, at this stage, it can not be said that no offence is made out against the applicant, when the entire evidence is yet to come.

15. Moreover, at the stage of summoning the applicant, the Court is not expected to go deep into the probative value of the material on record. The Court only needs to consider whether there is ground of presuming that the offence has been committed. There exists fine distinction between the cheating and mere breach of contract. It depends upon the intention of the accused at the time of inducement, which may judged by the subsequent conduct.

16. The case law relied upon by learned counsel for the applicant is clearly distinguishable on facts as in the said case cited by learned counsel for the applicant, there was no inducement made by the accused persons to invest the money in the company and complainant himself desired to make the investment in the company of the accused. Furthermore, it was mutually decided between the parties that the complainant's company SMC Global Securities Limited would invest the amount of Rs.2.5 Crores with the company, in lieu of which, they will be issued 2,50,000 equity share of Priknit Apparel Private Limited and on the basis of said transaction, it was held that the offence under Sections 406, 420 IPC would not be made out against the accused persons, however, in the present case, the factual scenario is completely different, wherein prima facie there is fraudulent and dishonest inducement by the applicant, who admittedly is the agent of the Welcost Company, to make investment in the company on the false representation that the entire money along with interest would be paid back on

maturity, however, at the time of maturity, the assured amount was not paid by the company and superstitiously swindled by the company and the applicant being agent of the said company was responsible for the said offence, which would cause wrongful loss to the opposite party no.2 and wrongful gain to the company and the applicant, being the agent of the company, would certainly be liable for the said deceit committed and therefore at this stage, the entire proceedings can not be quashed by invoking jurisdiction of this Court under Section 482 CrPC.

17. The present application under Section 482 CrPC is therefore devoid of merit and is accordingly **dismissed**.

Order Date :- 1.12.2023

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