

Court No. - 29

Case :- APPLICATION U/S 482 No. - 891 of 2016

Applicant :- Sanchit Jaiswal

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Civil Sectt. And Anr.

Counsel for Applicant :- Ashish Kumar Pathak, Upendra Prakash Pathak

Counsel for Opposite Party :- Govt. Advocate, Nishant Srivastava

Hon'ble Ajay Bhanot, J.

Heard Ms. Prachi Arya, learned counsel holding brief of Sri Ashish Kumar Pathak, learned counsel for the applicant, Sri Nishant Srivastava learned counsel for the opposite party no. 2 and learned AGA for the State.

Despite time being granted no counter affidavit has been filed. The matter is being pending since 2016. Hence it is being decided in the interest of justice.

This application under Section 482 Cr.P.C. has asserted the summoning order dated 27.02.2015 passed by the Judicial Magistrate-II, Gonda in Complaint Case no. 504 of 2013 under Section 420 IPC for quashment of the Complaint Case no. 504 of 2013 (Swaminath Vs Sanchit Jaiswal).

Briefly the complaint instituted by the opposite party no. 2 under Section 156 (3) Cr.P.C. asserts these facts. The opposite party no. 2 and the applicant proposed to jointly purchase the disputed parcel of land from Girja Shanker Pathak at a sale consideration of Rs. 1.5 Lac. The complainant and the applicant respectively paid Rs.

75,000/- each towards sale consideration to the said Girja Shanker Pathak. The complainant also paid half the expenses to be incurred in the execution of the sale deed. The complainant is suffering from a kidney ailment for the past period of one year. On the appointed date of registration of sale deed the applicant told him that the deed is being formalised and that he may go and sit at a comfortable place. After sometime the applicant approached the complainant and informed him that the deed had been reduced to writing and he should fix his signature to the same. Having full faith in the applicant the complainant fixed his signatures to the document. The deed was thereafter duly registered. The complainant put his signatures to all the relevant documents. In the year 2013 the applicant commenced construction work on the disputed parcel of land. The complainant asked the applicant to separate his share in the parcel of land and thereafter commence construction. The applicant was not forthcoming with a straight answer which made the complainant suspicious. On 06.02.2013 the complainant obtained a copy of the sale deed. He then realised that a sale deed had been executed in favour of the applicant by fraud and cheating. The said action of the applicant constituted offence.

No counter affidavit has been filed by the opposite party. In view of the long pendency of this case and failure of the

opposite party no. 2 to file a counter affidavit no further time is granted.

The matter is being heard on merits.

The complainant had paid the sale consideration to the vendor namely Girja Shanker Pathak. Registered sale deed was executed by the said Girja Shanker Pathak in favour of the applicant. Recitals in the sale deed clearly disclose that Girja Shanker Pathak is the sole owner and the vendor while the applicant is the only vendee/purchaser of the parcel of land. The sale deed also records that the entire sale consideration of Rs. 1.5 Lac was paid by the applicant to the said Girja Shanker Pathak. The complainant is a witness to the sale deed. These are undisputed facts.

It now remains to be seen whether the ingredients of offence under Section 420 IPC are established in view of the facts described above. The provisions of cheating under Section 415 IPC and is punishable under Section 417 IPC are set out as under:-

"Section 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".

"Section 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. "

The ingredients of provisions have been interpreted by various constitutional court from time to time. The discussion is benefit by the authority. The Supreme Court in **Inder Mohan Goswami and another Vs State of Uttaranchal and others** reported at **2007 (12) SCC 1** held thus:-

"42. On a reading of the aforesaid section, it is manifest that in the definition there are two separate classes of acts which the person deceived may be induced to do. In the first class of acts he may be induced fraudulently or dishonestly to deliver property to any person. The second class of acts is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but need not be fraudulent or dishonest. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had a fraudulent or dishonest intention at the time of making the promise. From his mere failure to subsequently keep a promise, one cannot presume that he all along had a culpable intention to break the promise from the beginning."

Similarly while dealing with the ingredients of offence of cheating the Supreme Court in **Vijay Kumar Ghai Vs State of West Bengal** reported at **2022 (7) SCC 124:-**

"31. Section 415IPC defines "cheating" which reads 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”.”

The essential ingredients of the offence of cheating are:

1. Deception of any person
2. (a) Fraudulently or dishonestly inducing that person—
 - (i) to deliver any property to any person; or
 - (ii) to consent that any person shall retain any property; or
- (b) intentionally inducing that person 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."

32. A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating.

34. Section 420 IPC is a serious form of cheating that includes inducement (to lead or move someone to happen) in terms of delivery of property as well as valuable securities. This section is also applicable to matters where the destruction of the property is caused by the way of cheating or inducement. Punishment for cheating is provided under this section which may extend to 7 years and also makes the person liable to fine.

35. To establish the offence of cheating in inducing the delivery of property, the following ingredients need to be proved:

- (i) The representation made by the person was false.
- (ii) The accused had prior knowledge that the representation he made was false.
- (iii) The accused made false representation with dishonest intention in order to deceive the person to whom it was made.
- (iv) The act where the accused induced the person to deliver the property or to perform or to abstain from any act which the person

would have not done or had otherwise committed.”

Admittedly the applicant did not induce the vendor Girja Shanker Pathak to deliver the property to the former. The applicant also did not induce the complainant to give any money to the said Girja Shanker Pathak. The sale deed captures the pictures of both the vendor and the vendee. The complainant is an educated person. His signatures are appended to the sale deed as a witness. He was present at the office of the Registrar when the process of execution of the sale deed was being undertaken. The sale deed is a registered document. There is a presumption of correctness in its favour. The complainant does not assail the said presumption. No dishonest intent on part of the applicant is gathered from the record. The authenticity of the document is not challenged by the complainant.

In these facts and circumstances of the case the ingredients of the offence of cheating are not made out against the applicant.

In view of above the revisional order dated 27.01.2016 passed in Criminal Revision No. 178 of 2015 passed by learned Additional Sessions Judge, Court No. 3, Gonda and also summoning order dated 27.02.2015 passed by learned Judicial Magistrate-II, Gonda in Complaint Case no. 504 of 2013 under Section 420 IPC as well as entire proceedings of Complaint Case no. 504 of 2013 (Swaminath Vs Sanchit Jaiswal) pending in the Court of

learned Judicial Magistrate-II, Gonda are quashed.

The application U/S 482 Cr.P.C. is allowed.

Order Date :- 13.3.2024

Pravin