

Court No. - 22

Case :- APPLICATION U/S 482 No. - 4725 of 2013

Applicant :- Ikram

Opposite Party :- The State Of U.P And Anr.

Counsel for Applicant :- S.H Ibrahim,S.A Abbas Zaidi

Counsel for Opposite Party :- Govt. Advocate

AND

Case :- APPLICATION U/S 482 No. - 4237 of 2013

Applicant :- Sunil Kumar Thru Mother Smt. Anarkali

Opposite Party :- The State Of U.P And Anr.

Counsel for Applicant :- S.H Ibrahim,S.A Abbas Zaidi

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Ajai Kumar Srivastava-I,J.

Heard Shri S. H. Ibrahim, learned counsel for the applicants and learned A.G.A. for the State.

The instant applications under Section 482 Cr.P.C. have been filed by the applicants for quashing the same charge sheet and summoning order dated 17.07.2013. Therefore, they have been heard together and are being decided by a common judgment.

Brief facts of the instant application are that on 20.03.2013, in the first shift of intermediate (private examination) at Aaradhna Aadarsh Inter College, Veersinghpur, the applicant, Sunil Kumar S/o Budhram Saroj, R/o Hariharpur, Post Bhatni, District Pratapgarh was intercepted, who was appearing in place of the applicant, Ikram, bearing Roll No.4123600 in Room No.8. The applicant, Sunil Kumar was intercepted while his admit card was being verified. On being interrogated, he frequently changed his statements and ultimately

fled away from the scene of incident on the pretext of going to urinate. The opposite party no.2, Shri Ram Padarath, the Centre Manager, Aradhna Adharsh Inter College, Beersinghpur, Pratapgarh, gave a written report to the Police Station Lalganj, District Pratapgarh and requested to lodge a case in this connection.

It appears that on the basis of aforesaid written report, Crime No.89 of 2013 came to be initially lodged under Sections 419 and 420 I.P.C. at Police Station Lalganj, District Pratapgarh against the applicants, namely, Ikram and Sunil Kumar. Upon conclusion of the investigation, a charge sheet came to be filed against them under Sections 419 and 420 I.P.C.

It is submitted by learned counsel for the applicants that the applicant, Ikram was never intercepted or apprehended at the examination centre i.e. Aradhna Adharsh Inter College, Beersinghpur, Pratapgarh. It is the prosecution's case that someone else was appearing in place of the applicant, Ikram. Even the applicant, Sunil Kumar, who was allegedly trying to appear in place of the applicant, Ikram was not apprehended on the spot. He, thus, submits that no offence, whatsoever, is made out against the applicant, Ikram, who did not commit any offence under Sections 419 and 420 I.P.C.

Insofar as the the applicant, Sunil Kumar is concerned, his contention is that according to

prosecution story, the applicant, Sunil Kumar allegedly tried to appear in place of the applicant, Ikram. However, he did not appear and did not write the answer sheet in place of the applicant, Ikram. The opposite party no.2 was not apprehended or arrested on the spot. No recovery, whatsoever, of any admit card issued in favour of the applicant, Ikram, was recovered from his possession at the time of his alleged interception by the invigilators. Therefore, no offence is made out against the applicant, Sunil Kumar also. The continuation of the present proceedings against them is, thus, nothing but an abuse of process of the Court.

Per contra, learned A.G.A. has vehemently opposed the prayer by submitting that the first information report came to be lodged at the behest of opposite party no.2, Ram Padarath, Centre Manager, Aaradhana Adarsh Inter College, Veersinghpur, District Pratapgarh. He had no personal grudge against the applicants, namely, Ikram and Sunil Kumar. During investigation, the Investigating Officer collected credible evidence against the applicants, namely, Ikram and Sunil Kumar and submitted the charge sheet against them, which is based on cogent evidence, therefore, the same cannot be quashed.

Having heard learned counsel for the applicants, learned A.G.A. for the State and upon perusal of the record, it transpires that so far as the applicant, Ikram is concerned, he never appeared

on 20.03.2013 at the examination centre i.e. Aaradhana Adarsh Inter College, Veersinghpur, District Pratapgarh for writing the history paper. It is the prosecution's own case that the another applicant, Sunil Kumar tried to appear in place of the applicant, Ikram, who was also not apprehended or arrested on the spot.

Sections 419 and 420 I.P.C, being relevant, are quoted herein below :-

"Section 419 :- *Punishment for cheating by personation- Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.*

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."*

Hon'ble the Supreme Court in **Mariam Fasihuddin and another vs. State by Adu Godi Police Station and another** reported in **2024 SCC OnLine SC 58** in paras 22 to 25 has held as under :

"22. *Section 420 I.P.C. provides that 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 valuable security, or anything, which is signed or sealed, and which is capable of being converted into a valuable security, shall be liable to be punished for a term which may extend to seven years and shall also be liable to fine. Further, Section 415 I.P.C. distinctly defines the term 'cheating'. The provision elucidates that an act marked by fraudulent or dishonest intentions will be categorised as 'cheating' if it is intended to induce the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, causing damage or harm to that person.

23. It is thus paramount that in order to attract the provisions of Section 420 I.P.C., the prosecution has to not only prove that the accused has cheated someone but also that by doing so, he has dishonestly induced the person who is cheated to deliver property. There are, thus, three components of this offence, i.e., (i) the deception of any person, (ii) fraudulently or dishonestly inducing that person to deliver any property to any person, and (iii) mens rea or dishonest intention of the accused at the time of making the inducement. There is no gainsaid that for the offence of cheating, fraudulent and dishonest intention must exist from the inception when the promise or representation was made.

24. It is well known that every deceitful act is not unlawful, just as not every unlawful act is deceitful. Some acts may be termed both as unlawful as well as deceitful, and such acts alone will fall within the purview of Section 420 I.P.C. It must also be understood that a statement of fact is deemed 'deceitful' when it is false, and is knowingly or recklessly made with the intent that it shall be acted upon by another person, resulting in damage or loss. 'Cheating' therefore, generally involves a preceding deceitful act that dishonestly induces a person to deliver any property or any

part of a valuable security, prompting the induced person to undertake the said act, which they would not have done but for the inducement.

25. *The term 'property' employed in Section 420 I.P.C. has a well-defined connotation. Every species of valuable right or interest that is subject to ownership and has an exchangeable value - is ordinarily understood as 'property'. It also describes one's exclusive right to possess, use and dispose of a thing. The IPC itself defines the term 'moveable property' as, "**intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth.**" Whereas immoveable property is generally understood to mean land, benefits arising out of land and things attached or permanently fastened to the earth."*

When this Court undertook to appreciate the facts of these cases in the light of laid down by Hon'ble the Supreme Court in **Mariam Fasihuddin (Supra)**, it is noticed that so far as the applicant, Ikram is concerned, he was to appear in the examination on 20.03.2013 for writing the History paper as a candidate in whose favour, an admit card was issued. However, according to prosecution's own story, he never went to the examination centre to write the answer sheet. On the other hand, the other applicant, Sunil Kumar is said to have gone to the examination centre, but he never wrote the answer sheet in place of the applicant, Ikram. The applicant, Sunil Kumar was not arrested on the spot according to prosecution's own story. Therefore, having regard to the fact that although the applicant, Sunil Kumar was trying to

do something which was unlawful, however, he could not succeed in appearing in the examination or writing the answer sheet and was also not arrested on the spot, therefore, in the considered opinion of this Court, it cannot be said that the offences under Sections 419 and 420 I.P.C. are made out against them.

At the cost of repetition it may be mentioned that the applicant, Ikram had never gone to the examination centre to write the answer sheet.

In view of the aforesaid overall reasons, this Court is of the considered view that no offences under Sections 419 and 420 I.P.C. are made out against the applicants.

In view of above, the instant applications succeed and are liable to be allowed.

Accordingly, the instant applications under Section 482 Cr.P.C. are **allowed**. Consequently, the entire proceedings of Criminal Case No.1895 of 2013 "State vs. Sunil Kumar and another" arising out of Case Crime No.89 of 2013, under Sections 419 and 420 I.P.C., Police Station Lalganj, District Pratapgarh are, hereby, quashed.

Office is directed to send a copy of this order to the Court concerned for information and necessary compliance.

Order Date :- 5.7.2024/Mahesh