

Court No. - 13

Case :- APPLICATION U/S 482 No. - 10862 of 2024

Applicant :- Faiz Ali

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko. And Another

Counsel for Applicant :- Anurag Trivedi, Puneet Saxena

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Singh, J.

1. Heard.

2. The instant application has been filed by the applicant with prayer to quash the order dated 20.09.2024 passed by learned Addl. District and Sessions Judge/F.T.C.-II, Lucknow in Sessions Trial No. 3545 of 2023 (*State of U.P. versus Faiz Ali*).

3. Learned counsel for the applicant submits that the charge-sheet was submitted by the Investigating Officer in the most mechanical manner as there as some monetary dispute between the parties. Thereafter, discharge application was filed for the offense under Sections 420, 406, 506, 328 and 376 I.P.C. He further submits that learned trial Court committed error in appreciating the evidence at the time of deciding the discharge application. He also submits that proceedings in relation to Sections 420 and 406 I.P.C. cannot run simultaneously.

Relying on the decision of Hon'ble Apex Court in the case of ***Delhi Race Club (1940) Ltd. and Ors. Vs. State of U.P. and Anr.*** reported in (2024) SCC OnLine SC 2248, learned counsel for the applicant vehemently submits that it clearly shows non application of mind of learned trial Court while passing the impugned order, hence, indulgence of this court is required.

4. Learned counsel for the applicant has also relied on the order dated 31.08.2024 passed by this Court in **Application U/S 482 Cr.P.C. No. 23104 of 2024**, which is reproduced as under:-

"1. Heard Sri Anil Babu, learned counsel for applicants and Sri Alok Sharma, learned AGA for State.

2. At the outset, learned counsel for applicants submit that offences under Section 406 and 420 could not go together and further refers that facts of present case are squarely covered from a judgment passed by Supreme Court in Delhi Race Club (1940) Ltd. and Ors. Vs. State of U.P. and Anr., 2024 SCC OnLine SC 2248, in favour of the applicants as well as dispute was arising out of a financial dispute. He further submits that appropriate remedy was available to opposite

party-2 to file an application under Section 138 NI Act, however, said remedy was not taken by him and after 4 years, said complaint was filed wherein applicants have been summoned.

3. Learned AGA fairly submits that Sections 406 and 420 I.P.C. could not go together.

4. In the aforesaid circumstances, I find merit in the argument of learned counsel for applicants that case of applicants are squarely covered from Delhi Race Club (supra) and also find merit that appropriate remedy available i.e. for filing of proceedings under N.I. Act should have taken by complainant, however, he has not availed it and approached trial Court after 4 years.

Relevant paragraphs of above referred judgment are reproduced hereinafter :-

"41. Before we close this matter, we would like to say something as regards the casual approach of the courts below in cases like the one at hand. The Penal Code, 1860 (IPC) was the official Criminal Code in the Republic of India inherited from the British India after independence. The IPC came into force in the sub-continent during the British rule in 1862. The IPC remained in force for almost a period of 162 years until it was repealed and replaced by the Bharatiya Nyaya Sanhita ("BNS") in December 2023 which came into effect on 1st July 2024. It is indeed very sad to note that even after these many years, the courts have not been able to understand the fine distinction between criminal breach of trust and cheating.

42. When dealing with a private complaint, the law enjoins upon the magistrate a duty to meticulously examine the contents of the complaint so as to determine whether the offence of cheating or criminal breach of trust as the case may be is made out from the averments made in the complaint. The magistrate must carefully apply its mind to ascertain whether the allegations, as stated, genuinely constitute these specific offences. In contrast, when a case arises from a FIR, this responsibility is of the police - to thoroughly ascertain whether the allegations levelled by the informant indeed falls under the category of cheating or criminal breach of trust. Unfortunately, it has become a common practice for the police officers to routinely and mechanically proceed to register an FIR for both the offences i.e. criminal breach of trust and cheating on a mere allegation of some dishonesty or fraud, without any proper application of mind.

43. It is high time that the police officers across the country are imparted proper training in law so as to understand the fine distinction between the offence of cheating viz-a-viz criminal breach of trust. Both offences are independent and distinct. The two offences cannot coexist simultaneously in the same set of facts. They are antithetical to each other. The two provisions of the IPC (now BNS, 2023) are not twins that they cannot survive without each other."

5. In the aforesaid circumstances, taking note of above submissions of learned counsel for applicants and above referred paragraphs of Delhi Race Club (supra), this Court is of considered opinion that both Sections 420 and 406 I.P.C. cannot run together, therefore, impugned

order dated 28.07.2023 passed in Complaint Case No. 16876/2023 (M/s Karigar Workshop vs. M/s Deepak Automobile and others), under Sections 406, 420 I.P.C. Police Station- Kharkhauda, District-Meerut, pending before Additional Chief Judicial Magistrate, Meerut is set aside and matter is remitted back to trial Court to pass fresh order in accordance with law.

6. With aforesaid observations, this application is disposed of."

5. Learned A.G.A. vehemently opposes the prayer of the applicant and submits that all these defense can be raised at the stage of trial. However, he does not dispute on legal verdict of Hon'ble Apex Court in the case of **Delhi Race Club (1940) Ltd. and Ors. Vs. State of U.P. and Anr. (supra)**.

6. In the aforesaid circumstances, I find merit in the argument of learned counsel for applicant that case of applicant is squarely covered from **Delhi Race Club (supra)** and also find merit that appropriate remedy available i.e. for filing of proceedings under N.I. Act should have taken by complainant, however, he has not availed it and then approached learned trial Court.

Relevant paragraphs of above referred judgment are reproduced hereinafter :-

"41. Before we close this matter, we would like to say something as regards the casual approach of the courts below in cases like the one at hand. The Penal Code, 1860 (IPC) was the official Criminal Code in the Republic of India inherited from the British India after independence. The IPC came into force in the sub-continent during the British rule in 1862. The IPC remained in force for almost a period of 162 years until it was repealed and replaced by the Bharatiya Nyaya Sanhita ("BNS") in December 2023 which came into effect on 1st July 2024. It is indeed very sad to note that even after these many years, the courts have not been able to understand the fine distinction between criminal breach of trust and cheating.

42. When dealing with a private complaint, the law enjoins upon the magistrate a duty to meticulously examine the contents of the complaint so as to determine whether the offence of cheating or criminal breach of trust as the case may be is made out from the averments made in the complaint. The magistrate must carefully apply its mind to ascertain whether the allegations, as stated, genuinely constitute these specific offences. In contrast, when a case arises from a FIR, this responsibility is of the police - to thoroughly ascertain whether the allegations levelled by the informant indeed falls under the category of cheating or criminal breach of trust. Unfortunately, it has become a common practice for the police officers to routinely and mechanically proceed to register an FIR for both the offences i.e. criminal breach of trust and cheating on a mere allegation of some dishonesty or fraud, without any proper application of mind.

43. It is high time that the police officers across the country are imparted proper training in law so as to understand the fine

distinction between the offence of cheating viz-a-viz criminal breach of trust. Both offences are independent and distinct. The two offences cannot coexist simultaneously in the same set of facts. They are antithetical to each other. The two provisions of the IPC (now BNS, 2023) are not twins that they cannot survive without each other."

7. In the aforesaid circumstances, taking note of above submissions of learned counsel for applicant and above referred paragraphs of **Delhi Race Club (supra)**, this Court is of considered opinion that both Sections 420 and 406 I.P.C. cannot run together.

Therefore, the order dated 20.09.2024 passed by learned Addl. District and Sessions Judge/F.T.C.-II, Lucknow in Sessions Trial No. 3545 of 2023 (*State of U.P. versus Faiz Ali*) is hereby **set aside** and matter is remitted back to learned trial Court to pass fresh order in accordance with law.

8. With aforesaid observations, this application is **disposed of**.

Order Date :- 5.12.2024

Arpan