

Court No. - 75

Case :- APPLICATION U/S 482 No. - 41763 of 2023

Applicant :- Smt Neeraj Arora And 2 Others

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

Counsel for Applicant :- Akash Dwivedi, Manauvar Husain, Rakesh Kumar Gupta, Syed Ahmed Faizan

Counsel for Opposite Party :- Afzal Ahmad Khan Durrani, G.A., Rohit Sharma

Hon'ble Arun Kumar Singh Deshwal, J.

1. Heard Sri Aushim Luthra, learned counsel for the applicants, Sri Jamal Ahmad Khan, Advocate, holding brief of Sri Afzal Ahmad Khan Durrani, learned counsel for the opposite party no. 2 and Sri Mohd. Shueb Khan, learned A.G.A. for the State.
2. The present application has been filed to quash the impugned summoning order dated 24.03.2023 as well as non-bailable warrant and proceeding of 82 & 83 Cr.P.C. dated 02.05.2023 to 26.10.2023 initiated against the applicants by Chief Judicial Magistrate, Ghaziabad in Complaint Case No. 1922 of 2023 (Smt. Sunita Devi Vs. Arun Arora & others) u/s 420, 406, 504, 506, 323, 354-Ka, 392, 120-B I.P.C., Police Station- Shahibabad, District- Ghaziabad, pending in the court of Chief Judicial Magistrate, Ghaziabad.
3. Facts giving rise to the present controversy are that opposite party no. 2 has filed a complaint which was registered as Complaint Case No. 1922 of 2023 against the applicants as well as one Karan Arora making allegation that applicants and opposite party no. 2 were in business relationship and initially, they also returned certain amount taken from her but thereafter, they did not return the amount of Rs.1,20,00,000/- which was taken by the applicants in phased manner. It was also mentioned in

the above complaint, when opposite party no. 2 along with her sons went to the factory of the applicants to demand her money then they misbehaved with her as well as her sons. In support of this complaint, opposite party no. 2 got herself examined u/s 200 Cr.P.C. while two of her sons, namely, Kapil Kumar and Sachin Kumar, were examined u/s 202 Cr.P.C.

4. Learned Magistrate on perusal of the complaint as well as the statements recorded u/s 200 and 202 Cr.P.C., summoned the applicants u/s 420, 406, 504, 506, 323 I.P.C. which is under challenge in the present case.

5. Learned counsel for the applicants submitted that the dispute between the parties is purely civil in nature and it is admitted by the opposite party no. 2 in her statement u/s 200 Cr.P.C. that she was in business relationship with the applicants and the applicants had also returned certain amount during that relationship but subsequently the applicants did not return the remaining amount of Rs.1,20,00,000/-. This fact shows that the intention to cheat opposite party no. 2 was not from very beginning. It is also submitted by learned counsel for the applicants that date of incident was mentioned as 10.02.2023 by the opposite party no. 2 in her statement but the date of incident by her witnesses in their statements was mentioned as 11.02.2023.

6. In support of his contention, learned counsel for the appellants has also relied upon the judgment in the case of **Delhi Race Club (1940) Limited and Others Vs. State of Uttar Pradesh and Another, (2024) 10 SCC 690** wherein the Apex Court has observed that offence of cheating u/s 420 I.P.C. and breach of trust u/s 406 I.P.C. cannot be made out simultaneously. He has also relied upon the judgement in the case of **Mohammad Wajid and Another Vs. State of U.P. and others, 2023 SCC Online SC 951** wherein Apex Court has observed that merely insulting or abusing will not attract offence u/s 504 I.P.C. and it is further mentioned that for making out the case u/s 506 I.P.C., it must be

established that the accused had intention to cause alarm to the complainant.

7. Per contra, learned counsel for the opposite party no. 2 has vehemently opposed the prayer and submitted that after taking amount of Rs.1,20,00,000/-, applicant nos. 2 and 3 had also issued receipt thereof, copy of the same has been annexed along with short counter affidavit though the aforesaid receipts have been disputed by the learned counsel for the appellants. It is also submitted by learned counsel for the opposite party no. 2 that applicants are habitual to commit such type of offences and four cases of similar nature have been registered against them.

8. Learned A.G.A. has also adopted the arguments of learned counsel for the opposite party no. 2 and further added that on bare perusal of the statements of the witnesses, it is clear that the applicants had taken the money from opposite party no. 2 and when she asked the said amount, she along with her sons were beaten by them in their factory.

9. After hearing the submissions of learned counsel for the parties and on perusal of record, following facts are undisputed :-

(i) Applicants and opposite party no. 2 were in business relationship and opposite party no. 2 used to lend money to the applicants and they also returned certain amount taken from opposite party no. 2. Thereafter, as per the allegations of opposite party no. 2, Rs.1,20,00,000/- was given to the applicant nos. 2 and 3 but they refused to return the same despite repeated demand on the part of the opposite party no. 2.

(ii) It is also clear from the record that there is no injury report on record though there was allegation of beating by the applicants to the opposite party no. 2 as well as to her sons.

(iii) It is also clear from the record that the date of incident of beating in the factories of the applicants was mentioned as 10.02.2023 by the opposite party no. 2 in her statement. However, the date of incident of beating and threatening to opposite party no. 2 and her sons was

mentioned as 11.02.2023 in the statements of the witnesses of opposite party no. 2 recorded u/s 202 Cr.P.C.

10. For making out a case u/s 420 I.P.C., the ingredients as defined u/s 415 I.P.C. must be attracted. To attract the offence u/s 420 I.P.C., there must be an element of cheating from the very beginning. Section 415 I.P.C. defines cheating and is quoted 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”.

Explanation.— A dishonest concealment of facts is a deception within the meaning of this section.

11. In the present case, it is not in dispute that the applicants and opposite party no. 2 were in business relationship and they had also returned the money taken from opposite party no. 2 and this fact was admitted by opposite party no. 2 as well as her witnesses. Therefore, element of cheating or deception was not from very beginning. Though the applicant nos. 2 and 3 may have taken money from opposite party no. 2, subsequently, non-returning the same will not itself attract the offence u/s 420 I.P.C.

12. To attract offence u/s 406 I.P.C., there must be an entrustment of property as defined u/s 405 I.P.C. Unless there is entrustment for particular purpose, offence of breach of trust will not be attracted and from the perusal of statements of opposite party no.2 and her witnesses recorded u/s 200 and 202 Cr.P.C., it is clear that there is nothing regarding entrustment of property for any particular purpose. The allegation was that after taking money, the applicants did not return the same. Section 405 I.P.C. is being quoted as under :-

405. Criminal breach of trust.—

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.

Explanation 1.— A person, being an employer of an establishment whether exempted under section 17 of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not who deducts the employee’s contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Explanation 2.— A person, being an employer, who deducts the employees’ contribution from the wages payable to the employee for credit to the Employees’ State Insurance Fund held and administered by the Employees’ State Insurance Corporation established under the Employees’ State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

13. The Apex Court in the case of **Delhi Race Club (supra)** has also observed that merely because the payment received by the accused was not made by him, itself would not be sufficient to attract the ingredients of offence u/s 420 or 406 I.P.C. It was further observed by the Apex Court that offence u/s 420 and 406 I.P.C. cannot be attracted simultaneously. Paragraph nos. 38, 39, 43 and 45 of **Delhi Race Club (supra)** are being quoted as under :-

38. In our view, the plain reading of the complaint fails to spell out any of the aforesaid ingredients noted above. We may only say, with a view to clear a serious misconception of law in the mind of the police as well as the courts below, that if it is a case of the complainant that offence of criminal breach of trust as defined under Section 405 of IPC, punishable under Section 406 of IPC, is committed by the accused, then in the same

breath it cannot be said that the accused has also committed the offence of cheating as defined and explained in Section 415 of the IPC, punishable under Section 420 of the IPC.

39. Every act of breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of manipulating act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person may seek his remedy for damages in civil courts but, any breach of trust with a mens rea, gives rise to a criminal prosecution as well. It has been held in Hari Prasad Chamaria v. Bishun Kumar Surekha & Ors., reported in (1973) 2 SCC 823 as under:

“4. We have heard Mr. Maheshwari on behalf of the appellant and are of the opinion that no case has been made out against the respondents under Section 420 Penal Code, 1860. For the purpose of the present appeal, we would assume that the various allegations of fact which have been made in the complaint by the appellant are correct. Even after making that allowance, we find that the complaint does not disclose the commission of any offence on the part of the respondents under Section 420 Penal Code, 1860. There is nothing in the complaint to show that the respondents had dishonest or fraudulent intention at the time the appellant parted with Rs. 35,000/- There is also nothing to indicate that the respondents induced the appellant to pay them Rs. 35,000/- by deceiving him. It is further not the case of the appellant that a representation was made, the respondents knew the same to be false. The fact that the respondents subsequently did not abide by their commitment that they would show the appellant to be the proprietor of Drang Transport Corporation and would also render accounts to him in the month of December might create civil liability on the respondents for the offence of cheating.”

43. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e., since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriated the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously.

45. Even if the Magistrate would have issued process for the offence punishable under Section 420 of the IPC, i.e., cheating the same would have been liable to be quashed and set aside, as none of the ingredients

to constitute the offence of cheating are disclosed from the materials on record.

14. So far as offence u/s 504 I.P.C. is concerned, from the perusal of the statement of opposite party no. 2 as well as her witnesses, it is clear that there is allegation of abusing. The Apex Court observed in the case of **Mohammad Wajid (supra)** that merely abusing, rudeness or discourtesy may not amount to intentional insult within the meaning of Section 504 I.P.C. Similarly, to attract ingredients of offence u/s 504 I.P.C., the criminal intimidation must be intentional to alarm the complainant. Paragraph nos. 29 and 30 of **Mohammad Wajid (supra)** are being quoted as under :-

29. Mere abuse, discourtesy, rudeness or insolence, may not amount to an intentional insult within the meaning of Section 504, IPC if it does not have the necessary element of being likely to incite the person insulted to commit a breach of the peace of an offence and the other element of the accused intending to provoke the person insulted to commit a breach of the peace or knowing that the person insulted is likely to commit a breach of the peace. Each case of abusive language shall have to be decided in the light of the facts and circumstances of that case and there cannot be a general proposition that no one commits an offence under Section 504, IPC if he merely uses abusive language against the complainant. In King Emperor v. Chunnibhai Dayabhai, (1902) 4 Bom LR 78, a Division Bench of the Bombay High Court pointed out that:-

*“To constitute an offence under Section 504, I.P.C. it is sufficient if the insult is of a kind calculated to cause the other party to lose his temper and say or do something violent. Public peace can be broken by angry words as well as deeds.”
(Emphasis supplied)*

30. A bare perusal of Section 506 of the IPC makes it clear that a part of it relates to criminal intimidation. Before an offence of criminal intimidation is made out, it must be established that the accused had an intention to cause alarm to the complainant.

15. In the case in question, it is clear from the perusal of the statement of opposite party no. 2 that there was simply allegation of abusing and beating and there was no allegation of criminal intimidation. Even from the perusal of the statement of the witnesses of opposite party no. 2, there is no specific allegation to cause intentional alarm to the complainant,

therefore, from the material present on record, it is clear that offences u/s 504 and 506 I.P.C. are also not made out.

16. So far allegation u/s 323 I.P.C. is concerned, from the perusal of the statement of opposite party no. 2, there is allegation that the applicant nos. 2 and 3 beaten her as well as her sons but there is no injury report on record to substantiate such allegation. Even otherwise from the perusal of the statement of opposite party no. 2 as well as statement of her witnesses recorded u/s 202 Cr.PC., there are serious contradictions.

17. One fact is also clear from the record that there is no allegation against applicant no. 1 regarding receiving money from opposite party no. 2 or extending any threat to the opposite party no. 2 or her sons. Therefore, she has been maliciously roped in, in the impugned proceedings and the learned Magistrate has not applied his mind that there is no allegation against applicant no. 1.

18. In view of the above, this Court of the opinion that the dispute is purely civil in nature and the opposite party no. 2 has remedy to file civil suit to recover the amount in question but so far as criminal offence as mentioned in the impugned summoning order is concerned, no offence is made out.

19. Therefore, the impugned summoning order dated 24.03.2023 as well as non-bailable warrant and proceeding of 82 & 83 Cr.P.C. dated 02.05.2023 to 26.10.2023 initiated against the applicants by Chief Judicial Magistrate, Ghaziabad in Complaint Case No. 1922 of 2023 (Smt. Sunita Devi Vs. Arun Arora & others) u/s 420, 406, 504, 506, 323, 354-Ka, 392, 120-B I.P.C., Police Station- Shahibabad, District- Ghaziabad, pending in the court of Chief Judicial Magistrate, Ghaziabad, is accordingly quashed.

20. The application is accordingly, **allowed.**

Order Date :- 13.5.2025

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