

Court No. - 80

Case :- CRIMINAL REVISION No. - 2414 of 2024

Revisionist :- Atul And 3 Others

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

Counsel for Revisionist :- Sandeep Kumar, Sharad Kumar
Srivastava

Counsel for Opposite Party :- Brijendra Kumar Srivastava, G.A.

Hon'ble Ram Manohar Narayan Mishra, J.

1. Instant criminal revision has been preferred and directed against the impugned order dated 2.3.2024 passed by C.J.M. Firozabad in Case No. 1161 of 2023 (State vs. Ram Gopal and others) in case crime no. 573 of 2021, under section 420, 467, 468, 471, 506 I.P.C. PS. Tundala, District Firozabad. By the impugned order learned court below has dismissed application for discharge under section 239 Cr.P.C. filed by the revisionist/accused namely Atul, Amit and Yogesh and Abhishek, who are real brothers.

2. Heard Sri Sandeep Kumar, learned counsel for the revisionist, Sri Brijendra Kumar Srivastava, learned counsel for the opposite party no. 2, learned AGA for the State and perused the record.

3. Factual matrix of the case in brief are that respondent no. 2 informant filed an application under section 156(3) Cr.P.C. before court of CJM, Firozabad bearing date 9.9.2021 wherein he stated that applicant is owner of plot No. 547 Area 0.3110 Hectare. The shape of Plot No. 547 was less than its area in the map for which informant had filed an application under section 30 U.P. Revenue Code before Court of Additional District Magistrate along with

consolidation paper No. 41 and 45, map khasara and khatauni whereupon learned ADM found in proceeding of correction of map that area of plot no. 550 was 0.150 H in excess therefore on adding this 0.150 H to area of plot no. 547, the total area becomes 0.3110 H. Plot Nos. 547, 550 and 551 were carved out from old plot No. 725. Opposite party Atul Kumar filed a petition under section 13 U.P. Revenue Act before Board of Revenue against order dated 27.3.2018 passed by learned ADM regarding correction of map which was registered as Case No. REB/220/2018 Firozabad. This case was dismissed for want prosecution on 19.12.2019 and it was also specified therein that any interim order passed therein will stand vacated.

4. The opposite party Atul Kumar and others got very much annoyed due to order of correction of map and started conspiring against the informant and threatened that they would not permit him to take possession and in spite of map correction order they were cultivating newly added area in said plot number. The opposite party has executed many sale deeds with a view to grab the land of informant even subsequent sale deed was executed of same land in favour of other persons without any authority in as much as in sale dated 30.5.2015 age of Yogesh Kumar and Abhishek Kumar was shown as 15 and 12 years and after 2 months in sale deed dated 25.7.2015, they were shown as major. FIR was lodged against ten accused persons including present revisionist under section 420, 467, 471, 506 I.P.C. an order of the court passed on application under section 156(3) Cr.P.C. The Investigating Officer submitted two separate charge sheet against accused persons; after conclusion of the investigation, a first charge sheet was passed against two accused under section 420, 467, 468, 471, 506 I.P.C. and second charge sheet was filed against remaining

eight accused persons including present revisionist under section 420 only. The court took cognizance of the offence on charge sheet under section 420, 467, 468, 471, 506 I.P.C. and issued process against the ten accused persons to face trial in the case. Accused persons were enlarged on bail vide orders of this Court. The four accused persons who have been charge sheeted under section 420 I.P.C. had filed an application for discharge from charge under section 420 I.P.C. which was dismissed vide impugned order passed by learned CJM. The applicants preferred present criminal revision being aggrieved by impugned order whereby their discharge application has been dismissed.

5. The applicants have stated in discharge application under section 239 Cr.P.C. that the applicants are named in F.I.R. as accused along with the accused persons. During investigation no oral or documentary evidence surfaced by which possession of informant was found and for that reason, no offence was made out against the accused persons/applicants and for that reasons investigating officer found that name of many of applicants has wrongly been mentioned and he segregated their name from the investigation in C.D. Parcha dated 21.4.2022 and final (closure report) was filed on 24.4.2022 in favour of the applicants. The Investigating Officer on 5.6.2022 segregated the name of co-accused Nirmal, Ram Naresh, Satish Chandra and Devender also. Applicants were enlarged on bail by order of this Court dated 24.3.2022. the Investigating officer filed second charge sheet on 18.1.2023 against accused applicants and four others under section 420 I.P.C. which is not tenable under law because even no case under section 420 I.P.C. is made out against them.

6. In F.I.R. it is stated that the opposite party Atul Kumar threatened the informant that he would not permit him to take

possession of the land and Diwakar Singh assists him in this Act. He is cultivating the land and threatened the informant by flashing the weapon. Informant belongs to caste of Yadav whereas applicants belongs to scheduled caste. Applicants are bhumidhar of Khata No. 256 and Plot No. 550 total area 0.502 H in which applicants have 1/6 share whereas informant is Khatedar of Khata No. 269 Plot No. 547 total area 0.3100 H. He is neither Khatedar nor co-sharer of Khata No. 256. Accused applicants have every right to sale their share of land recorded in plot no. 550 out of which their own 0.88 H.

7. It is also stated in discharge application that applicants have not sold any portion of plot no. 547 claimed by informant. All the sale deeds were executed out of plot no. 550. There is no allegation that the applicants had made any inducement to informant to part with his property or he has been deceived by playing fraud, therefore, no case under section 420 I.P.C. is made out against the applicants.

8. Learned counsel for the revisionist submitted that from perusal of the allegation made in the FIR and material collected during course of investigation, no offence is disclosed against the applicants and the present case has been investigated with mala fide intention for the purpose of harassment of the revisionists. He has pointed out certain documents and statements in support of his contention. Learned court below while rejecting discharge application failed to consider the fact that after investigation only the charge under section 420 I.P.C. remained against the revisionist. The dispute between the parties is purely of civil nature but the complainant, due to ulterior motive implicated the revisionists in this case on the basis of false allegations. Ingredients of offences of forgery are not made out against the revisionists.

9. The revisionist had executed sale deed to fulfill their needs only in respect of their land which was under their possession since long and they have no concern with the land of first informant shown as plot No. 547. The discharge application was filed prior to correction of second area and as such it was filed under sections 420, 467, 468, 471, 506 I.P.C. The revisionist have not committed any fraud or cheating with the first informant. They had not prepared any fraudulent document. There is no allegation of any kind of misappropriation against them. The sale deeds were executed prior to date of correction of map dated 27.1.2018, therefore, execution of sale deed itself could not made out any offence on the part of the accused applicants. There is no any allegation against the revisionist regarding commission of offence under section 420 I.P.C. Learned court below has dismissed application for discharge filed by the revisionists without considering the fact that no where charge sheet under section 420 I.P.C is made out against the applicants.

10. Per contra, learned counsel for the respondent no. 2 submitted that accused revisionist and co-accused had executed several sale deeds on various dates during the period of correction of map of plot no. 547 of the informant to deprive him the benefit of correction of map ordered in his favour and derived undue monetary advantage by selling the land which was found in the share of the informant in the proceedings correction of map. Therefore, it cannot be held that no offence of cheating or forgery is made out against the revisionist, in fact this is a case of wrongful loss to the information by act of the accused persons including revisionists. Learned court below has considered the factual and legal aspect of the case and has rightly dismissed the discharge application of the revisionist with finding that there is no such

anomaly in cognizance taking order on which basis it can be held that charge against the applicants is groundless.

11. Learned counsel for the revisionist placed reliance on judgment of Hon'ble Supreme Court passed in A.M. Mohan vs. State represented by SHO, 2024 0 Supreme(SC) 258 wherein Hon'ble Supreme Court observed in Paragraph nos. 11,12,13,14 as under:-

11. This Court, in the case of Prof. R.K. Vijayasathy and Another v. Sudha Seetharam and Another³ has culled out the ingredients to constitute the offence under Sections 415 and 420 of IPC, as under:

"15. Section 415 of the Penal Code reads thus:

"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".

16. The ingredients to constitute an offence of cheating are as follows:

16.1. There should be fraudulent or dishonest inducement of a person by deceiving him:

16.1.1. The person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or

6.1.2. The person so induced should be intentionally induced to do or to omit to do anything which he would not do or omit if he were not so deceived; and

16.2. In cases covered by 16.1.2. above, the act or omission should be one which caused or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

17. 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.

18. Section 420 of the Penal Code reads thus:

"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."

19. The ingredients to constitute an offence under Section 420 are as follows:

19.1. A person must commit the offence of cheating under Section 415; and

19.2. The person cheated must be dishonestly induced to

(a) deliver property to any person; or

(b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.

20. Cheating is an essential ingredient for an act to constitute an offence under Section 420."

12. A similar view has been taken by this Court in the cases of Archana Rana v. State of Uttar Pradesh and Another⁴, Deepak Gaba and Others v. State of Uttar Pradesh and Another⁵ and Mariam Fasihuddin and Another v. State by Aduodi Police Station and Another⁶ 2024 SCC OnLine SC 58: 2024 INSC 49.

13. It could thus be seen that for attracting the provision of Section 420 of IPC, the FIR/complaint must show that the ingredients of Section 415 of IPC are made out and the person cheated must have been dishonestly induced to deliver the property to any person; or to make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security. In other words, for attracting the provisions of Section 420 of IPC, it must be shown that the FIR/complaint discloses:

(i) the deception of any person;

(ii) fraudulently or dishonestly inducing that person to deliver any property to any person; and

(iii) dishonest intention of the accused at the time of making the inducement.

14. The averments with regard to the present appellant as have been found in the FIR is as under:

"At the instance of the said Lakshmanan (accused No.1), I (complainant) paid directly Rs. 20,00,000/- to one Mohan (appellant-accused No. 3) and the said Lakshmanan (accused No.1) transferred the remaining sale consideration of over 18 odd crores to Mohan for the purchase of his lands at Sunguvarchatram. But suppressed the execution of sale deed dated 03.02.2017 by the appellant/accused No.3."

12. In instant case, the revisionist are charged *inter alia* under section 420 I.P.C. only and the discharge application has been dismissed by the impugned order dated 2.3.2024. The main allegation against them is that they had executed sale deed of land which was earlier laying in their name in the revenue records in favour of the some other persons whereas the said land was allotted by learned ADM vide order dated 27.3.2018 passed in application for correction of map in favour of the informant. Learned ADM found in his order that shape of plot no. 547 which belongs to the informant was wrongly shown in village map and for that reason 0.450 land which should have been part of plot no. 547 was shown in plot No. 550 which was recorded in the name of the revisionists and others.

13. Revisionist are co-sharer of plot no. 550 total area 0.530H and first informant is not a co-sharer of said plot no. 550. Accused side claims 1/6 share in plot No. 550 total area 0.530 H, thus, the claim was over 0.588 H land out of plot No. 550 in as much as they had sold their respective shares to non applicants in the year 2015 and prior to that learned ADM passed order on map correction application filed by the revisionist on 27.3.2018 as per his own version that this land was laying in the plot no. 550 of which revisionist are co-sharer, there is no material which could suggest that revisionist has made any representation to the informant or

played any deception to induce him to deliver the property. The revisionists have sold the disputed portion of plot no. 550 on which they are not recorded tenure holder at the time of execution of disputed sale deed to some other persons purportedly in the capacity of an owner thereof if any cloud was created in their title over the land was found in proceedings of correction of map by learned ADM and said land was subsequently found to have been part of the plot of the informant, it cannot be held that the revisionists have committed the act of cheating against informant i.e respondent no. 2. It is not the case of the informant that he was made to deliver any property to the revisionist by any deception or inducement made by them. The dispute between the revisionists and informant are essentially of civil nature and the effective remedy can be sought from Civil or Revenue Court. Informant has not challenged any of the alleged sale deeds before Civil Court.

14. In ***Mohd. Ibrahim vs. State of Bihar and another (2009) 8 SCC 751***, Hon'ble Supreme Court held in that case the allegations involving the execution of the sale deed by accused claiming ownership of plot or land, did not necessarily constitute the offence of cheating under section 420 I.P.C. as disputes of civil nature may also contain the ingredients of criminal offences.

15. In the present case also even if it is supposed that the cheating has been committed by the revisionists by selling part of land which do not belong to them legally then a question of cheating arises between the revisionists and the purchasers of the land and not qua the informant who is not a party to the sale deed and only claim valid title over land which is subject matter of disputed sale deeds in as much as the time of execution of sale deeds, there was no finding of any competent court that the land in question belongs to the share of the informant. Learned court below took cognizance of all the offences against the revisionists and co-accused without assigning any reason or considering the applicability of said charges on fact of the case and ignored the fact that they were charge sheeted under section 420 I.P.C. after investigation. Revisionists have also filed an application for correction of cognizance taking order under section 362 Cr.P.C. on 21.11.2023 which was allowed by learned court below on 14.2.2024 and cognizance was taken against them only for offence under section 420 I.P.C.

16. Learned court below has dismissed the discharge application without considering ingredients of offences of forgery and theft under section 420 I.P.C. and role played by the accused persons in the case.

17. With foregoing discussion this court is of considered opinion that learned court below has committed legal error while dismissing discharge application filed by the revisionists without considering the grounds taken therein in proper perspective and giving a thoughtful consideration to the question as to whether ingredients of charge under section 420 I.P.C. are attracted in the case or not in the case put forth by the prosecution accused person.

18. There is no plausible material to connect the revisionists even prima facie with charges under section 420 I.P.C., therefore, the impugned order is set aside.

19. Learned court below is directed to hear the application for discharge filed by the revisionists afresh and decide the same after giving opportunity of hearing both the sides (prosecution and accused) in accordance with law.

20. The revision is allowed accordingly.

Order Date :- 10.3.2025

SY