



2025:AHC:164204

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 27620 of 2025

AFR

Mohammad Irasad

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Manoj Kumar Mishra, Rahul Mishra
Counsel for Opposite Party(s) : Aditya Prasad Mishra, G.A., Vijay Mishra

Court No. - 92

HON'BLE RAM MANOHAR NARAYAN MISHRA, J.

1. Rejoinder affidavit filed on behalf of the applicant is taken on record.
2. Heard Sri Manoj Kumar Mishra, learned counsel for the applicant, Sri Aditya Prasad Mishra, learned counsel for the opposite party No.2 and learned A.G.A. for the State.
3. The pleadings have already been exchanged between the parties.
4. The instant application under Section 528 BNSS has been filed by the applicant for quashing further proceeding of Case No.17927 of 2024 (State vs. Irasad and Others), arising out of Case Crime No.64 of 2022, under Sections 420 and 120 B I.P.C., Police Station Civil Lines, District Meerut as well as order dated 23.10.2024 passed by the learned Additional Chief Judicial Magistrate, Court No.5, Meerut.
5. Learned counsel for the applicant submits that according to the prosecution version, the informant, Shahid Ali, lodged an FIR against the applicant and six others at Police Station Civil Lines, District Meerut, on 23.02.2022 with the allegation that the disputed plot, i.e., Khasra No. 6293/1, area 1142.61 square meters @ 1366.57 square yards is situated in Village Shergadhi, Sai Colony, Tehsil and District Meerut. It is further alleged that the said plot was owned by Kanwar, Bhawar Singh, Bijendra

Singh, Satendra Singh, Indraj Singh and others. Aase and others executed a sale deed for 1366.57 square yards of land from Khasra No. 6293/1 in favour of Siyaram Kasturi Devi Educational Society, Meerut, through its Secretary, Sudheer Sharma, on 30.05.2005. The sale deed further records that, after the previous transactions, 1366.57 square yards of land had remained with the vendors. Aase and others had created a society, namely, Anusuchit Jati Grah Nirman Sahkari Samiti Ltd. A sale deed was executed by Audesh Kumar as President of the said society, and the sale deed also bore the signatures of all the members of the Samiti. The said deed was duly registered on 30.05.2005, and possession of the sold land was handed over to the purchasers. Subsequently, the said land was purchased by the informant, applicant Mohammad Irasad, and others on 15.03.2018 from Siyaram Kasturi Devi Educational Society. At present, the said land is in the form of Abadi (residential area). On 28.03.2018, the purchasers executed a Power of Attorney in favour of the informant, which was duly registered before the Sub-Registrar. The accused persons were well aware of the said Power of Attorney. The informant executed several sale deeds and power of attorney in respect of the property purchased by the executors of the power of attorney holder. However, on 14.06.2019, Bijendra (son of Aase) and Nand Kishor had executed a sale deed for 180 square yards in favour of Irshad, Amit Sharma, and Lakshya Sharma without any authority. Bijendra and Nand Kishor had no right in the said property. On the basis of the sale deed dated 14.06.2019, the applicant executed a sale deed on 23.10.2020 in favour of Kajal, transferring 90 square yards (75.24 square meters) of the said property, without any legal right or authority. Both sale deeds dated 14.06.2019 and 23.10.2020 were executed without any legal authority. On the basis of said sale deeds, the accused persons, namely Mohd. Irshad, Kajal, Bijendra and others, are threatening the informant. The applicant is a land grabber, and an FIR has been lodged against him under Sections 420, 467, 468, 471 and 120-B IPC. However, after investigation, the police submitted a charge-sheet against the applicant under Sections 420 and 120-B of the IPC, and thereafter, the applicant was summoned by the court below on 23.10.2024 on the basis of the said charge-sheet.

6. Learned counsel for the applicant further submits that no case under

Section 420 I.P.C. is made out against the applicant, as there is no allegation that he made any representation or played any deception upon the informant while purchasing the land from Bijendra and others or while selling the same to Kajal. If any cloud has been created on the title of Kajal with respect to the property purchased by her from the applicant, she ought to have approached the law enforcement agency to raise her grievance. He next submits that, in the rejoinder affidavit, an extract of the Khatauni for Fasli years 1429–1434 (from 01.07.2021 to 30.06.2027) has been annexed. In this extract, *Khasra* No. 6293/1m, area 0.3100 hectare is equivalent to a total area of 1366.57 square yards is recorded in the name of Aase, son of Govind. Out of the said 0.3100 hectare of land, the applicant had purchased 90 square yards from Bijendra, son of Aase, and subsequently transferred the same to Kajal. It is further submitted that both Aase and Bijendra had died over the course of time. He next submits that a civil suit was filed by the informant in respect of the said dispute, which was withdrawn with liberty to file afresh. He also submits that the dispute is essentially of civil nature, and criminal prosecution in respect of the said matter amounts to a gross misuse of the process of law. Therefore, the impugned charge-sheet as well as the summoning order are liable to be quashed.

7. Per contra, learned counsel for opposite party no. 2 submits that the applicant has criminal history, which has been disclosed in the counter-affidavit. Two criminal cases have been registered against the applicant i.e. Case Crime No. 114 of 2020, Police Station Lisadi Gate, District Meerut, under Sections 270, 269, and 188 I.P.C., at the instance of S.I. Ajay Sharma during the COVID period and Case Crime No. 346 of 2024, under Section 318(4) BNS, registered on 20.12.2024 at the instance of Birendra Kumar pursuant to the orders of the learned Magistrate. In this case, the informant has alleged that the accused, Irshad Ali, took Rs. 13,00,000 from him by practicing deception and fraud, and with the said amount, purchased a plot in his own name.

8. In reply to the criminal history alleged on behalf of opposite party no. 2, learned counsel for the applicant submits that the first case was lodged against the applicant for violation of COVID-19 guidelines, which has been withdrawn by the Government, and the second case was still under

investigation at the time of filing the present petition, so its details were not available. However, both criminal cases have been duly explained in the rejoinder affidavit.

9. Learned counsel for opposite party No. 2 submits that the applicant is one of the persons who executed a power of attorney in favour of the informant. Once the applicant had executed the power of attorney, he was not entitled to execute a sale deed in favour of Kajal for land that was neither available nor in existence. After the sale deed dated 30.05.2005 executed by the society in favour of Siyaram Kasturi Devi Educational Society, no land remained with the vendors. Consequently, the subsequent sale deed executed by Bijendra in favour of the applicant, as well as the sale deed executed by the applicant in favour of Kajal, are fraudulent and devoid of any authority or legal right. Due to such sale deeds, the informant has suffered difficulty, as he had already sold several chunks of the said plot to other persons, who are now seeking possession of the property purchased by them. He lastly after withdrawing the suit for cancellation of sale deed, due to some formal defects, informant has filed a fresh suit for cancellation of sale deed dated 14.06.2019.

10. Learned counsel for the applicant has placed reliance the judgment of Hon'ble Supreme Court in **V.Y. Jose and Anr vs. State of Gujarat And Anr reported in AIR 2009 SC (SUPP) 59**, wherein Hon'ble Court has considered the ingredients of offence of cheating as defined under Section 415 I.P.C. and observed that for the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out. The Hon'ble Court also observed that under Section 482 Cr.P.C., saves the inherent power of the court. It serves a salutary purpose viz. a person should not undergo harassment of litigation for a number of years although no case has been made out against him. It is one thing to say that a case has been made out for trial and as such the criminal proceedings should not be quashed but it is another thing to say that a

persons should undergo a criminal trial despite the fact that no case has been made out at all. In **Hira Lal Hari Lal Bhagwati vs CBI; (2003) 5 SCC 257**, the Hon'ble Court has held that it is settled law, by a catena of decisions, that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. From his making failure to keep promise subsequently, such a culpable intention right at the beginning that is at the time when the promise was made cannot be presumed.

11. In another judgement, **Vir Prakash Sharma vs. Anil Kumar Agarwal; (2007) 7 SCC 373**, the Hon'ble Supreme Court held in para-13 that the ingredients of Section 420 of the Penal Code, which are as follows:-

"(i) Deception of any persons;

(ii) Fraudulently or dishonestly inducing any person to deliver any property;

(iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit."

12. In another judgment relied upon by the learned counsel for the applicant in **Md. Ibrahim And Ors vs. State of Bihar And Anr; 2010 AIR SCW 405**, the Hon'ble Supreme Court held as under:-

"14. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first

accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner. As the ingredients of cheating as stated in [section 415](#) are not found, it cannot be said that there was an offence punishable under [sections 417, 418, 419](#) or 420 of the Code.

15. When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint. The term 'fraud' is not defined in the Code. The dictionary definition of 'fraud' is "deliberate deception, treachery or cheating intended to gain advantage". [Section 17](#) of the Contract Act, 1872 defines 'fraud' with reference to a party to a contract. In [Dr. Vimla vs. Delhi Administration](#) - AIR 1963 SC 1572, this Court explained the meaning of the expression 'defraud' thus "The expression "defraud" involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied."

The above definition was in essence reiterated in [State of UP vs. Ranjit Singh](#) - 1999 (2) SCC 617: (1999 AIR SCW 863)"

13. In [Rajiv Thapar And Ors vs. Madan Lal Kapoor](#); AIR 2013 SC (SUPP) 1056, the Hon'ble Supreme Court considered the ambit and scope of the exercise of powers under Section 482 Cr.P.C. In paragraph 23, the Court issued guidelines for invoking the power vested in the High Court under Section 482 Cr.P.C., which are reported as follows:

"23. Based on the factors canvassed in the foregoing paragraphs, we would delineate

the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under [Section 482](#) of the Cr.P.C.:-

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under [Section 482](#) of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused."

14. In the present case, the main allegation against the applicant is that he obtained a registered sale deed dated 14.06.2019 from Bijendra Singh for 90 square yards of land from Khasra No. 6293/1, and subsequently sold the said land to Smt. Kajal by means of another registered sale deed dated 30.10.2020. According to the informant, neither the vendor of the applicant, late Bijendra Singh, had any legal right or authority to sell the said land to the applicant, nor did the applicant derive any valid title under the sale deed executed by Bijendra Singh in his favour, as the land in question did not remain in the share of Bijendra Singh. It is further

alleged that the applicant and the co-accused have taken benefit of the revenue records, in which the name of father of Bijendra Singh continued to appear. Since no legal title was conveyed to the applicant through the said sale deed, he had no right to transfer the land to Smt. Kajal through a registered sale deed.

15. Counsel for the applicant admitted that two civil suits were already filed for annulment of cancellation of sale deed executed by Bijendra Singh in favour of applicant and sale deed executed by applicant in favour of Smt. Kajal. Both the civil suits had dismissed as withdrawn, but new civil suits have been filed with permission of the Court. Counsel for the applicant admitted that two civil suits had already been filed seeking annulment and cancellation of the sale deed executed by Bijendra Singh in favour of the applicant and the sale deed executed by the applicant in favour of Smt. Kajal. Both civil suits have been dismissed as withdrawn and fresh civil suits have been filed with the permission of the Court.

16. Upon thoughtful consideration, and in light of the legal position laid down by the Hon'ble Supreme Court regarding the essential ingredients of the offence of cheating punishable under Section 420 I.P.C. and its application to the facts of the present case, as well as the scope of interference by this Court under Section 482 CrPC, this Court is of the considered opinion that the matter is essentially of a civil nature.

17. The opposite party No. 2 has wrongly invoked the jurisdiction of this Court under Section 482 CrPC, which amounts to giving a criminal colour to a matter that is essentially civil. There is nothing in the FIR or the prosecution papers to suggest that the applicant made any representation much less a false representation to opposite party No. 2 regarding his ownership of the property in question, or that he fraudulently induced him to part with any money or property. It is also relevant to note that the informant is not a purchaser of the land. The purchaser, Smt. Kajal, has also been implicated as an accused.

18. The crux of the allegation is that the applicant sold a property, claiming himself to be the owner, to co-accused Smt. Kajal, whereas the said property is not in existence due to earlier sale deeds executed from

Khasra No. 6293/1m. The complicated questions involved in the present case are whether the vendor, Bijendra Singh, whose father's name appears in the revenue records had the right to sell his share, if any, in favour of the applicant, whether the applicant had any right to execute a subsequent sale deed in respect of the same portion of land in favour of co-accused Smt. Kajal, and whether the informant, who claims to be the power of attorney holder of the applicant and other co-sharers of the land, has any right or interest in the said land. All these questions are triable in a civil suit and not in a criminal prosecution.

19. In view of the above discussion and the legal position emanating from the judgments of the Hon'ble Supreme Court cited above, no case of cheating punishable under Section 420 IPC appears to be made out against the applicant. The matter is essentially of civil nature and is liable to be settled on the basis of the evidence of the parties in civil proceedings.

20. The present prosecution is nothing but an abuse of the process of law, therefore, proceedings are liable to be quashed. Consequently, the application (under Section 528 of BNSS) is **allowed**. The proceedings of Case No.17927 of 2024 (State vs. Irasad and Others), arising out of Case Crime No.64 of 2022, under Sections 420 and 120 B I.P.C., Police Station Civil Lines, District Meerut as well as order dated 23.10.2024 passed by the learned Additional Chief Judicial Magistrate, Court No.5, Meerut are hereby **quashed** in respect of applicant.

(Ram Manohar Narayan Mishra,J.)

September 12, 2025

Amit