

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 1323 of 2018**Order reserved on : 19.08.2019Order delivered on : 19.11.2019

1. Dayanand Sharma S/o Late Rajendra Sharma, aged about 50 years.
2. Mayanand Sharma D/o Late Rajendra Sharma, aged about 40 years.
3. Smt. Aarti Sharma D/o Late Rajendra Sharma, aged about 38 years.
4. Smt. Parmeshweri Devi Sharma Wd/o Rajendra Sharma.
All R/o Quarter No.3/A, Near Murtikar House, Sec. No.1, Bhilai, Power House, District Durg (C.G.)

----Applicants**Versus**

- State of Chhattisgarh Through : Station House Officer, Police Station Urla, District Raipur (C.G.)

---- Respondent

For Applicants	:	Shri B.P. Singh, Advocate.
For Respondent/State	:	Shri Sameer Sharma, Dy. G.A.

Hon'ble Smt. Justice Rajani Dubey**C A V ORDER****19/11/2019**

01. Challenge in this revision is to the order dated 07.01.2013 passed by the learned Judicial Magistrate First Class, Raipur, in Criminal Case No.337/2012, whereby the learned trial Court has framed charge under Section 420/34

IPC against the applicants.

02. Brief facts of the case are that complainant namely Budharu Markande and Santosh Markande lodged FIR against the applicants alleging that the applicants made an agreement to sale of their property bearing Khasra No.125, area 0.506 hectare for consideration of Rs.30,00,000/- and the applicants have also obtained earnest money of Rs.4,00,000/- for executing sale deed in favour of the complainants. Further case of the prosecution is that after obtaining earnest money before the witnesses, the applicants executed agreement to sale but did not execute sale deed and thereby committed cheating. That apart, the applicants also not provided documents to the complainants. On the basis of FIR, criminal case was registered against the applicants under Section 420/34 IPC and charge sheet was filed before the learned Judicial Magistrate First Class. On 07.01.2013, the learned trial Magistrate, after hearing the argument before charge, framed charges against them under Section 420/34 IPC. Hence, this revision.

03. Learned counsel for the applicant submits that the impugned order relating to framing of charge against the applicants under Section 420/34 IPC is nothing but the abuse of process of law. In the FIR and the statements of the witnesses, there are no ingredients relating to cheating even though the police has lodged the crime against the applicants. He further submits that it is evident from the charge sheet

that there is only allegation against the applicant that they have not executed sale deed after sale of agreement and obtaining earnest money. He also submits that the only grievance of the complainant is that the applicants have not executed sale deed in favour of the complainant, which itself shows that the whole dispute is of civil in nature for which the remedy of filing the suit for specific performance is available to the complainant, therefore, framing of charge under Sections 420/34 IPC is not in accordance with law and the same may be set aside. It is next submitted that from the FIR it is clear that just to create pressure on the applicants, the complainant first lodged the FIR, then filed civil suit and he also chosen to file criminal complaint and this is completely misuse of liberty. In support of this argument, he placed reliance on the decision of Hon'ble Supreme Court in the matter of **Inder Mohan Goswami and another Vs. State of Uttaranchal and others**¹.

04. On the other hand, learned State counsel supporting the impugned order submits that the learned trial Court, considering the facts and circumstances of the case, found the ingredients of Section 420/34 IPC and charges have been framed accordingly.

05. I have heard the learned counsel for the parties and perused the record.

06. It is clear from the FIR and the statements of the

¹ (2008) 1 – SCC (Cri) 259

witnesses that the applicants and complainant entered into an agreement to sale of property and the applicants have also received Rs.4,00,000/- in advance but did not execute sale deed.

07. The term “*Cheating*” has been defined under in Section 415 of the IPC, which is reproduced herein below:-

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”.

08. The Hon'ble Apex Court in the matter of **Inder** (supra) has dealt with the aspect of Section 482 CR.P.C. and held in para 42, 45 and 46, which read thus:-

“42. On a reading of the aforesaid section, it is manifest that in the definition there are two separate classes of acts which the person deceived may be induced to do. In the first class of acts he may be induced fraudulently or dishonestly to deliver property to any person. The second class of acts is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, the inducing must be fraudulent or dishonest. In the second class of acts, the inducing

must be intentional but need not be fraudulent or dishonest. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had a fraudulent or dishonest intention at the time of making the promise. From his mere failure to subsequently keep a promise, one cannot presume that he all along had a culpable intention to break the promise from the beginning.

45. *Even if all the averments made in the FIR are taken to be correct, the case for prosecution under Sections 420 and 467 IPC is not made out against the appellants. To prevent abuse of the process and to secure the ends of justice, it becomes imperative to quash the FIR and any further proceedings emanating therefrom.*

46. *The Court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482 CrPC though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained."*

09. From the material on record, the picture what emerges is

that the present appears to be a case of civil in nature and the petitioner filed Annexure P/3, which is certified copies of Civil Suit No.14-A/2012. It is clear from the documents (Annexure P/3) that on 09.08.2019, the complainant has filed civil suit for specific performance against the applicants. It is the allegation against the applicants that they have not executed sale deed after sale of agreement, for which the civil remedy is the only way to redress their grievance, which the complainant has already availed by filing the suit for specific performance. Therefore, filing of criminal case against the applicants is nothing but to abuse the power of law and court.

10. Thus, from the aforesaid discussion and in the light of decision of Hon'ble Apex Court in the matter of **Inder** (supra), the impugned order, therefore, cannot be sustained and the same deserves to be set aside.

11. Accordingly, the revision is allowed. The impugned order of framing the charges under Section 420/34 IPC is set aside.

Sd/-

(Rajani Dubey)
JUDGE