IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-11935-2019 (O&M)
Date of decision : 22.10.2019

Vijay Sodhi ...Petitioner

Versus

Priya Sodhi ...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Tarun Vir Singh Lehal, Advocate for the petitioner.

Mr. P.K. Jain, Advocate for the respondent.

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ANIL KSHETARPAL, J.

Petitioner, father-in-law of the complainant-respondent has filed this petition under Section 482 Cr.P.C. for quashing of criminal complaint No.253 dated 17.01.2017 filed by the respondent-daughter-in-law, as also the order of summoning dated 21.12.2017 passed by learned Judicial Magistrate Ist Class, Ludhiana.

At this stage, it is pertinent to note here that criminal prosecution is result of matrimonial discord between Karan Sodhi and his wife Priya Sodhi (respondent herein). They were married on 06.02.2013. Priya Sodhi has lodged criminal prosecution pursuant to FIR No.57 dated 31.05.2014 under Sections 498-A, 406 of the Indian Penal Code. She has also filed a criminal complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter to be referred as "the Act of 2005"). It has also come on record that one FIR has also been registered by the petitioner herein.

Through the complaint filed by the respondent herein, it is alleged that all the accused in the complaint in order to establish 'the shared accommodation' as defined under the Act of 2005 have forged a rent deed in order to prove that in fact respondent-complainant and Karan Sodhi, her husband used to reside in a rented premises owned by accused No.1 and 2. The precise allegations made in the criminal complaint by the respondent are extracted as under:-

> *"2. That since the complainant had been subjected to acts of cruelty and domestic violence, she got registered an FIR No.57 dated 31.5.2014 under Sections 406/498-A of IPC with P.S. Women, Ludhiana against accused No.4 on the basis of complaint dated 31.5.2014. She even was constrained to file a petition under the provisions of Protection of Women from Domestic Violence Act vide petition dated 5th April, 2014 claiming inter-alia an order of residence with respect to property No.B-34-4355, Gali No.9, Durgapuri, Haibowal Kalan, Ludhiana. During the said proceedings, the accused Karan Sodhi dishonestly set up to have allegedly taken property No.B-34-1823/A, Pavittar Nagar, Haibowal Kalan, Ludhiana on rent from accused No.1 and 2 and propounded one false rent note setting up to have taken the said property on rent for 11 months w.e.f. 1.9.2013 and pleaded before the Court that the complainant alongwith accused No.4 had allegedly shifted in the said rented accommodation w.e.f. 1.9.2013.*
>
> *3. That as a matter of fact no alleged premises were allegedly taken on rent by the accused No.1. The accused No.4 in criminal conspiracy with accused No.1, 2, 3 and 5 to 7 had dishonestly created a false and forged rent note so*

as to facilitate taking of a false plea by accused No.4 in the Court so as to deprive the complainant of her valuable right to claim residence in the shared household bearing No.B-23-4355, Gali No.9, Durgapuri, Haibowal Kalan, Ludhiana. The accused No.4 is an income tax assessee and before various Public authorities including the bank as well as Income Tax Department, he continued to set up his actual address as that of property No.B-34-4355, Gali No.9, Durgapuri, Haibowal Kalan, Ludhiana. The complainant even got issued legal notice dated 3.12.2015 and a clarification dated 5.1.2016 with respect to the impugned rent note. When the complainant has been turned out of the matrimonial home on 19.5.2013 and she did not live and cohabit with accused No.4 thereafter, there was no question of the complainant and accused No.4 having lived together in the aforesaid purported rented accommodation. During the pendency of the aforesaid proceedings, the accused No.5 in criminal conspiracy with accused No.4, 6 and 7 got registered an absolutely false FIR No.0133 dated 10.8.2016 under Sections 457, 380, 447, 511, 506 and 120-B IPC with Police Station Division No.4, Ludhiana on the statement of accused No.5. In the said FIR, accused No.5 recorded that after 2/3 months from the marriage of the complainant with accused No.4 on account of the domestic disputes, the complainant left the company of accused No.4 and started living separately with her parents. The said stand taken by accused No.5 clearly exposed the impugned rent note and the stand taken by accused No.4 of allegedly shifting with the complainant in the aforesaid rented accommodation on 1.9.2013 to be absolutely false and that the impugned rent note was nothing but a false, forged and fabricated document and *dishonestly created by the accused in criminal conspiracy with each other to use the same against the complainant so as to deprive her of her right of residence in the shared household and cause her wrongful less. Once it is the stand of accused No.5 that there was no cohabitation between the complainant and accused No.4 after 2/3 months of the marriage, which coincides with the plea of the complainant of having been turned out of the matrimonial home on 19.5.2013, there was no question of the complainant residing in the aforesaid rented accommodation with accused No.4 w.e.f. 1.9.2013. By dishonestly creating the aforesaid false and forged rent note and using the same against the complainant, the accused have committed offences punishable under Sections 420, 465, 467, 468, 471 read with Sections 120-B/34 of the IPC, which are cognizable and non bailable."*

In the preliminary evidence, Priya Sodhi-respondent deposed as under:-

"My father-in-law claimed that I resided in rented accommodation but I resided at rented accommodation for 2-3 months."

Learned Judicial Magistrate summoned all the accused by passing order. Operative part whereof is extracted as under:-

"So from the perusal of these documents it is clear that accused no.4 namely Karan Sodhi the husband of the complainant has cheated the complainant by projecting the forged Rent note which is proved by him on record in reply to the complaint proved on record as Ex.C2 and he was residing in rented accommodation whereas that was not the address mentioned in FIR filed by the father of the accused

> *no.4 i.e. accused no.5. The challan is proved on record as Ex.C22 whereby it is mentioned that the complainant alongwith other persons trespassed entered into the house on 19.07.2016. So, from these evidence it is clear that the accused no.4 in criminal conspiracy with accused no.1,2 and 3 prepared forged Rent note to get the benefit which is Ex.C23 and they committed the offence punishable under section 420/465/468 r/w 34 of IPC.* ***Accused no.5 Vijay Sodhi has also in criminal conspiracy with them.*** *So, filed the FIR by which manifested his intention and further benefit of the same is taken by the accused Karan he also 471 of IPC and as he took the benefit that Rent note in Protection of Women from Domestic Violence Act and filed the reply. So accused no.1 to 5 be summoned under section 420/465/468 of IPC and accused no.4 be also summoned under section 471 of IPC. They be summoned to face trial for 21.12.2017."*

Pursuant to notice in the petition, short reply by way of counter affidavit has been filed.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the documents produced.

As is apparent, the petitioner-accused No.5, has been summoned under Sections 420, 465, 468 of IPC. Offence under Section 420 of IPC provide for a punishment on account of cheating and dishonestly inducing delivery of property. The term "Cheating" has been defined in Section 415 of the Code which is extracted 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"."

Next provision under which the petitioner has been summoned is Section 465 of IPC which provides for punishment for forgery. The term "Forgery" has been defined in Section 463 of IPC, which reads as under:-

*"**463. Forgery.**--Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."*

Making of a false document is provided in Section 464 IPC which is extracted as under:-

*"**464. Making a false document**.--A person is said to make a false document or false electronic record-*
First.-Who dishonestly or fraudulently-
(a) makes, signs, seals or executes a document or part of a document;
(b) makes or transmits any electronic record or part of any electronic record;
(c) affixes any electronic signature on any electronic record;
(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature, with the intention of causing it to be believed that such document or

part of document, electronic record or electronic signature was made, signed, sealed executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly.-Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly.-Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration."

Next provision for which the petitioner has been summoned is 468 of IPC which provides for punishment for forgery for the purpose of cheating, which is extracted as under:-

*"**468. Forgery for purpose of cheating.**--Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description a term which may extend to seven years, and shall also be liable to fine."*

On careful examination of Section 415 of IPC, it is apparent that cheating has been defined in a particular manner and not only deception but even inducement to deliver any property is must. Various ingredients of Section 415 of IPC have been culled by Hon'ble the Supreme Court in ***AIR 1974 SC 1811, Ram Jas Vs. State of U.P.***, which is extracted as under:-

> *"(i) There should be fraudulent or dishonest inducement of a person by deceiving him;*
>
> *(ii)(a) The person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or*
>
> *(b) The person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and*
>
> *(iii)In cases covered by (ii) (b), the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property."*

Thus, it is clear that ingredients of offence of cheating as defined in Section 415 IPC are conspicuously absent. Now let us go to next relevant provision which is Section 464 IPC, Section 464 deals with making a false document or false electronic record. It is not a case of false electronic record, so let us concentrate on false document. False document has been categorized in four different categories as provided in Section 464 under Clause 1(a), (b), (c) and (d). On careful perusal of second and third clause of Section 464, the allegations made in the complaint do not fulfill the ingredients of Section 464 Cr.P.C.

Now let us examine as to whether offence under Section 420 is made out or not. Ingredients of Section 420 have been explained by Hon'ble the Supreme Court in the case of ***Mohammad Ibrahim and others Vs. State of Bihar and another, (2009) 8 SCC 751***. After discussing entire case law and relevant provisions of Penal Code, the ingredients of Section 420 are noticed in paras 18 and 19, which are extracted as under:-

> *"18. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of "cheating" are as follows:*
>
> *(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;*
>
> *(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and*
>
> *(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.*
>
> *19. To constitute an offence under Section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived*
>
> *(i) to deliver any property to any person, or*
>
> *(ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security)."*

The term "fraud" is not defined under the Code. As per the meaning of the word “fraud” in the english dictionary, it is deliberate, deception, treachery or cheating intended to gain advantage. However, the Penal Code defines the word “fraudulently” in Section 25 which is extracted as under:-

> *“**25. “Fraudulently”**.—A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise. ”*

Still further, to defraud or to do something fraudulently is not itself made an offence under Penal Code but various acts when done fraudulently are made offences which have been noticed by Hon'ble the Supreme Court in para 28 of the judgment passed in the case of Mohammad Ibrahim (Supra), which is extracted as under:-

> *“28. To `defraud' or do something fraudulently is not by itself made an offence under the Penal Code, but various acts when done fraudulently (or fraudulently and dishonestly) are made offences. These include:*
>
> *(i) Fraudulent removal or concealment of property (Sections 206, 421 and 424)*
>
> *(ii) Fraudulent claim to property to prevent seizure (Section 207).*
>
> *(iii) Fraudulent suffering or obtaining a decree (Sections 208 and 210)*
>
> *(iv) Fraudulent possession/delivery of counterfeit coin (Sections 239, 240, 242 and 243).*
>
> *(v) Fraudulent alteration/diminishing weight of coin (Sections 246 to 253)*
>
> *(vi) Fraudulent acts relating to stamps (Sections 255 to 261)*

(vii) Fraudulent use of false instruments/weight/measure (Sections 264 to 266)

(viii) Cheating (Sections 415 to 420)

(ix) Fraudulent prevention of debt being available to creditors (Section 422).

(x) Fraudulent execution of deed of transfer containing false statement of consideration (Section 423).

(xi) Forgery making or executing a false document (Sections 463 to 471 and 474)

(xii) Fraudulent cancellation/destruction of valuable security etc.(Section 477)

(xiii) Fraudulently going through marriage ceremony (Section 496). It follows therefore that by merely alleging or showing that a person acted fraudulently, it cannot be assumed that he committed an offence punishable under the Code or any other law, unless that fraudulent act is specified to be an offence under the Code or other law."

Similarly, in order to make out a case of forgery, the ingredients of offence of forgery have to be proved by the complainant. Section 468 of IPC provides for combination of forgery alongwith cheating.

Now let us examine as to whether from the reading of the complaint and summoning order, the offences as alleged are made out or not. The forgery is of alleged lease deed (Annexure P-1). It has been executed between Karan Sodhi, the husband of the complainant-respondent, and Rohit Verma. This is with respect to taking on lease a portion of house No.B-34/1823/A Pavitter Nagar, Haibowal Kalan, Tehsil and District

Ludhiana w.e.f. 01.09.2013. Mr. Rohit Verma, the alleged landlord does not complain of any cheating or forgery. He does not dispute execution of the aforesaid lease deed. It is undisputed that petitioner herein i.e. Vijay Sodhi is neither party to the aforesaid lease deed nor attesting witness thereof. Gravamen of allegations made in the complaint are that the lease deed has been created to deprive the relief which has been prayed for by the complainant-respondent in criminal complaint filed under Section 12 of the Act of 2005 wherein she claims that she is entitled to re-entry in 'the shared accommodation'. She claims that this lease deed is result of forgery. On the other hand, it is the case of petitioner that respondent-complainant alongwith her husband started residing separately in the rented accommodation which was taken on lease vide lease deed Annexure P-1. She in her deposition while appearing in preliminary evidence has admitted that she alongwith her husband resided in rented accommodation for 2-3 months.

On careful reading of the operative part of the order of summoning which has been extracted above, it is apparent that the Court did not took trouble to analyze how and in what manner, even prima facie, offences under Sections 415, 463 or 468 of IPC are made out. As noted above, before an accused is summoned, prima facie the ingredients of offence of cheating are required to be noticed by the Court and after application of mind, the Court is required to prima facie found at the stage of summoning also that such offence is made out. Similarly, before summoning an accused under Section 465 of IPC, it has to be established, prima facie, at least, that there is some forgery which falls within the scope of Section 463 of the Code. Section 468 talks of combination of forgery for the purpose of cheating, thus, before an accused is summoned under Section 468, both the offences should have been prima facie made out. As noted above, it is apparent that petitioner herself when appearing in preliminary evidence has admitted that she has resided in a rented accommodation for a period of 2-3 months before she started residing with her parents.

Now the question is whether any offence is made out against the petitioner. As noted above, petitioner is not party to the aforesaid lease deed. Petitioner is father-in-law of the complainant. There is no finding of the Court or competent authority that the aforesaid lease deed has been prepared, procured or forged with a view to deprive the petitioner the relief under the Act of 2005. In these circumstances, only inescapable conclusion is that offences for which the petitioner have been summoned are not made out even prima facie on examination of material on its face value. The order passed by learned Judicial Magistrate while passing the order of summoning is result of non-application of mind. Summoning of an accused is a serious matter. An accused after having been summoned, is called upon to face criminal prosecution which would continue for years together. It is for this reason, a provision has been made to pass an order of summoning. In a criminal complaint, the summoning order is not passed merely on filing of the complaint similar to be a civil suit. The Code of Criminal Procedure specifically, makes a provision for issuing of process only after a Magistrate has formed an opinion for taking cognizance of an offence after reaching at a conclusion that there are sufficient grounds for proceeding. Section 204 of the Code of Criminal Procedure is mandatory. The aforesaid provision is extracted as under:-

> *"**204. Issue of process.-**(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be—*
>
> > *(a) a summons-case, he shall issue his summons for the attendance of the accused, or*
> >
> > *(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.*
>
> *(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.*
>
> *(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.*
>
> *(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.*
>
> *(5) Nothing in this section shall be deemed to affect the provisions of section 87."*

Section 204 of the Code of Criminal Procedure has been interpreted by Hon'ble the Supreme Court in series of judgments.

Reference in this regard can be made to judgment passed by Hon'ble the Supreme Court in the case of ***M/s Pepsi Food Ltd. and anothers Vs. Special Judicial Magistrate and others, (1998) 5 SCC 749***. It has been held in the aforesaid judgment that before issuing process as required under Section 204 of the Code of Criminal Procedure, it is duty of the Magistrate to take cognizance only after having formed an opinion that there are sufficient grounds for proceeding. The Magistrates have been cautioned time and again to be careful before passing such order. The order issuing process has to reflect application of mind. If the present case is examined on the touchstone of requirements of law, it is found that the learned Magistrate has failed to comply with the requirement of Section 204 of the Code of Criminal Procedure.

This Court finds that criminal complaint and order of summoning-issue of process and continuance thereof, against the petitioner would be abuse of process of the Court.

Keeping in view the aforesaid facts, the present petition is allowed. Criminal complaint as well as order issuing process which is commonly known as order of summoning against the petitioner is quashed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

22.10.2019 **(ANIL KSHETARPAL)**
Pawan **JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**