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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 24.12.2019

\+ CRL.M.C. 6705/2019 and CRL.M.A. 43525/2019

AVANI SINGH ..... Petitioner

Through: Mr. Bharat Singh and Mr. Suraj Prakash Pandey, Advs.

versus

STATE (NCT OF DELHI) & ANR ..... Respondents

Through: Mr. Panna Lal Sharma, APP for State with SI Shiv Singh, PS – Saket, New Delhi and SI Suraj Kumar, PS-Kapashera, S.W.D.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (ORAL)

CRL. M.A. 43526/2019

1. Allowed, subject to all just exceptions.

2. Application is disposed of.

CRL.M.C. 6705/2019

3. Vide the present petition, the petitioner seeks direction thereby to quash the Complaint Case No. 7003/2017 filed by the respondent No. 2 under Section 200 Cr.P.C, 1973 before the Ld. Metropolitan Magistrate, Dwarka Court, New Delhi and summoning order dated 15.01.2019, whereby the learned Trial Court has issued summons against the petitioner.

4. Brief facts of the case are that on 26.02.1994, the petitioner got married with Lt. Col. Manish Kumar, who was son of Mr. Mahipal Singh, complainant (respondent No. 2 herein). However, he died on 09.08.2013 due to cancer. But, the Petitioner continued to live with her ex-husband's family even after death of her husband.

5. On 10.07.2016, with the consent of Respondent No. 2, Petitioner re-married with his nephew- Mr. Nirdesh Malik. Immediately thereafter, the Respondent no.2 informed State Bank of India, Sector-10, Dwarka, New Delhi (hereinafter referred to as SBI) about said remarriage of the petitioner. The respondent No.2 also received acknowledgement letter dated 18.07.2016 issued by SBI with regard to information pertaining to remarriage of the petitioner. Further, SBI also got confirmation from the petitioner on phone about her remarriage.

6. In first week of September, 2016, the petitioner left for Nigeria to stay with her present husband who has been working there for many years.

7. In December 2016, the Petitioner came to India from Nigeria alongwith her husband. As family pension was still being credited in her SBI account, since July, 2016, so she personally went to SBI and met the Bank Manager and informed him that since, Respondent No. 2 had already

intimated to SBI about her remarriage, so why her family pension was still being credited into her account. The Manager of SBI told her that she should send a letter to the Army Authorities stating the fact that she has already remarried and thus, the family pension be stopped from 11.07.2016 onwards.

8. Accordingly, Petitioner made a representation to the Additional Directorate General Personnel and Services, AG's Branch, IHQ of MoD (Army), New Delhi, thereby requesting for transfer/allocation of ordinary family pension from Petitioner's Account to her two sons' account w.e.f 11.07.2016.

9. Despite her various requests made to the SBI and Army Authorities, still, the same was not stopped, therefore, Petitioner again made request to bank for stopping the family pension, however, still it was not stopped for the reasons best known to them. On 03.04.2017, Petitioner again represented to SBI, and finally, in May, 2017, payment of family pension was stopped from being credited into the account of the Petitioner.

10. Learned counsel for the Petitioner submits that on 13.04.2017, Petitioner refunded the entire amount of family pension from 10.07.2016 till 13.04.2017 in the account of Army Authorities. She did not use/withdraw

any amount from family pension account for her personal purpose. However, Respondent No.2 filed a Criminal Complaint under Section 156(3) Cr.P.C. read with Section 200 Cr.P.C., 1973 before the Ld. Metropolitan Magistrate, South West, Dwarka Court, New Delhi against the petitioner for initiating proceedings under Sections 406, 420, 468, 471, 120B and 34 of Indian Penal Code, 1860.

11. It is further submitted that on the aforesaid request made by the Petitioner to SBI, the Bank stopped the family pension and also, recovered the amount on 13.04.2017 from the petitioner which was credited in her account as family pension. In that regard, the Bank also issued certificate to the Petitioner. However, on 26.08.2017, the learned Metropolitan Magistrate, South West, Dwarka Court, New Delhi after perusing the detailed action taken report filed by the Police alongwith the relevant documents was pleased to reject the aforesaid complaint made under section 156(3), Cr.P.C., 1973 and the learned Magistrate granted liberty to the Respondent no.2 (Complainant) to produce witnesses for summoning of the Petitioner in the aforesaid criminal complaint made under Section 200 Cr.P.C., 1973.

12. Being aggrieved by the order dated 26.08.2019 passed by the learned

Metropolitan Magistrate, the respondent No. 2 filed Revision Petition No. 454/2017 under Section 497 Cr.P.C. before the learned Additional Sessions Judge, Dwarka Courts, New Delhi, however, same was dismissed vide order dated 25.10.2017.

13. Learned counsel further submits that on 15.01.2019, the Ld. Metropolitan Magistrate, South-West, Dwarka Courts, Dwarka, New Delhi without considering the facts and material available on record as well as the law, summoned the Petitioner by recording that the Petitioner filed a wrong certificate in the month of January, 2017 before the Bank mentioning that she was not married till said date and whenever she gets remarried, she will inform the Bank. Whereas, the respondent No. 2 himself informed the bank, immediately, after remarriage of petitioner solemnized on 10.07.2016 and SBI issued acknowledgment letter dated 18.07.2016 in that regard, therefore, the question of giving a wrong document by petitioner stating that she was not married does not arise. Further, the Bank has recovered the amount of family pension on 13.04.2017 which was credited into her account by mistake.

14. However, Petitioner came to know about aforesaid summoning order in the month of April, 2019, thereafter, on 10.05.2019 Petitioner came to

India from Nigeria and enquired about the present case. Learned counsel submits that the matter before the learned Metropolitan Magistrate was again listed for 07.09.2019 and 16.10.2019, however, the Petitioner could not appear due to pendency of renewal of residence permit to be issued by Nigerian Government. In the meantime, the Respondent no.2 moved an application for early disposal of the complaint and got the Non- Bailable Warrant issued against the petitioner for 16.10.2019. Due to the aforesaid reasons, in the month of October, 2019, the Petitioner requested the Nigerian Government for renewal of residence permit on an urgent basis and as such, the same was allowed in the starting of first week of November, 2019. Thereafter, the Petitioner came to India and appeared before the Ld. Metropolitan Magistrate, South-West, Dwarka Courts, Dwarka, New Delhi, who after considering the facts and circumstances, stayed the execution of NBW against the Petitioner and directed to list the matter on 12.12.2019.

15. However, when the petitioner went to attend the court hearing in Dwarka Court, respondent no.2 threatened her with dire consequences, if she will not transfer the entire property in his or his grandsons' name. He also threatened the petitioner that if she will not transfer it within one week, the respondent No. 2 will get petitioner killed by Goons. However, the

petitioner silently left the court premises and went to her matrimonial home at Gurgaon with her husband. On 14.11.2019, in the light of aforesaid threat, Petitioner lodged a complaint to S.H.O., Police Station - Kapashera, New Delhi against the Respondent No. 2, his wife, his son, namely, Mr. Pankaj Kumar and Bank officials of State Bank of India, Dwarka, New Delhi for harassing, torturing, criminally intimidating, defaming, cheating and molesting the Petitioner.

16. It is submitted that in the month of December 2019, the counsel for Petitioner made her records of the case available, which, on perusal, makes it clear that the complaint case has been filed by the Respondent no.2 just to harass the Petitioner and her husband with malafide intention to grab her properties. Thus, the complaint and proceedings thereto deserves to be quashed.

17. On the other hand, learned counsel appearing on behalf of the Respondent No. 2/ complainant submits that the Petitioner re-married on 10.07.2016 and thereafter, on 16.01.2017, submitted proforma declaring that she has not re-married during past six months and undertook to report as such, promptly to the bank. Thus, she was aware on 16.01.2017 that she remarried on 17.10.2016 and is not entitled for family pension, however, she

continued to have the pension and utilized the same for her personal purposes. Since, she had submitted a wrong statement before the bank, thus, she has cheated the grand children of Respondent No. 2 due to which they could not get the benefit of family pension to which they were entitled w.e.f. 10.07.2016. Thus, the learned Trial Court has rightly issued summons based upon the statement made by respondent No. 2 and witnesses from the bank.

18. Learned counsel further submits that in addition to the cheating, there are various properties in the name of the Petitioner, which were financed by Respondent No. 2 in the name of the Petitioner and after remarriage with the present husband, the Petitioner was supposed to transfer each and every property in the name of his grand children. Moreover, an amount of Rs.20-25 lakhs is lying in the FDRs in the name of the Petitioner which she has not transferred till date in the name of the children. Learned counsel submits that since the Petitioner already remarried and her right in property accrued in the present family w.e.f. 10.07.2016, but she is still enjoying the property to which the grand children of Respondent No. 2 are entitled.

19. Heard learned counsel for the parties in length and interacted with the parties in open Court.

20. It is not in dispute that the pension continued to be credited in pension

account of the Petitioner after 10.07.2016, when she remarried. It is also not in dispute that on 18.07.2016, the bank acknowledged the information made by the Respondent No. 2 regarding her remarriage on 10.07.2016. Thus, the bank was supposed to stop the family pension of the Petitioner, however, this did not happen. As per the letters, which are part of the present petition, the Petitioner informed the bank regarding her remarriage on 20.01.2017. Moreover, on 04.03.2017, the petitioner informed to the Army Authorities regarding her remarriage and requested that pension be accordingly modified.

21. Again on 03.04.2017, the petitioner requested the bank for stopping of the family pension. However, this fact has been disputed by the learned counsel for the respondent No. 2. But Respondent No. 2, who is present in Court has not disputed that he himself informed the Bank about Petitioner's re-marriage and to this affect, acknowledgment dated 18.07.2016 was issued by the Bank.

22. It is also not in dispute that vide order dated 13.04.2017, the excess amount credited in the account of the petitioner had been recovered by the Bank on the instructions of the Army Authorities and on 20.04.2017, the Bank issued the certificate to this effect to the Petitioner.

23. Regarding the properties, though not the issue in the present case, it is not in dispute that some of the properties were purchased in the name of the Petitioner. On perusal of the deposition of CW-1/ Respondent No. 2 made before the learned Metropolitan Magistrate, he deposed that the Petitioner had also kept various Fixed Deposits, which were kept in a Bank account maintained with SBI, Sector – 10, Dwarka, New Delhi, which belongs to Lt. Col. Manish Kumar, son of the complainant/ Respondent No. 2. The petitioner had jointly purchased some immovable properties alongwith Lt. Col. Manish Kumar and after remarriage of the petitioner, only his grandsons are entitled to those properties and not the petitioner. The Petitioner also took the gold jewellery along with her, after remarriage.

24. It is being stated at Bar by the petitioner, who is present in Court, that she has transferred two properties, one in Dwarka and another in Dehradun in the name of her children/ grand children of Respondent No. 2, though she was the absolute owner of the said properties. She has only two properties in her name, first, being a shop at Sohana Road, Gurugram (Haryana) as absolute owner and second, a flat in Dwarka (Delhi) having 50% ownership. It is also stated by the petitioner that a flat in Greater Noida was in the name of her husband and she was the nominee, but without her consent, mutation

has been sanctioned in favour of her children, to which she never disputed. However, the parties have liberty to approach the appropriate forum regarding the property dispute, if any.

25. Be that as it may, the present complaint has been filed by the Respondent No. 2, who is grandfather of children of the petitioner. This Court put a specific query to the learned counsel for the Respondent No. 2 that neither the Bank nor the Army Authorities nor the children, whose share was allegedly utilized by the Petitioner have made the complaint, but however, the grandfather of the children has filed the complaint but under what capacity?

26. To the aforesaid query, learned counsel for the Respondent No. 2 submits that the grandchildren are staying with the Respondent No. 2, he is taking care of all their needs and being guardian, he has filed the complaint on their behalf.

27. Moreover, he submits that there is no such ground taken by the Petitioner for quashing of the complaint and summoning order in the present petition.

28. For convenience, Section 420 IPC is reproduced as under: -

> *"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."

As per the said provision, whoever, cheats and thereby dishonestly induces the person deceived to deliver any property to any person, is guilty of cheating.

29. In the present case, Respondent No. 2, who is complainant, has not been induced to deliver any property to any person. Thus, the Respondent No. 2, by any stretch of imagination, cannot be complainant in the present case. If the petitioner continued to have family pension, for that purpose, either the Bank or the Army Authorities are entitled to initiate proceedings against the Petitioner, as per the law. But the Respondent No. 2 has *no locus* in the present case to file the complaint.

30. For the purposes of the commission of an offence, the ill-intention and *mens rea* is required. In the present case, from the facts narrated above, it is not established that she continued to have the pension with ill-intention. The Petitioner herself informed the Bank and Army Authorities and only

thereafter excess amount was recovered from the Petitioner. There is no such situation in the present case that after making complaint, the Petitioner has offered to pay excess amount. Thus, there is no *mens rea* on the part of the Petitioner.

31. Accordingly, in view of the above, I hereby quash the complaint and summoning order dated 15.01.2019, issued by the learned Trial Court.

32. Petition is accordingly allowed and disposed of.

33. Pending application also stands disposed of accordingly.

34. It is, hereby, made clear that observations made by this Court, with regard to any of the properties shall not effect the rights and contentions of the parties.

(SURESH KUMAR KAIT)
JUDGE

DECEMBER 24, 2019
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