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

Reserved on: 07.01.2020

Pronounced on: 13.02.2020

+ CRL.REV.P. 474/2017

JYOTI SAWHNEY

..... Petitioner

Through Mr.Maninder Singh, Adv. with
Ms.Aekta Vats, Mr.Vikram Kalra,
Mr.Sankalp Kolhi, Mr.Aahil Arora &
Mr.Dinhar Takiar, Advs.

versus

STATE GOVT OF NCT OF DELHI & ORS Respondents

Through Mr. Panna Lal Sharma, APP for State.
Mrs.Rebeeca M. John, Sr. Adv. with
Mr.B.Badrinath & Ms.Megha Bahl,
Advs. for R-2.
W/SI Mukesh Kumari PS Ambedkar
Nagar.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. The present petition has been preferred under sections 397 and 401 read with section 482 Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C. ') against the order on charge dated 14.02.2017 and the framing of charge dated 22.02.2017 passed by learned ASJ (FTC), Patiala House

Courts, New Delhi, in SC No.9416/2016, whereby respondent no.3 has been discharged of the offence of cheating under section 420 of Indian Penal Code (hereinafter referred to as '*IPC*') in spite of their being glaring prima facie evidence to charge him for the offence of cheating revisionist.

2. The brief facts of the case are that on 21.11.1992, marriage between petitioner and respondent no.3 was solemnized at Ashok Vihar, New Delhi. They were blessed with a son on 31.07.1995 and thereafter blessed with daughter on 22.12.1998.

3. As stated in the present petition that marriage between the petitioner and respondent no.3 was rocky and there was extreme discord and disharmony, due to which petitioner and respondent no.3 decided to dissolve their marriage. Consequently, an Agreement dated 13.02.2012 was executed between them whereby petitioner was promised, induced, allured and enticed by respondent no.3, to believe that respondent no.3 would be paying her a sum of ₹9,00,00,000/- (Rupees Nine Crores Only), over and above what she would receive in Divorce Proceedings. Subsequently, on the same date i.e. on 13.02.2012, a Petition under section 13-B(1) of the Hindu Marriage Act, 1955, between the petitioner & respondent no.3, was signed, their Affidavits attested and the same was filed before the Filing Section and

allowed vide order dated 15.02.2012 whereby it has been observed by the learned Principal Judge, Family court, Saket (South), New Delhi as under:

“It has been mutually agreed between petitioners that petitioner No. 2 shall pay a total amount of Rs.1 crore to petitioner No. 1 towards the full and final settlement qua her past, present and future maintenance, entire stridhan and permanent alimony, out of which, a sum of Rs. 5,00,000/- vide Demand Draft bearing No. 986073, dated 29.01.2012, in favour of petitioner No. 1 in the Court. The balance amount of Rs. 95,00,000/- has been agreed to be paid by petitioner No. 2 to petitioner No. 1 at the time of passing of order/decreet.”

4. It is not in dispute that agreement dated 13.02.2012 was notarized by the parties on 03.03.2012. Thereafter on 31.08.2012, the petitioner and respondent no.3 entered into a Settlement Agreement, whereby, it was agreed that for the purpose of obtaining the Divorce Decree, Respondent No.3 would pay ₹5,00,00,000/- instead of ₹1,00,00,000/- as had been agreed during the filing of the Petition under section 13-B(1) of the Hindu Marriage Act, 1955.

5. Relevant portion of the same is reproduced as under:

“AND WHEREAS the parties above named had filed a petition under Section 13B(1) of the Hindu Marriage Act, 1955 bearing HMA No. 134 of 2012 before the Court of Shri. K.S. Mohi, Family Court, Saket Court Complex, New Delhi. That in terms of the mutual consent petition

under Section 13B(1) of the Act it was clearly averred that both the parties have been living separately since January 2010 due to differences in their temperamental attitude and have not resumed cohabitation thereafter and there is no possibility of living together as husband and wife and it was agreed that the Second Party .i.e., the husband shall pay a sum of Rs.1,00,00,000/- (Rupees one crore only) towards full and final settlement of all the past, present and future maintenance, stridhan and permanent alimony qua the First Party in respect of which Rs. 5,00,000/- (Rupees Five Lakhs only) was paid vide Demand Draft No. 986073 dated 29.1.2012 in favour of the First Party and the balance amount of Rs.95,00,000/- (Rupees Ninety Five lakhs only) was liable to be paid to the First Party at the time of passing of the order/decreet.”

“ ”

"1. That it has been decided between the parties above named that in total a sum of Rs. 5.00 crores (Rupees Five Crores only) shall be paid to the First Party towards all her claims in respect of stridhan, maintenance, permanent alimony, right of residence, etc., by the Second Party. That out of the sum of Rs. 5.00 crores (Rupees Five Crores) the Second Party shall make an FDR in the sum of Rs.2.5 crore (Rupees Two Crores Fifty Lacs only) in the name of the minor daughter Sarah Sawhney under the guardianship of Ms. Jyoti Sawhney."

6. Mr. Maninder Singh, learned counsel for the petitioner submits that in the Settlement Agreement dated 31.08.2012, agreement dated 13.02.2012 does not even find mention and in fact, the Agreement dated 13.02.2012 did not even see the light of day in the entire Divorce Proceedings before the Ld. Family Court. Even otherwise, it is suffice to say that the Agreement dated

13.02.2012 is independent of Decretal Amount in the Divorce Proceedings and has not been superseded ever. Ld. Family Court was pleased to record the statements of petitioner as well as Respondent No.3 in Petition U/S 13-B(2) of the Hindu Marriage Act, 1955. Vide order dated 04.09.2012, learned Family Court was pleased to allow the petition by dissolving the marriage between them.

7. It is further submitted that on 09.04.2014, FIR No.305/2014 was registered at Police Station Vasant Vihar, New Delhi on the complaint of petitioner against respondent no.3 for commission of offence punishable under section 376/377/420 IPC. However, Trial Court while charging respondent no.3 for the offence under section 376(2) (n) of IPC erroneously discharged him for the commission of offences under section 420 IPC.

8. Learned counsel submits that to appreciate offence punishable under section 420 IPC, it is to be established that offence of cheating has been committed and ingredients of Section 415 of the IPC which defines the offence of cheating are fulfilled. There should be a dishonest or fraudulent intention at the time of making promise for the purpose of causing inducement to deliver any property to any person.

9. To strengthen his argument, learned counsel for the petitioner has relied upon the case of ***Hirdaya Ranjan Prasad Verma & Ors. Vs. State of Bihar & Anr.: (2000) 4 SCC 165***, therein, the Hon'ble Supreme Court after examining definition of "*cheating*" opined that there are two separate class of acts which persons deceived may be induced to do. In the first place, he may be induced fraudulently or dishonestly to deliver any property to any person. Second class of acts set forth in the section is 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 inducement may be fraudulent or dishonest. Whereas, in the second class of acts, the inducement must be intentional but not fraudulent or dishonest. A guilty intention is an essential ingredient of offence of cheating. In order to secure conviction of a person for the offence of cheating, "*mens rea*" on the part of that person, must be established.

10. He further relied upon the case of ***Kailash Nath vs. State: 1969 (5) DLT 426***, wherein, this Court while refusing to discharge the petitioner therein of the offence under section 420 IPC has observed as under:

"10. This takes me to the charge under section 420 Indian Penal Code. The contention of the learned counsel for the petitioner is that there is no evidence to support the

complainants' allegations about any fraudulent misrepresentation having been made by the petitioner. I am however not impressed by this argument at this stage. It is no doubt true that ordinarily when a person deposits money with another for the purpose of earning interest thereon the ordinary relation of a debtor and a creditor is created between the parties. From that, however, it does not necessarily follow that in every case where money is deposited by one person with another the question is one of civil liability only. The essential ingredient of an offence under section 420 Indian Penal Code is that there should be ab initio dishonest intention on the part of the accused to knock out money from the complainant by means of fraudulent representations. This intention can be proved not only by the oral evidence of witnesses but also by surrounding circumstances including circumstances which precede and follow the transaction whereby the complainant has been made to part with his money. It is not possible to say at this stage, that the charge against the petitioner for an offence under section 420 I.P.C. is entirely groundless. It is however quite possible that at the trial the petitioner may be able to show by cross-examination of witnesses and or by defense evidence that there was no intention on his part to cheat the complainants and that the transaction between the parties was one of civil nature. The framing of charge against the petitioner has no other significance except that there is a prima facie case which requires to be tried. It is no indication of guilt of the person charged with the offence."

11. In view of the settled law, learned counsel for petitioner submits that Trial Court lost sight of the fact that at stage of charge, the court has to arrive at only a prima facie finding that a charge could be sustained with the

materials on record and not rely on the grounds relied upon by accused, which are not gospel truth and accused requires evidence to prove the same which can only be adduced at the stage of trial.

12. He further submitted that holding of a mini trial at the time of framing of charge has been deprecated by the Hon'ble Apex Court in ***Indu Jain vs. State of M.P.: (2008) 15 SCC 341***, whereby it was held in Para 39 that: -

"As observed in Kewal Krishan case, at the stage of framing of a charge, the court is not required to go into the details of investigation but to only arrive at a prima facie finding on the materials made available as to whether a charge could be sustained as recommended in the charge-sheet. The same view has been reiterated in Debendra Padhi case and in Bharat Parikh v. CBI wherein the holding of a mini trial at the time of framing of charge has been deprecated."

13. Learned counsel submits that in view of the facts and legal position as cited above, present petition deserves to be allowed.

14. On the other hand, Ms. Rebeeca John learned senior counsel appearing on behalf of respondent no.3 submits that FIR in the present case came to be registered on 08.04.2014 for an incident which purportedly took place on 12.08.2013 i.e. after a delay of 240 days. The entire substance of accusation is based on the allegation that having entered into a settlement

dated 13.02.2012 and promising to pay a sum of ₹9 crores towards permanent alimony, the accused/respondent no.3 induced complainant to execute a settlement dated 31.08.2012 and obtained divorce by making a payment of ₹5 crores (₹2.5 crores in favour of their daughter and ₹2.5 crores in favour of complainant). It has been alleged that after obtaining divorce on 04.09.2012, respondent no.3 did not pay any money to the petitioner in terms of the agreement dated 13.02.2012 and thereby, cheated the complainant. It has further been alleged that despite verbally demanding for money payable under agreement dated 13.02.2012, respondent no.3 refused to make any payment. Further alleged that in order to avoid making any payment to the petitioner, respondent no.3 induced her with a false promise of marriage (re-marriage) stating that up on marriage, the question of payment of such amounts would not arise. It has been further alleged that by making false promise of marriage, respondent no.3 indulged in a physical relation with the complainant on 12.08.2013.

15. Ld. senior counsel submitted that petitioner and respondent no.3 got married on 21.11.1992 and divorced on 04.09.2012. Petitioner is an educated lady (Graduate in English Hons.) hailing from an affluent family. She has travelled across the world and is well known in social circles of

Delhi. She operates her own business and is capable of understanding the consequences of her acts. Petitioner voluntarily entered into the agreement 31.08.2012 and obtained divorce on the basis of the said agreement. The statement of petitioner, on oath, was also recorded by the Ld. Family Court to the effect that she shall abide by the terms and conditions of agreement dated 31.08.2012. Having novated agreement dated 13.02.2012 with the agreement dated 31.08.2012, earlier agreement dated 13.02.2012 was rendered unenforceable. Petitioner has not initiated any civil suit to seek declaration regarding the subsistence of the agreement dated 13.02.2012 or enforcement of her right to receive money under the said agreement.

16. Learned senior counsel has relied upon section 62 of the Indian Contract Act, 1872 which reads as under:

“62. Effect of novation, rescission, and alteration of contract:

If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed..”

17. She submits that petitioner has failed to place any material on record to show any communication between the petitioner and respondent no.3 between 13.02.2012 and 31.08.2012 i.e. after respondent no.3 purportedly

agreed to pay ₹9 crores to petitioner, till execution of the second agreement (31.08.2012) seeking additional payment of ₹5 crores as per the agreement dated 13.02.2012. Furthermore, even after divorce on 04.09.2012, petitioner has not placed any document / communication on record to show that petitioner ever demanded payment of money, due to her, under agreement dated 13.02.2012. Moreover, petitioner has failed to place any material on record to show that respondent no.3 had agreed to purchase a house for her in addition to giving alimony. Petitioner has not cited any witness to prove the said fact. To the contrary, in Column 2 of the agreement dated 31.08.2012, petitioner has agreed to purchase a residential house for herself, out of ₹2.45 crores paid by the respondent no.3 as alimony. Consequently, agreeing to all the conditions of agreement dated 31.08.2012, petitioner has falsely alleged fraud only to extort money from respondent no.3.

18. Ld. counsel further submitted that communication between petitioner and respondent no.3 were initiated by petitioner only in June, 2013 (i.e. after about 10 months of divorce), when petitioner lodged an FIR against one Sumit Walia (FIR 280/2013 PS Vasant Vihar u/s 376/406/506 IPC) after having lost all her money to him. Case of petitioner is that she contacted respondent no.3 only to seek financial assistance because of having lost all

her money to Sumit Walia.

19. She also submitted that petitioner was initially defending Sumit Walia in FIR 294/12 with PS Vasant Vihar, New Delhi, under section 384/506/509 IPC and was in touch with various police officials and lawyers. However, no complaint or demand was made vis-a-vis money purportedly payable under the agreement dated 13.02.2012. The said agreement appears to have been attested only in December 2012 and not in March 2012.

20. While concluding her arguments, learned senior counsel for the respondent no.3 submits that petitioner preferred civil suit bearing no. 04/2014 before the Ld. Family Courts, New Delhi seeking declaration of the decree dated 04.09.2012 as null and void. Upon service of summons in said suit, respondent no.3 preferred a contempt case bearing Cont. Cas. No. 315/2015 before this court, seeking initiation of contempt proceedings against petitioner for violation of terms of settlement dated 31.08.2012 and undertaking dated 01.09.2012. This Court was pleased to record undertaking of the petitioner that she would withdraw said civil suit and disposed of the abovementioned petition. On 12.10.2015, statement of petitioner was recorded by the Ld. Court and on 04.11.2015, said suit was dismissed as withdrawn. Hence terms of settlement dated 31.08.2012 is binding on the

petitioner. Thus, present petition deserves to be dismissed.

21. It is not in dispute that allegations regarding cheating are that during divorce proceedings between petitioner and respondent no.3, said respondent induced her to enter into an agreement of ₹9 crores separately, though there was settlement for total amount of ₹14 crores and after divorce, he had also promised to buy a house for petitioner and that he will look after her daughter and provide all amenities as per the status enjoyed by them. At the time of first motion, respondent no.3 got the petitioner's signature for the settlement of Rs.1 Crore but in fact paid Rs. 5 crores and the documents were obtained by misrepresenting the petitioner that it was format of the court.

22. Case of petitioner is that at the time of second motion, the respondent no.3 stated that Rs.2.5 crore would be given to their daughter in form of FDs and Rs.2.45 crore to petitioner and said that remaining amount out of Rs.9 crore settled outside the court would be paid later on due to taxation issues. However, respondent no.3 did not keep his promise and got the divorce petition signed in the absence of any lawyer of petitioner by arranging junior of his advocate. However, after the decree of divorce dated 04.09.2012, respondent no.3 did not pay any money despite repeated requests and thus,

cheated the petitioner.

23. Here, Section 415 of IPC is relevant which defines '*cheating*' as "*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 of omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property is said to "cheat".*"

24. Section 420 of the IPC states that "*in case the person cheats and dishonestly induces the other 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.*"

25. From the allegations in complaint and statement of petitioner, it is to be seen as to whether she was cheated or not. Case of petitioner is that there was an agreement dated 13.02.2012 which was never complied with by

respondent no.3.

26. In present case, if the agreement dated 13.02.2012 was not complied with regarding payment of amount, petitioner could avail correct recourse of law by filing civil suit for specific performance of said agreement dated 13.02.2012. Undisputedly, divorce between the parties took place on 01.09.2012. As per allegation, during this period, respondent no.3 was not performing said agreement and pretending that he would be making payment outside the court. This version of the petitioner even if presumed to be entirely correct, it cannot be said that the petitioner was induced not to get it performed and thereby she was cheated. The petitioner was having remedy before the Court of competent jurisdiction at the time of divorce petition and she could have disclosed said fact and not enter into the agreement with respondent no.3 for passing first motion or final motion of divorce. However, she never made any complaint before Competent Court that there was any other agreement whereby she was assured of additional payment over and above the settlement amount arrived at between the parties in the divorce proceeding. During Court proceeding, at the time of pendency of divorce petition, no objection was raised regarding the amount of permanent alimony by petitioner.

27. However, based upon the allegations, petitioner has sought remedy that the court should go behind the settlement arrived between the parties at the time of divorce which is not permissible under the law.

28. In view of above, the learned Trial Court opined that the remedy, if any, regarding this allegation was available with petitioner at the time of divorce proceeding or if any before the Civil Court for the recovery. It cannot be said that the petitioner was ever induced to agree to the settlement amount arrived at before Id. Family Court by respondent no.3 with assurances and making petitioner believe that remaining payment would be made later on. It was a separate agreement and was capable of being specifically performed. In the agreement itself, it is clearly stipulated that amount of Rs.9 Crore will be paid after divorce. Thus, it was an independent agreement between the parties having no concern with mutual settlement arrived at in divorce proceedings. Accordingly, learned Trial Court observed that it could have been enforced to be performed separately. It cannot be said that because of this agreement, petitioner was induced to enter into the settlement in divorce proceedings.

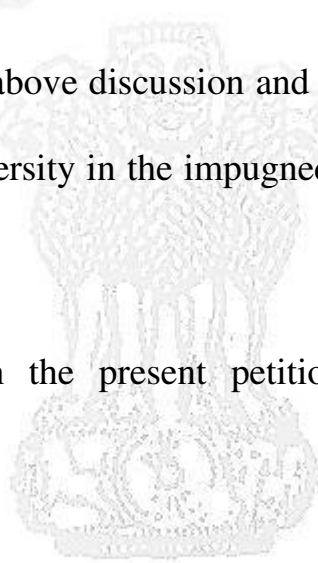
29. In addition to above, learned Trial Court observed that during the argument, it was disclosed on behalf of respondent no.3 that petitioner filed

suit bearing No.04/14 before Ld. Family Court regarding this allegation, but said suit was withdrawn. This fact was not denied on behalf of petitioner. Thus, learned Trial Court arrived at a conclusion that there is no material available on record to induce the petitioner later on.

30. In view of the above facts narrated above, the judgments relied upon by the counsel for the petitioner are of no relevance.

31. Keeping in view the above discussion and the settled position of law, I find no illegality and perversity in the impugned order passed by the Trial Court.

32. Finding no merit in the present petition, same is, accordingly, dismissed.


(SURESH KUMAR KAIT)
JUDGE

FEBRUARY 13, 2020
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