

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M No.3744 of 2018 (O&M)
Date of decision:14.03.2024

Bajrang

versus

...Petitioner

State of Haryana and others

...Respondents

2. CRM-M No.35211 of 2018 (O&M)

Sandeep Kumar

versus

...Petitioner

State of Haryana and others

...Respondents

3. CRM-M No.35259 of 2018 (O&M)

Madan Lal alias Madan Lal Jain

versus

...Petitioner

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: - Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Sukhcharan Singh Gill, Advocate
for the petitioner(s)

Ms. Garima Sharma, Advocate
for the private respondents

Mr. Vikas Bhardwaj, AAG Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. This common order shall dispose of three petitions, details of which are given above, as they arise from similar factual matrix. However, for the sake of brevity, facts are culled out from CRM-M No.3744 of 2018.
2. The petitioner in CRM-M No.3744 of 2018 has approached this Court under Section 482 Code of Criminal Procedure, 1973 (for brevity Cr.P.C.) for quashing of the impugned FIR bearing No.264 dated 19.09.2017

under Sections 120-B, 420, 467, 468, 471 of the IPC, registered at Police Station Civil Lines, District Bhiwani (Annexure P-1), as well as all subsequent proceedings arising therefrom.

FACTUAL BACKGROUND

3. The facts of the present case, tersely put, are that the impugned FIR was registered on the basis of a complaint filed by respondent no. 2, who was posted as a Computer Operator in the office of District Information Technology Society, Hisar (hereinafter referred to as 'DITS'), which is established under the Right to Information Act, 2005 (in short RTI Act). As per the FIR, an application under the RTI Act was received by him from the petitioner in CRM-M No.35211 of 2018 namely Sandeep Kumar, on 24.08.2017, seeking certain information regarding the DITS from 01.04.2006 till 22.08.2017. Since information sought was of more than a decade old and thus voluminous, the petitioner-accused was contacted and told to come in the office in order to peruse the record and the relevant information. However, the petitioner-accused informed the complainant that no such application was filed by him. When the DITS office conducted an enquiry, the petitioner-accused disclosed that the signature on the application is not his and it is a case of forgery. He further stated that on the asking of his brother-in-law, he had sent a photo of his Below Poverty Line Card on the Whatsapp account of Shri Balaji Paper Mart on 19.08.2017. The RTI application was resultantly filed by the petitioner-accused, namely, Bajrang in the place of Sandeep Kumar after enclosing copy of the latter's Below Poverty Card and forging his signature. Sandeep Kumar also supplied an affidavit to this effect. Hence, it was requested that appropriate legal action be taken against the accused as the RTI application was filed with a *mala fide* intent. Upon the basis of the said

complaint, FIR under Sections 420, 467, 468, 473, 120-B of the IPC was lodged.

CONTENTIONS

4. Dr. Anmol Rattan Sidhu, learned senior counsel assisted by Mr. Sukhcharan Singh Gill, Advocate appearing for the petitioner avers that the petitioner has been falsely implicated in the present case. In fact, Sandeep Kumar himself filed the RTI application on 24.08.2017, seeking information regarding the DITS office. The assertions made in the FIR are completely false. Sandeep Kumar was called in the office, where the office staff of the DITS misbehaved with him and snatched his mobile phone. They further coerced him to sign an affidavit stating that he had not filed the application but was filed by the petitioner-Bajrang of Balaji Paper Mart in his name.

5. Learned senior counsel further submits that the private respondents, who work at the DITS office, in order to escape from their liability to provide information under the Right to Information Act, as the said information relates to them, falsely got the present case registered against the petitioner by illegally and forcefully obtaining the signatures of Sandeep Kumar. In order to substantiate this contention, Sandeep Kumar has already moved various representations before the Superintendent of Police, Bhiwani and other competent officers upon realising that an FIR was registered on the basis of his wrongly obtained affidavit.

6. He further contends that neither any material is available on the record to indicate commission of offences as defined under Sections 420, 464, 467 of the IPC nor are the ingredients of the said offences as enumerated by the Hon'ble Supreme Court in *Dalip Kaur vs. Jagnar Singh (2009) 14 SCC 696* and *Mohd. Ibrahim vs. State of Bihar (2009) 8 SCC 751* made out for the reason that Sandeep Kumar himself has admitted to have filed the disputed RTI

application. The petitioner in CRM-M No.3744 of 2018 also filed a complaint (Annexure P-6) before the learned Illaqa Magistrate, Hisar against the private respondents for falsely implicating him in the instant FIR.

7. Per contra, learned State counsel and the counsel appearing for the private respondents argue that Madan Lal Jain is an aide of the petitioner and has been working on his behalf. He is also associated with the business of the petitioner. Further, there is a recorded telephone conversation between Sandeep Kumar and respondent No.2-complainant wherein Sandeep has denied filing of any application under the RTI Act. The copy of the BPL Card was sent by Sandeep Kumar to the petitioner-Bajrang on 19.08.2017 i.e. three days before the day on which the application in the name of Sandeep was submitted. Moreover, a bare perusal of the signatures on the application and on the affidavit submitted by Sandeep Kumar, reveal that there is variation of signatures.

8. It is further submitted that the forged RTI application has been made with an intention to cause a loss to the State Exchequer and to defraud the functionaries of the State. With respect to the application filed before the Superintendent of Police, Hisar, learned counsel contend that the fact that Sandeep Kumar suddenly resiled from his earlier version, hence, winning over of Sandeep by the petitioner cannot be ruled out.

OBSERVATIONS AND ANALYSIS

9. Having heard learned counsel for the parties and after perusing the record of the case as well as the case laws cited, this Court would like to examine the necessary ingredients constituting the offence of cheating as defined under Section 415 IPC as well as forgery as defined under Section 463 and 464 IPC. Sections 415, 463 and 464 IPC are reproduced 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”.

Explanation. – A dishonest concealment of facts is a deception within the meaning of this section.

463. Forgery. - Whoever makes any false document 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.

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.”

10. The essential ingredients for commission of offence of cheating are deception and inducement to deliver any property to any person or to consent that any person shall retain any property. There must be an intention to induce a person to do or omit to do anything which he would not do or omit if he were not so deceived, and the act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. Further, to attract ingredients of forgery, there must be making of a false document or false electronic record with an intention to cause damage or injury to the public or to any person.

11. A perusal of the record indicates that ingredients for the offence of cheating are not satisfied. There is nothing on record to show that the petitioner(s) have deceived any person fraudulently or dishonestly to deliver any property to any person. Therefore, a bare reading of the averments and allegations in the FIR would show that no case for offence under Section 420 IPC is made out. Making a false document as defined under Sections 463 and 464 IPC would show that there must be making of a false document with an intention to cause damage or injury to the public or any person. Making of the false document is *sine qua non* for launching prosecution under Sections 467, 468, 471 IPC. A bare perusal of the allegation contained in the FIR shows that it is not a case where the petitioner(s) dishonestly or fraudulently made a document with an intention of causing it to be believed that the document was

made by some other person. Neither it is a case that petitioner(s) had dishonestly or fraudulently altered a document in any material part thereof without lawful authority nor it is a case that the petitioners dishonestly or fraudulently caused any person to sign, execute or altered a document knowing that such person by reason of (i) unsoundness of mind; (ii) intoxication and (iii) deception practiced upon him, would not understand the contents of the documents or the nature of the alteration. Thus, the ingredients of forgery are attracted; if a person (i) made or executed a document claiming to be someone else or authorized by someone else; (ii) materially altered or tampered a document; (iii) procured a document by deception from a person, who is not in control of his senses. In the case at hand, there is no allegation that the petitioner(s) have dishonestly or fraudulently altered the BPL certificate with an intention to cause damage or injury to the public or any person. There is no delivery of any property or valuable security.

12. In the case at hand, FIR has been lodged at the instance of Sachin Kaushik, who was posted as Computer Operator in the office of DITS, Bhiwani alleging that the RTI application seeking certain information regarding DITS on behalf of Sandeep Kumar i.e. petitioner in CRM-M No.35211 of 2018 was not signed by him and his signatures were forged by one Bajrang i.e. petitioner in CRM-M No.3744 of 2018 and his BPL card was enclosed by said Bajrang with an intention to avoid payment of requisite fee to be submitted for obtaining the information sought in the RTI application. However, in the application (Annexure P-2) given by said Sandeep to SSP Bhiwani duly accompanied by affidavit, he specifically averred that the RTI application was filed by him and the complainant in FIR (supra) and other officials of DITS threatened him to implicate in a false case and got his statement recorded under coercion and also forced him to purchase an affidavit. Further, the petitioner in

CRM-M No.3744 of 2018 has filed a complaint before the Illaqa Magistrate against respondents No.2 and 3 for falsely implicating him in the FIR (supra) wherein Sandeep made a statement on oath that he had filed an application with the office of DITS, Bhiwani under the RTI Act, 2005 and he was telephonically informed by the staff of DITS, Bhiwani that the information is ready and he can collect the same by depositing additional fee of Rs.1,50,000/-. However, when he reached their office, respondents No.2 and 3 along with other officials manhandled him and threatened him to implicate in a false case. He was forcibly asked to sign on 4-5 blank papers and one affidavit. It was further stated that he sought RTI information for his personal use and not under pressure of anyone else.

13. There is no provision under the RTI Act or Rules made thereunder to file a complaint against an applicant, who sought any information under the said Act. No loss of property or valuable security has been caused to the complainant, who is an official working under the DITS, Bhiwani and therefore, he had no *locus standi* to lodge prosecution against the petitioner(s). In fact, the FIR ought to have been filed by Sandeep Kumar, whose signatures are alleged to have been forged by Bajrang, rather said Sandeep Kumar is seeking quashing of the FIR (supra) in CRM-M No.35211 of 2018 on the ground that he sought the information by filing an application under the RTI Act and respondents No.2 and 3 along with other officials obtained his signatures on blank papers and one affidavit, which were used by them against the petitioners, who are before this Court seeking quashing of the FIR (supra) by way of separate petitions.

CONCLUSION:

14. In view of the aforesaid facts and circumstances, this Court finds it a fit case to exercise power under Section 482 Cr.P.C. and consequently, FIR

No.264 dated 19.09.2017 under Sections 120-B, 420, 467, 468, 471 IPC registered at Police Station Civil Lines Bhiwani, District Bhiwani and all subsequent proceedings arising therefrom are quashed qua petitioners. All petitions stand allowed accordingly.

(HARPREET SINGH BRAR)
JUDGE

March 14, 2024

Pankaj*

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No