2024:PHHC:084282

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-56222-2022
Date of decision : 30.05.2024

Director Foreign Post of Delhi ..... Petitioner

versus

State of Haryana and another ...... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Ms. Puneeta Sethi, Advocate
for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

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PANKAJ JAIN, J. (ORAL)

1. Petitioner seeks quashing of FIR No.0053 dated 10.03.2022, registered for offences punishable under Sections 406 and 420 of IPC at Police Station Sector 20, Panchkula.

2. The contents of the FIR reads as under:-

> "Copy complaint No. 42-Dasti dated 11.02.2022 Ajane Shri Ramesh Kumar Gulia Assistant Commissioner of Police Panchkula, after investigation order was received at Bajaria postal station to accuse Afsaran Bala, the essence of which is in such a way that the manager of the police station Sector-20 in the service Panchkula Sir it is requested that I am posted as Assistant Commissioner of Police Panchkula. My friend who lives in Australia. He sent me iphone 13 pro max. The phone which was received by the Director Foreign Post Office Delhi, which I videographed and got it checked from

> Apple Phone Store, after that I came to know that the phone which my friend had sent was fraudulently changed and sent to me. Those Director Foreign Post Office Delhi people who fraudulently changed my phone and kept another phone which was already used. You are requested to file a case against the Director Foreign Post Office Delhi and its employees who have changed my phone by doing this fraud with me. documents which are attached herewith. SD- Rarnesh Kumar Gulia, Ramesh Kumar Gulia Assistant Commissioner of Police Panchkula. Proceedings of the police station The above complaint No. 42-Dast date 11.02.2022 Ajane Shri Ramesh Kumar Gulia Assistant Commissioner of Police Panchkula after the inquiry and order to accuse Afsaran Bala on receipt in the Bajaria postal station, from the substance of the complaint, the offense of section 406,420 IPC If found to be happening, charge number 53 dated 10.03.2022 section 406, 420 IPC police station Sector-20 Panchkula will be registered and the copy of the case will be handed over to Deputy Commissioner Rajpal No. 83/Pachkula for further investigation. Copies of the FIR Information Report are being sent to the service of Bajaria Post Afsaranabala. The situation manager police station was told Bajaria phone. Recording was done as per law. Note The above charge was registered in the presence of Mr. Balkar Singh."

3. Counsel for the petitioner submits that the petitioner is working as Director Foreign Post, New Delhi. The allegation is against one daily wager of having stolen the articles of two parcels booked with the department. Daily wager accepted his guilt and returned the contents of both the parcels to the Branch Supervisor which was again dispatched to the destined address

after re-packing. The petitioner who was posted as Head of the department and was working as Director had nothing to do with the incident. Incident is of Delhi, yet FIR was registered at Police Station, Panchkula and the petitioner has been nominated without there being any allegation against him merely on account of him holding office as incharge of the department.

4. Counsel for the petitioner has relied upon Section 6 of the Indian Post Office Act, 1898 which deals with the exemption from liability for loss, misdelivery, delay or damage and thus submits that there is no allegation against the petitioner to constitute offence punishable under Sections 406 and 420 of IPC against the present petitioner.

5. Reply on behalf of the State has been filed. It is not in dispute that the petitioner has been nominated in the FIR for being in office. It is not denied that so far as personal connivance of the petitioner is concerned, there is no such allegation and no incriminating evidence came to the light during the course of investigation pointing towards his culpability.

6. Before proceeding ahead, it will be apt to peruse Section 405 and 415 of IPC, which read as under:-

> **"405. Criminal breach of trust—**
> Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".
> **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."

7. An essential ingredient of the offence of cheating is guilty intention, i.e. 'mens rea' on the part of the accused must be established before he can be convicted of an offence of cheating. Apex Court in ***Mahadeo Prasad v. State of West Bengal AIR 1954 SC 724***, held as under :

> "Where the charge against the accused is under Section 420 in that he induced the complainant to part with his goods, on the understanding that the accused would pay for the same on delivery but did not pay, if the accused had at the time he promised to pay cash against delivery an intention to do so, the fact that he did not pay would not convert the transaction into one of cheating. But if on the other hand he had no intention whatsoever to pay but merely said that he would do so in order to induce the complainant to part with the goods then a case of cheating would be established."

8. In ***Hari Prasad Chamaria v. Bishun Kumar Surekha & Ors., AIR 1974 Supreme Court 301***, it was held that:

> "xx xx xx
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> 4. Even after making that allowance, we find that the complaint does not disclose the commission of any offence on the part of the respondents under Section 420 Indian Penal Code. There is nothing in the complaint to show that the respondents had dishonest or fraudulent intention at the time the appellant parted with Rs. 35,000. There is also nothing to indicate that the respondents induced the appellant to pay them Rs. 35,000 by deceiving him. It is further not the case of the appellant that a representation was made by the respondents to him

at or before the time he paid the money to them and that at the time the representation was made, the respondents knew the same to be false. The fact that the respondents subsequently did not abide by their commitment that they would show the appellant to be the proprietor of Drang Transport Corporation and would also render accounts to him in the month of December might create civil liability for them, but this fact would not be sufficient to fasten criminal liability on the respondents for the offence of cheating."

9. Further in ***G.V. Rao v. L.H.V. Prasad & Ors., 2000(2) RCR (Criminal) 290 (SC) : 2000(3) SCC 693***, it was reiterated that:-

"xx xx xx

6. Intentional deception which must be intended not only to induce the person deceived to do or omit to do something but also to cause damage or harm to that person in body, mind, reputation or property. The intentional deception presupposes the existence of a dominant motive of the person making the inducement. Such inducement should have led the person deceived or induced to do or omit to do anything which he would not have done or omitted to do if he were not deceived. The further requirement is that such act or omission should have caused damage or harm to body, mind, reputation or property.

7. As mentioned above, Section 415 has two parts. While in the first part, the person must "dishonestly" or "fraudulently" induce the complainant to deliver any property; in the second part, the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be

dishonest or fraudulent. In the second part, the inducement should be intentional. As observed by this Court in ***Jaswantrai Manilal Akhaney v. State of Bombay AIR 1956 SC 575***, a guilty intention is an essential ingredient of the offence of cheating. In order, therefore, to secure conviction of a person for the offence of cheating, "mens rea" on the part of that person, must be established. It was also observed in ***Mahadeo Prasad v. State of West Bengal AIR 1954 Supreme Court 724***, that in order to constitute the offence of cheating, the intention to deceive should be in existence at the time when the inducement was offered.

8. Thus, so far as second part of Section 415 is concerned, "property", at no stage, is involved. Here it is the doing of an act or omission to do an act by the complainant, as a result of intentional inducement by the accused, which is material. Such inducement should result in the doing of an act or omission to do an act as a result of which the person concerned should have suffered or was likely to suffer damage or harm in body, mind, reputation or property. In an old decision of the Allahabad High Court in ***Empress v. Sheoram and another, (1882) 2 AWN 237***, it was held by Mahmood, J.:-

> "That to palm off a young woman as belonging to a caste different to the one to which she really belongs, with the object of obtaining money, amounts to the offence of cheating by personation as defined in Section 416 of the Indian Penal Code, which must be read in the light of the preceding, Section 415."

10. Keeping in view the admitted case of the prosecution that so far as the petitioner is concerned, his personal connivance is not alleged, but he stands nominated only for being head of the department, this Court finds that in the absence of the allegations against the petitioner, impugned FIR for offences punishable under Sections 406 and 420 of IPC cannot be sustained. In order to book the petitioner, there has to be allegation constitute offence of breach of trust as adumbrated under Section 405 of IPC and that of cheating as defined under Section 415 of IPC.

11. Trite it is that in criminal jurisprudence, there is no concept of vicarious liability.

12. There being no allegation against the petitioner to constitute offence defined under Sections 415 and 405 of IPC, this Court is of the opinion that instance case would necessarily fall within the parameters laid down by Supreme Court in the case of **State of Haryana and others vs. Ch. Bhajan Lal and others reported as 1992 SCC (Cri) 426,** wherein Apex Court held as under:-

> *"107. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any*

precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a noncognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the

accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

13. In view of above, present petition is allowed. FIR No.0053 dated 10.03.2022, registered for offences punishable under Sections 406 and 420 of IPC at Police Station Sector 20, Panchkula and all proceedings arising therefrom, are, hereby, quashed qua the petitioner.

(PANKAJ JAIN)
JUDGE

30.05.2024
Dinesh

Whether speaking/reasoned Yes

Whether Reportable : No