



2024:DHC:10058



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

% Reserved on : 04.10.2024
Pronounced on : 24.12.2024

+ **CRL.M.C. 4047/2024**
POONAM BHARADWAJPetitioner
Through: Mr. Namit Saxena and Mr. Pranav K.,
Advvs.
versus
STATE NCT OF DELHI & ANR.Respondents
Through: Mr. Laksh Khanna, APP for State
with SI Mohit Verma, P.S. Parliament
Street.
Mr. Sharat Kapoor, Mr. Shubh
Kapoor and Ms. Bhavyah Garg,
Advvs. for R-2.

+ **CRL.M.C. 5419/2024 and CRL. M.A. 20727/2024**
ASHISH ABROLPetitioner
Through: Mr. Sharat Kapoor, Mr. Shubh
Kapoor and Ms. Bhavyah Garg,
Advvs.
versus
STATE NCT OF DELHI & ANR.Respondents
Through: Mr. Laksh Khanna, APP for State
with SI Mohit Verma, P.S. Parliament
Street.
Mr. Namit Saxena and Mr. Pranav K.,
Advvs.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present petitions are preferred by the complainant and the accused, respectively, both assailing the judgment dated 01.04.2024 passed



by the learned ASJ-05, Patiala House Court, New Delhi, vide which while the accused/*Ashish Abrol* was discharged under Section 468 IPC, the charges framed under Sections 420/471 IPC against him were upheld. Notably, the impugned order was passed in CrI. Rev. No.515/2023 filed by the complainant/*Poonam Bharadwaj* against the order on charge dated 31.05.2023 passed by the Trial Court.

Since common submissions have been addressed in both the petitions, the same are taken up for consideration together.

2. As per the facts of the present case, the complainant/*Poonam Bhardwaj* claiming herself to be wife of the accused/*Ashish Abrol*, in her complaint alleged that she was made a co-applicant in seeking home loan for purchase of property bearing No. C-4, 1st floor, Kailash Colony, New Delhi (hereinafter, '*subject property*') from Standard Chartered Bank (hereinafter, '*SCB*'). Even though the subject property was bought in the name of the accused and his mother, *Rekha Abrol*, the complainant claimed to have transferred money into the account of the accused *vis-à-vis* the said home loan.

3. On account of matrimonial discord, the parties started living separately. It was further alleged that at the time of loan closure, the accused submitted a letter of authorisation on behalf of the complainant alongwith a photocopy of her expired passport as an identification document with the SCB. It is claimed that the accused forged her signatures on the authorisation letter, as a result of which, the accused was able to take the title documents of the subject property in his possession. Consequently, the present FIR bearing FIR No.152/2015 came to be filed against the accused at P.S. Parliament Street, Delhi, and after investigation, the chargesheet was



filed under Sections 406/420/468/471 IPC.

Vide order dated 31.05.2023 passed by the learned JMFC-06 Patiala House Courts, Delhi, charges were framed under Sections 420/468/471 IPC against the accused. In the revision proceedings, however, while charges framed under Sections 420/471 IPC were upheld, the accused was discharged for commission of offence punishable under Section 468 IPC. Hence, while the accused has assailed the impugned order seeking discharge under Sections 420/471 IPC, the complainant has challenged the discharge of the accused under Section 468 IPC.

4. Learned counsel for the complainant submits that the subject property was purchased by the accused in the name of his mother and himself, however, the complainant was made a co-applicant for the purpose of securing a home loan for it. It is submitted that when the complainant realised the accused's malicious intent to obtain property documents from banks and selling the concerned properties in order to misappropriate their proceeds, the complainant filed a complaint with the SCB's Customer Care Division on 24.03.2015, whereafter, they provided her with a copy of an authorisation letter supposedly filed on her behalf by the accused with respect to the bank account numbers 43863256 and 45700613, as per which, SCB was authorised to hand over all the loan related documents to her husband/accused after loan closure. Learned counsel contends that the complainant had never written the aforesaid authorisation letter which was undated and handwritten and that the same was forged in order to usurp her rights in the subject property as well as defeat her right to the documents. It is further contended that the accused also provided a photocopy of the complainant's passport as proof of identification to SCB, however, the same



had already expired on 08.10.2011 and therefore, not valid at the time of loan closure. In support of his contentions, learned counsel draws the Court's attention to the RFSL Report, which opines that the signatures on the aforesaid authorisation letter and the copy of the passport did not match with the complainant's signatures. In fact, there was some similarity found in the alleged signatures of the complainant and the accused, suggesting that the accused had forged the said documents. It is also submitted that neither the loan closure request letter nor the loan closure forms were written/signed by the complainant. Learned counsel has also relied on the testimony of one *Sunil Balodi*, the Branch Sales Manager/bank official at SCB, who has stated that on the day the subject loans were closed, the accused appeared alone without the complainant. It is, therefore, submitted that the accused has *prima facie* forged the signatures of the complainant on multiple documents in order to cause wrongful loss to her and prays that the accused be also charged with Section 468 IPC.

5. Learned counsel for the accused, on the other hand, while opposing the above prayer, submits that it was the complainant herself who had asked for the foreclosure of the loans from SCB wherein she was admittedly a co-applicant, in order to protect her credit rating/CIBIL score. It is further submitted that the accused was rightly discharged for the offence under Section 468 IPC by the learned ASJ, who had noted in the impugned order that the FSL report relied upon by the complainant was in fact, inconclusive and without any definitive opinion, hence, not proving the challenged documents to be forged by the accused. It is further contended that the complaints dated 30.03.2015 and 10.04.2015 were filed by the complainant as an afterthought, subsequent to the initiation of the divorce proceedings in



2013 and though the present matter is essentially a matrimonial dispute in nature, the FIR has been registered for the purpose of harassing the accused. Learned counsel also points out that the title of the subject property was anyway in the name of the accused and his mother, therefore, even if the complainant were to be given the loan closure documents, the same would not transfer any right in the subject property to her and that there was no wrongful loss in order to constitute the offences of cheating and forgery. It is also pointed out that the complainant has never challenged the factum of ownership of the property and was aware of the same from the beginning. The monetary transactions relied upon by the complainant in order to purchase the subject property must be seen in light of the fact that the parties were married at the time and the transaction were staggered in nature, not giving rise to any conclusive payment towards the purchase of the subject property. He further relies upon the decision of the Supreme Court in Union of India vs. Prafulla Kumar Samal & Anr., reported as **1979 3 SCC 4**, to submit that at the stage of framing of charges, the Trial Court ought to weigh the evidence for a limited purpose and if a *prima facie* case is not made out against the accused or if the evidence produced does not give rise to a grave suspicion against the accused, the Court shall discharge the accused.

On the aspect of charge under Section 420 IPC upheld against the accused vide the impugned judgment, it is submitted that key ingredients that need to be proved in order to constitute an offence under Section 420 are *firstly*, cheating; *secondly*, dishonest inducement to deliver or to make, alter, or destroy any valuable security or anything which is capable of being converted into a valuable security and *thirdly*, *mens rea* on the part of the accused at the time of the said inducement. However, it is the case of the



accused that neither of the three ingredients are fulfilled as when seen in light of the ongoing matrimonial dispute/divorce proceedings between the parties and the documents on record, it is evident that the said loan was closed on the request of the complainant herself. More pertinently, the complainant was never the owner of the subject property and has not even contested the same. It is also pointed out that the final payments prior to the loan closure were solely made by the accused in his capacity as the primary applicant and that he was anyway entitled to the property ownership documents and not the complainant. While the subject documents may be considered 'valuable security' for the accused, they had no similar value for the complainant for her to claim any wrongful loss by depriving her of the same. Lastly, it is submitted that while the learned ASJ was right in holding that there was no evidence on record to establish the subject documents as forged by the accused and hence, he was discharged under Section 468 IPC, however, the same is in contradiction to the charge being upheld under Section 471 IPC against the accused. It is contended that where there is an absence of proof of forgery, there arises no question as to the use of a forged document as a genuine one.

6. Additionally, learned APP for the State submits that at the stage of framing of charges, what is to be seen is whether a *prima facie* case is made out against the accused or not and that if the material placed before the Court gives rise to a grave suspicion against the accused or if it discloses ingredients of the alleged offence at the face value, charges should be framed. The probative value of the evidence is something to be seen later, during trial. In support of his contentions, learned APP relies on State (NCT of Delhi) v. Shiv Charan Bansal & Ors., reported as (2020) 2 SCC 290 and



Soma Chakravarty v. State through CBI, reported as **(2007) 5 SCC 403**. It is contended that a *prima facie* case exists against the accused under Sections 420/468/471 IPC, inasmuch as *firstly*, the key findings of the laboratory examination at RFSL opined the specimen signatures of the complainant to not match the signatures on the authorisation letter and the copy of her expired passport; *secondly*, the statement of *Sunil Balodi* recorded under Section 161 Cr.P.C. to the effect that the accused alone went to the bank for the loan closure and handed over the allegedly forged documents and *lastly*, considering that the complainant had allegedly invested her hard earned money towards the purchase of the subject property wherein she was also the co-applicant in the loan procured for the same, would *prima facie* amount to wrongful loss suffered by her and wrongful gain to the accused in terms of the property papers/valuable security released from the bank.

7. I have heard learned counsels for the parties as well as gone through the material placed on record.

8. It is a settled position in law that evidence can be examined as sufficient or acceptable only at the stage of trial. In the present case, while framing of charges, the Court is only expected to take a *prima facie* opinion as to whether a case is made out against the accused, if the material placed on record by the prosecution is accepted as truthful. Only a strong reason can justify interference with the order of the Court at the stage of framing of charges, inasmuch as if the trial was allowed to be proceeded with, it would amount to an abuse of the process of law. [Ref: Manjit Singh Viridi v. Hussain Mohammed Shattaf, reported as **(2023) 7 SCC 633**]

9. A perusal of the impugned judgement would show that the accused was discharged under Section 468 IPC merely on the strength of the



argument that the RFSL opinion was not definitive in nature to indicate that the accused was in fact the maker of the allegedly forged documents, coupled with the fact that there was no witness to the said forgery. However, there is a specific allegation made by the complainant that her signatures were forged on the authorisation letter and copy of the expired passport which was given to SCB during loan closure by the accused. The aforesaid RFSL report opines the said signatures to not match the complainant's specimen signatures. The authenticity or value of the subject FSL report, which is merely an opinion and also not conclusive either way, is to be evaluated at the stage of trial and at this stage, an allegation as to the said documents being forged is enough for the Court to frame charges of forgery against the accused, especially in light of the statement of *Sunil Balodi*, the Branch Sales Manager at SCB, who has testified to the effect that the allegedly forged documents were given to the bank by the accused in the absence of the complainant. Depending on the material and evidence on record, discharge at this stage merely on the ground of the FSL opinion not being definitive, is erroneous and deserves to be set aside.

10. As regards the offence of cheating, it is noted at the outset that Section 468 IPC presupposes cheating. Once it is held that Section 468 IPC is made out, the offence of cheating cannot be set aside. Looked from another angle, and also rightly noted in the impugned judgment, the SCB has also been cheated by the accused inasmuch as the said property documents were released by producing forged authorisation. Whether the material on record, in totality, is enough to establish the culpability of the accused is a question which needs to be tested at the stage of trial.

11. Lastly, it is pertinent to observe that the complainant has denied her



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signatures on the authorisation letter as well as copy of her expired passport, used as a proof of identity, and the same were presented as genuine for the purpose of loan closure at the bank by the accused. The fact that the said allegedly forged documents were given by the accused in the absence of the complainant is also substantiated by the statement of the bank official, *Sunil Balodi*. In totality, this implies *prima facie* fulfilment of key ingredients of Section 471 IPC, hence, the charge framed against the accused under Section 471 IPC deserves to be upheld.

12. Keeping in view the aforesaid facts and circumstances, this Court is of the considered opinion that there is no infirmity in the order of charge dated 31.05.2023 passed by the Trial Court and there is enough material on record to proceed with trial against the accused under Sections 420/468/471 IPC. Accordingly, the petition in CRL.M.C. 4047/2024 succeeds and the discharge of the accused under Section 468 IPC vide judgment dated 01.04.2024 is set aside, to that extent, while the petition in CRL.M.C. 5419/2024 is dismissed alongwith miscellaneous application.

13. Let a copy of this judgment be communicated to the Trial Court for information and compliance.

14. Needless to state that nothing observed hereinabove will tantamount to an expression on the final merits of the case and it shall in no manner influence the outcome of trial.

MANOJ KUMAR OHRI
(JUDGE)

DECEMBER 24, 2024

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