



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

%

Date of Decision: 22.02.2024

+

CRL.M.C. 5442/2023, CRL.M.A. 20616/2023

BHUSHAN KUMAR

..... Petitioner

Through: Mr. Desh Raj and Mr. Piyush Yadav,
Advocates.

versus

STATE OF NCT OF DELHI AND ANR

..... Respondents

Through: Mr. Sanjeev Sabharwal, APP for State
with SI Manish Tyagi, P.S. Jamia
Nagar.
Mr. Fauziq and Ms. Manisha,
Advocates for respondent No.2.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of present petition filed under Section 482 Cr.P.C., the petitioner seeks setting aside of the order dated 23.12.2022 passed by learned ASJ-07, South East District, Saket Courts, Delhi in CR No. 139/2019.
2. Vide the aforesaid order, learned Sessions Judge held that a prima facie case exists against the petitioner to frame charges against him under Sections 419/420 IPC. Earlier the Trial Court, vide order dated 05.12.2018, had held that no case is made out against the accused under Sections 419/420/465/468/471 IPC.
3. Brief facts, in a nutshell, are that an application under Section 156(3)



Cr.P.C. was filed by complainant/respondent No.2, inter alia, alleging that petitioner had befriended him by posing as a CBI Officer and also lived in his house. During his stay, petitioner took money from the complainant's family members on the pretext of getting their children admitted in a school. Suddenly, on 16.03.2009 petitioner left the complainant's house without any information and without returning the money earlier taken by him. Petitioner again forcibly entered the complainant's house on 23.03.2009 and 27.03.2009 in respect of which, a complaint was also alleged to be made vide DD Nos. 50B and 53B respectively.

4. Trial Court, vide order dated, 03.08.2009 dismissed the application under Section 156(3) Cr.P.C., however, proceeded under Section 200 Cr.P.C. Pre-summoning evidence was recorded and accused was summoned vide order dated 04.10.2010. At the stage of pre-summoning evidence, the complainant examined himself as CW1 and one *Sagir Ahmad* as CW2. After the pre-charge evidence, Trial Court discharged the petitioner. In the revision filed by the complainant, the impugned order came to be passed whereby case under Sections 419/420 IPC was found to be prima facie existing against the petitioner.

5. Learned counsel for the petitioner while assailing the impugned order contended that the learned Sessions Judge has failed to appreciate that in the complaint no specific details have been mentioned as to when and how much amount was cheated by the petitioner. He further submitted that allegations with respect to forgery have remained unsubstantiated resulting in discharge of the accused by the Trial Court and the same was also upheld by the Sessions Court.

6. As noted above, the complainant had examined himself and one *Sagir*



Ahmad at the stage of pre-summing as well as pre-charge. The entire complaint is based on the allegations that it was the complainant's family members who were cheated. It is not the case of the complainant that he was cheated but rather his family members. Complainant has specifically alleged that petitioner had posed himself as CBI officer and induced the complainant's family members to part with money for the purpose of getting their children admitted in a school. A perusal of the statement of *Sagir Ahmad*, who was examined as CW2, reveals that he has specifically stated that an amount of Rs.5,000/- was taken by the petitioner in cash to admit his children in second class. Further, petitioner had also taken money from his relatives on the same pretext. When the petitioner failed to secure any admission for his child, the witnesses requested the petitioner for return of money however without any intimation to anyone he left the complainant's house on 16.03.2009.

7. In view of the statement of complainant and CW2 Sagir Ahmad, this Court is of the opinion that the Sessions Court has rightly held that a prima facie case is made out under Sections 419/420 IPC against the petitioner. Since there is no challenge to the petitioner's discharge under other sections, the same requires no further consideration. Accordingly, present petition is dismissed alongwith miscellaneous application.

MANOJ KUMAR OHRI
(JUDGE)

FEBRUARY 22, 2024

ga