



2024:DHC:6909



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on:09.09.2024

+ **CRL.M.C. 5671/2019**

AJAY CHOPRA

..... Petitioner

versus

STATE & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Ms. Sangeeta Sondhi, Advocate.

For the Respondent : Mr. Pradeep Gahalot, APP for the State
alongwith Ms. Anushka Bhardwaj Dixit, Ms.
Apoorva Bhalla & Mr. Apurva Sachdeva,
Advocates.
Mr. Jinendra Jain, Ms. Bijay Lakshmi, Mr.
Krishna Sharma & Mr. M.N. Mishra,
Advocates for Respondent No.2 & 3.

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed seeking quashing of order dated 05.08.2019 (hereafter '**impugned order**') passed by the learned Additional Sessions Judge ('**ASJ**'), South East, Saket Courts, New Delhi in CR No. 204905/2016 titled '*Vikas Garg &Ors. vs. State.*'



2. By impugned order, the learned ASJ discharged Respondent Nos. 2 and 3 of offences under Sections 420/468 read with Section 120B of the Indian Penal Code, 1860 ('**IPC**') and upheld the charges framed under Sections 467/471/474 read with Section 120B of the IPC, and Section 201 read with Section 120B of the IPC.

3. The FIR in the present case was filed on a complaint given by the petitioner, who is stated to be the owner of the ground floor, and first floor of property bearing no. 202, Greater Kailash-I, New Delhi (hereafter '**subject property**'). It is alleged that on 22.09.2008, an employee of the HDFC Bank visited the subject property, when the petitioner was present, for verification of loan of the buyer of the home. It is alleged that the petitioner was able to get a copy of the sale deed from the said employee.

4. It is alleged that thereafter, the petitioner learnt that his sister, namely Seema Malhotra, in connivance with her husband, Joginder Malhotra, had forged the petitioner's signature, and had also allegedly prepared a GPA in her favour. It is further alleged that upon inquiries, the petitioner learnt that accused Seema Malhotra on the basis of the said forged GPA, had sold the ground floor of the subject property to Respondent No. 2, and first floor to Respondent No. 3 by way of sale deed both allegedly registered on 09.06.2008 for a consideration of ₹47 lakhs each. Consequently, the subject FIR was registered.

5. During the investigations, a copy of the GPA so obtained from the Registrar Office was sent to FSL to verify who signed the said



GPA. In terms of the FSL report, the GPA was allegedly found to be a forged document. It is alleged that the inquiry carried out revealed the possibility of there being some mischief being carried out in inserting a false entry in the peshi register of 01.11.2004. It is alleged that the investigation revealed that the alleged GPA was not found to be registered in the office of the Sub-Registrar, rather, another GPA executed by one Subhash Kumar was found registered on the same registration number. It is further alleged, that as per the FSL report, the signature of the petitioner on the alleged GPA was found to be forged, however, the signatures of accused Seema Malhotra, and attesting witnesses were found to be genuine.

6. It is alleged that thereafter the concerned stamp vendor also stated that he had not issued the stamp paper that was used for the alleged fake GPA.

7. As regards Respondent Nos. 2-3, the investigations carried out revealed that Respondent Nos. 2-3 had allegedly purchased two floors of the subject property for a total consideration of ₹94 lakhs. It is alleged that however, only a consideration for a sum of ₹44 lakhs was paid. It is alleged that the outstanding sum of ₹50 lakhs was allegedly given by way of cheques which got dishonoured. It is alleged that thereafter Respondent Nos. 2-3 got the subject property mutated in their names with MCD. It is further alleged that Respondent Nos. 2-3 mortgaged the ground floor of the subject property with HDFC Bank in September-October 2009 against a loan of ₹1.5 crores, however, at



that time, Respondent Nos. 2-3 had only made part payment, and had not made full payment in respect of the subject property.

8. The learned Chief Metropolitan Magistrate ('CMM'), South East, Saket Courts, New Delhi *vide* order dated 08.07.2016 heard arguments regarding framing of charges. Subsequently, *vide* order dated 16.07.2016, the learned CMM framed charges under Sections 420/467/468/471/474 read with Section 120-B of the IPC and Section 201 read with Section 120-B of the IPC against Respondent Nos. 2-3. The learned CMM, while hearing the argument on charge, noted that Respondent Nos. 2-3 did not make any attempt to verify the veracity of the concerned GPA. It was further noted that the involvement of Respondent Nos. 2-3 in the criminal conspiracy was evident from the fact that without even becoming the absolute owner of the subject property, Respondent Nos. 2-3 hastily went ahead and got the property mutated in their names with the MCD.

9. It was noted that the consideration for a sum of ₹50 lakhs was still outstanding. It was further noted that Respondent Nos. 2-3 illegally mortgaged the ground floor of the subject property with HDFC Bank for a loan of ₹1.5 crores. The learned CMM also observed that Respondent Nos. 2-3 in connivance with other co-accused persons had destroyed/caused to disappear the forged GPA dated 01.11.2004 in order to screen themselves from the offences.

10. Consequently, *vide* order dated 16.07.2016 the learned CMM, noting that there existed sufficient grounds, framed charges under



Sections 420/467/468/471/474 read with Section 120-B of the IPC and Section 201 read with Section 120-B of the IPC against Respondent Nos. 2-3.

11. The learned ASJ, in a revision petition, filed by Respondent Nos. 2-3, discharged them of offences under Sections 420/468 read with Section 120-B of the IPC, while specifically noting that that there was no evidence to indicate that Respondent Nos. 2-3 had cheated the petitioner.

12. The learned ASJ, however, upheld the charges under Sections 467/471/474 read with Section 120-B of the IPC, and Section 201 read with Section 120-B of the IPC. The learned ASJ observed that Respondent Nos. 2-3 were the beneficiaries of the alleged forged GPA because they got the subject property mutated in their names in MCD record, and also mortgaged the same against a loan of ₹1.5 crores, without even making full payment of consideration for the purchase of the subject property. Consequently, while relying upon ***Sheila Sebastian v. R. Jawaharaj and Another : (2018) 7 SCC 581*** it was noted that while the charge of forgery cannot be imposed on a person who is not the maker of the same, yet, the contention of Respondent Nos. 2-3 that charge of conspiracy to forge a document cannot lie against a person is untenable.

13. Aggrieved by the said order, the petitioner/complainant has filed the present petition.



14. The learned counsel for the petitioner submitted that the learned ASJ erred in concluding that charges under Sections 420/468 read with Section 120B of the IPC are not maintainable against Respondent Nos. 2-3. She submitted that merely because Respondent Nos. 2-3 met accused Seema Malhotra in 2008, and the GPA itself was executed way back in the year 2004, does not substantiate that charges under Sections 420/468 are not maintainable. She submitted that it is probable that the conspiracy to forge the GPA was devised much later than what is affixed on the GPA. She submitted that the same can only emerge during the course of trial when evidence is led in that regard.

15. She further submitted that Respondent Nos. 2-3, since the very beginning, worked with accused Seema Malhotra, and her husband accused Joginder Malhotra to get the property illegally transferred in their name. She submitted that it is not mandatory for conspirators to be party to every aspect of the offence being committed, since the object ultimately was to cheat the petitioner, thereby causing wrongful loss to the petitioner, and simultaneously resulting in wrongful gain to Respondent Nos. 2-3.

16. She submitted that even considering the argument of Respondent Nos. 2-3, had they been the *bona fide* purchasers of the subject property, they would have in the least attempted to ascertain the title of the property by collecting the entire chain of documents of the property from accused Seema Malhotra, including the verification of the veracity of the GPA. She submitted that instead of making an



attempt to verify the documents, they executed the sale deeds, that too, without the payment of the entire sale consideration. She submitted that not only did Respondent Nos. 2-3 not try to take possession of the subject property but they also did not pursue any legal steps against accused Seema Malhotra.

17. She submitted that even accused Seema Malhotra did not pursue any legal recourse for recovering the entire sale consideration, and the failure on the part of Respondent Nos. 2-3 to pay the outstanding amount, makes it clear that they were involved in the said conspiracy. She submitted that the learned ASJ should have considered how hastily Respondent No. 2 mortgaged the ground floor of the suit property with the HDFC Bank, that too, on the basis of a forged sale deed for which a separate FIR has already been lodged against him at the instance of the HDFC Bank. She submitted that the learned ASJ did not take into account that during the investigation, the GPA could not be seized either from accused Seema Malhotra or Respondent Nos. 2-3, which further points that they may have destroyed the same with the intention that no conclusive result in regard to the forgery could be obtained.

18. *Per contra*, the learned counsel for the respondents submitted that Respondent No. 2-3 have been falsely implicated in the present case. He submitted that it is only accused Seema Malhotra who conspired with other accused persons, and planned the whole transaction, and also derived financial gains out of the same. He



submitted that that even as per the case of the prosecution, no criminal conspiracy can be attributed to Respondent Nos. 2-3 as they never came in contact with the petitioner. He submitted that there is nothing on record to show that Respondent Nos. 2-3 ever did any overt act or meeting that could show that Respondent Nos. 2-3 conspired or had any role to play in the alleged commission of the offence. He submitted that Respondent Nos. 2-3 are merely *bonafide* purchasers of the subject property. He further submitted that Respondent Nos. 2-3 have no knowledge how the GPA came to be executed in favour of the accused Seema Malhotra. He submitted that in any event, the GPA was executed way back in the year 2004, however, Respondent Nos. 2-3 came in contact with the accused only in the year 2008. Consequently, he submitted that the Respondent Nos. 2-3 have no role to play in the commission of the alleged offence, and have falsely been roped in the present case.

ANALYSIS

19. Since the petitioner has assailed the impugned order dated 05.08.2019 whereby Respondent Nos. 2-3 were discharged of the offences under Section 420/468 read with Section 120-B of the IPC, it will be apposite to succinctly discuss the statutory law with respect to framing of charge and discharge as provided under Section 227 and 228 of the CrPC. The same is set out below:

“227. Discharge

If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the



accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

228. Framing of Charge

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, 1 [or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of subsection (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

20. The Hon’ble Apex Court, in the case of **Sajjan Kumar v. CBI : (2010) 9 SCC 368**, has culled out the following principles in respect of the scope of Sections 227 and 228 of the CrPC while observing that a prima facie case would depend on the facts and circumstances of each case. The relevant paragraphs read as under :

“21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.



(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

(emphasis supplied)

21. In a recent decision in ***State of Gujarat v. Dilipsinh Kishorsinh Rao*** : 2023 SCC OnLine SC 1294, the Hon’ble Apex Court has discussed the parameters that would be appropriate to keep in mind at the stage of framing of charge/discharge, as under:



“7. It is trite law that application of judicial mind being necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed. At that stage, the trial judge has to merely examine the evidence placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on basis of charge sheet material. The nature of the evidence recorded or collected by the investigating agency or the documents produced in which prima facie it reveals that there are suspicious circumstances against the accused, so as to frame a charge would suffice and such material would be taken into account for the purposes of framing the charge. If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged, but if the court is of the opinion, after such consideration of the material there are grounds for presuming that accused has committed the offence which is triable, then necessarily charge has to be framed.

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12. The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659 and the State of MP v. Mohan Lal Soni, (2000) 6 SCC 338 has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.”

22. The Court at the stage of framing of charge is to evaluate the material only for the purpose of finding out if the facts constitute the alleged offence, given the ingredients of the offence. Thus, while framing of charges, the Court ought to look at the limited aspect of whether, given the material placed before it, there is grave suspicion



against the accused which is not properly explained. Though, for the purpose of conviction, the same must be proved beyond reasonable doubt.

23. In the present case, the learned CMM had framed charges under Sections 420/467/468/471/474/201 read with Section 120-B of the IPC against Respondent Nos. 2-3. By impugned order, the learned ASJ discharged Respondent Nos. 2-3 of the offences under Sections 420/468 read with 120-B of the IPC while noting that there was no evidence to establish that Respondent Nos. 2-3 have cheated anyone including the petitioner.

24. Now what remains to be seen is whether there is any infirmity in the impugned order whereby the learned ASJ discharged Respondent Nos. 2-3 of the offence under Sections 420/468 of the IPC. The sections are reproduced as under:

“420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the 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 for a term which may extend to seven years, and shall also be liable to fine.

468. Forgery for purpose of cheating.—Whoever commits forgery, intending that the document [or electronic record] forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”



25. The Hon'ble Apex Court in the case of ***Mariam Fasihuddin & Anr. vs. State by Adugodi Police Station &Anr.: 2024 INSC 49*** while examining the ingredients of the offence of cheating and forgery under Sections 420 and 468 of the IPC respectively has observed as under:

“12.It is well known that every deceitful act is not unlawful, just as not every unlawful act is deceitful. Some acts may be termed both as unlawful as well as deceitful, and such acts alone will fall within the purview of Section 420 IPC. It must also be understood that a statement of fact is deemed ‘deceitful’ when it is false, and is knowingly or recklessly made with the intent that it shall be acted upon by another person, resulting in damage or loss. ‘Cheating’ therefore, generally involves a preceding deceitful act that dishonestly induces a person to deliver any property or any part of a valuable security, prompting the induced person to undertake the said act, which they would not have done but for the inducement.”

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22. There are two primary components that need to be fulfilled in order to establish the offence of ‘forgery’, namely:

(i) that the accused has fabricated an instrument; and
(ii) it was done with the intention that the forged document would be used for the purpose of cheating. Simply put, the offence of forgery requires the preparation of a false document with the dishonest intention of causing damage or injury.

23. The offences of ‘forgery’ and ‘cheating’ intersect and converge, as the act of forgery is committed with the intent to deceive or cheat an individual.....”

26. From a bare perusal, this Court finds that no *prima facie* case under Sections 420/468 of the IPC is made against Respondent Nos. 2-3. In line with the dictum of ***Mariam Fasihuddin (supra)***, for there to be an offence of cheating within the meaning of Section 420 of the IPC, the said act must be both unlawful and deceitful, that is, there must be a preceding deceitful act and the same must be done to



dishonestly induce a person to deliver/part with any valuable security. Further, in order to attract the offence under Section 468 of the IPC, two conditions must be satisfied, that is, firstly there must be a fabrication, and secondly the said fabrication must be done with the intention that the forged document would be used for the purpose of cheating. It is pertinent to mention that the said conditions are joined with the conjunctive 'and', thus an offence under Section 468 of the IPC would be attracted only when the twin conditions are satisfied. Forgery *per se* or conspiring to commit forgery alone do not suffice to constitute an offence under Section 468 of the IPC.

27. In the present case, the charges are sought to be framed against Respondent Nos. 2-3 under Sections 420/468 of the IPC by invoking the provisions of Section 120-B of the IPC. From a bare perusal of the allegations made against Respondent Nos. 2-3, it cannot *prima facie* be stated that they conspired to forge the document with the intention to cheat, or induce the petitioner to part with/deliver any property or valuable security.

28. It is one thing to say that the offence of forgery of a valuable security was committed, and the same was used as a genuine document despite knowing that the said document is a forged one. It is another thing to say that not only there was a forgery but also the same was done with an intention that it would be used for the purposes of cheating.



29. It is not disputed that the petitioner did not come in contact with Respondent Nos. 2-3. In that light, the allegations against Respondent Nos. 2-3 at best *prima facie* depict that they conspired to commit forgery, and despite knowing that the GPA was a forged document, they portrayed and used the same as a genuine document. The same however does not *prima facie* satisfy the ingredients of Section 420/468 or raise a grave suspicion against Respondent Nos. 2-3 to the extent that despite not knowing the petitioner or ever coming in contact with him, Respondent Nos. 2-3 not only conspired to forge the GPA but they also did so in order to cheat the petitioner. For this reason, this Court is in agreement with the observations made by the learned ASJ that there was no evidence to establish that Respondent Nos. 2-3 cheated anybody including the petitioner.

30. It has been pointed out that for the act of Respondent No. 2 in managing to mortgage the ground floor of the subject property with the HDFC Bank and obtaining a loan for ₹1.5 crores, a separate FIR being FIR No. 46/2011 dated 10.03.2011 was registered at the behest of the HDFC Bank under Sections 420/467/468/471/120-B of the IPC.

31. The contentions of the petitioner as to why Respondent Nos. 2-3 did not seek the chain of ownership of the subject property or press legal charges against the accused Seema are a subject matter of trial, and cannot be looked into at the stage of framing of charge. Such contentions, however, do not satisfy the ingredients of Section 420/468 of the IPC.



2024:DHC:6909



32. In view of the above discussion, I do not find any infirmity in the order of the learned ASJ, and the same cannot be faulted with.

33. The present petition is dismissed in the aforesaid terms.

AMIT MAHAJAN, J

SEPTEMBER 9, 2024