



2025:DHC:11318



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decision: December 10th, 2025***+ **CRL.M.C. 1863/2020 & CRL.M.A. 13202/2020**

SHRI J K TYAGI & ANR.

.....Petitioners

Through: Mr. Nishit Kush, Mr.
Mohit Tyagi, Mr.
Siddhartha Sikri & Mr.
Kirti Singh, Advs.

versus

JAI BHAGWAN & ANR.

.....Respondents

Through: Mr. S.P. Gairola, Adv. for
R-1.

CORAM:**HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)**

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC'), assailing the impugned order dated 07.11.2019 ('**impugned order**') passed by the learned Metropolitan Magistrate, Tis Hazari Courts, in Complaint Case No. 528338/2016, whereby the Petitioners were summoned for the offences under section 468/120B of the Indian Penal Code, 1860 ('IPC') on allegations that they filed a forged Affidavit dated 31.08.1999.

2. Succinctly stated, a criminal complaint was filed by the Complainants namely, Jai Bhagwan, Ram Kishan, Ramanand and Parmod, alleging that in Appeal bearing No. 70/2011 before

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the Financial, Delhi regarding mutation proceedings, the Petitioners namely, J.K. Tyagi and Narender along with the other accused Rajender filed a forged Affidavit dated 31.08.1999. It was alleged that the Affidavit, purportedly sworn by one of the complainant namely Ram Kishan, was in relation to sale of the share of Smt. Gulab Kaur, in the land bearing Khasra No. 35/29/2, measuring 3 bighas and 9 biswas, situated in the area of Burari, Delhi. However, the Complainants had never signed the Affidavit.

3. Therefore, the complaint was filed alleging offences under sections 193/420/465/468/471 of the IPC.

4. The learned counsel for the Petitioners submits that the learned Magistrate passed the impugned summoning order without due application of mind, relying solely on the statements of the complainants and two witnesses i.e. CW-1 and CW-2.

5. He further submits that a registered sale deed dated 14.05.1990, which is referred to in the allegedly forged Affidavit, was never disputed by the complainants, and that the affidavit was filed merely to affirm the sale already evidenced by the undisputed registered deed.

6. He further submits that it is undisputed that the Appeal No. 70/2011, filed before the Financial Commissioner, Delhi was decided in favour of the Petitioners by judgment dated 30.07.2015, upholding the order of the Deputy Commissioner dated 12.01.2011. The Financial Commissioner has also specifically noted that the complainants have never disputed the registered sale deed and that any alleged error should have been

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challenged in a competent civil court. The allegedly forged affidavit of 31.08.1999 also did not play any role in the determination of title or cause any prejudice to the complainants.

7. He further submits that the learned Magistrate failed to summon or consider the records of the Financial Commissioner, including the original affidavit, and did not verify the notarisation. Further, no handwriting or expert opinion was sought, nor was there any attempt to examine whether the alleged forgery caused any cheating or wrongful gain to the petitioners.

8. *Per contra*, the learned Counsel for the Respondent No. 1 vehemently opposes the petition and submits that the Affidavit dated 31.08.1999 was not signed by the Complainant and the impugned order has been passed after due consideration of the material on record. Thus, the impugned order does not warrant any interference and present petition is liable to be dismissed.

9. Submissions heard and the material placed on record perused.

Analysis

10. In the case of ***State of Haryana v. Bhajan Lal : 1992 Supp (1) SCC 335***, the Hon'ble Apex Court had illustrated the category of cases where the Court may exercise its extraordinary power under Article 226 of Constitution of India or Inherent jurisdiction to quash the proceedings. The relevant portion of the judgment is reproduced hereunder:

"102. 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 non-cognizable 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”
(emphasis supplied)*

11. As opined the test is whether the allegations in the complaint *prima facie* disclose commission of an offence. However, the Court ought to look into the complaint with care and a little more closely in case it finds that the proceedings are manifestly frivolous or vexatious or are instituted with the ulterior motive of wreaking vengeance. In such circumstances, the Court can look into the attending circumstances emerging from the record of the case and can read between the lines.

12. At this juncture, it is apposite to mention that issuance of summons in a criminal trial is a serious matter and it is thus imperative that the summoning order shows due application of mind and examination of the facts of the case as well as the evidence on record. In the case of *Pepsi Foods Ltd. and Another v. Special Judicial Magistrate and Others: (1998) 5 SCC 749*, the Hon’ble Apex Court had observed as under:

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put



questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

*29. No doubt the Magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, **but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial....***

(emphasis supplied)

13. The learned Magistrate is thus required to satisfy himself as to whether there is "*sufficient ground for proceeding*" against the accused by carefully scrutinising the material on record as well as the nature of allegations and material adduced in support thereof. While the Magistrate is not required to give detailed reasons, the order of issuance of process cannot be treated as an empty formality and a person ought not to be subjected to agony of long trial merely because a complaint is filed [**Ref. Lalankumar Singh v. State of Maharashtra : 2022 SCC OnLine SC 1383**].

14. The Court is not a mere post office for reproducing allegations; rather, it must be evaluated whether the evidence would constitute the offence and failure to undertake such scrutiny vitiates the summoning order.

15. In the present case, the record reveals that the Respondents/Complainants are the sons of Late Shri Durga Prasad, the recorded owner of Khasra no. 35/29/2, measuring 3 bigha 9 biswa, falling in revenue estate of Village - Burari, Delhi



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who died intestate leaving behind five sons, Widow Smt. Gulab Kaur and one daughter Smt. Basanti Devi. One son, who is not the complainant died as a bachelor and his share was inherited by the Complainants in terms of the Delhi Land Reforms Act, 1954.

16. It is also a matter of record that Widow Smt. Gulab Kaur died intestate in the year 1972 and the Complainants sold their entire share in Khasra no. 35/29/2 falling in revenue estate of Village - Burari, Delhi by way of registered sale deed dated 14.05.1990, in favour of father of the Petitioners namely Shri Devdutt and real uncle of the Petitioners namely Shri Rajender.

17. However, considering the above factual matrix and the documents on record and that the sale deed dated 14.05.1999 was never disputed by the complainants, the Order dated 24.05.2005 was passed by the learned Tehsildar in favour of the Petitioners. This order was challenged by the Complainants before the learned Deputy Commissioner and their appeal was also dismissed *vide* Order dated 12.01.2011.

18. This Order dated 12.01.2011 was again challenged by the Complainants, however, the Appeal before the Financial Commissioner was also dismissed, with a categorical finding that the registered sale deed dated 14.05.1990, which forms the core of the transaction regarding the entire subject property including the share of Smt. Gulab Kaur, was never disputed by the complainants.

19. Though it is alleged in the present case that a forged affidavit dated 31.08.1999, confirming the sale *vide* sale deed dated 14.05.1990, was filed by the Petitioners during the

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mutation proceedings, the said sale deed dated 14.05.1999 pertaining to the transfer stands admitted and it was never the case of the Complainants that they are claiming any loss, prejudice, in respect of the subject property. They are further not claiming any right, title or interest in the property but are only asserting that the signatures were not put by them in the Affidavit. This clearly demonstrates that even if the allegation of forged signature is taken at face value, there is no assertion that the complainants were deceived, defrauded, induced to part with property, or otherwise misled to their detriment.

20. These factors strike at the very root of the allegations and were a relevant circumstance which the learned Magistrate was required to evaluate before issuing summons.

21. A perusal of the impugned summoning order indicates that the learned Magistrate relied exclusively on the statements of CW-1 and CW-2, who merely reiterated the averments in the complaint. No independent material, documentary scrutiny, or foundational verification accompanies the order.

22. Further, the learned Magistrate did not summon the original record of the Financial Commissioner to ascertain whether the impugned affidavit was in fact filed therein. No enquiry was made regarding the genuineness of the notarisation, nor was any attempt made to assess whether the affidavit could *prima facie* be said to be fabricated.

23. Section 468 of the IPC reads as under: -

“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

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imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

24. It is well-settled that to constitute an offence under Section 468 of the IPC, the prosecution must *prima facie* disclose, *firstly*, the making of a *false document* within the meaning of Sections 463–464 of the IPC; *Secondly*, that such document was forged by the accused with dishonest or fraudulent intent; and *lastly*, the forgery was committed *for the specific purpose of cheating*. The provision is not attracted by a mere allegation of a forged signature unless it is accompanied by particulars showing how such forgery was used, or intended to be used, to deceive a person and thereby cause wrongful gain or loss. The existence of a forged signature, by itself, is not sufficient to constitute the offence unless it is tied to a dishonest inducement or deception.

25. In the present case, a careful reading of the complaint, coupled with the statements recorded at the pre-summoning stage, reveals a complete absence of foundational facts that could satisfy the statutory ingredients. The complaint does not identify any document forged by the Petitioner, nor does it describe how the alleged forgery was employed to deceive or induce the complainants.

26. It is well-settled that making a false document simpliciter does not satisfy the requirements of Section 468 of the IPC unless the document is created with *the intention that it be used for the purpose of cheating*, which in turn requires dishonest inducement and resultant wrongful loss or wrongful gain. In the absence of any such allegation, let alone *prima facie* material, the



essential ingredient of ‘cheating’ is also wholly missing. Therefore, even assuming the signature was not genuine, the same does not constitute an offence under Section 468 of the IPC.

27. In the landmark judgment of *Vimla (Dr) v. Delhi Admn., 1962 SCC OnLine SC 172*, Dr. Vimla purchased a car in the name of her minor daughter Nalini aged about 6 months. The insurance policy already issued was transferred in the name of Nalini and several documents and forms were signed by Dr. Vimla and thus, she was subsequently convicted under 467 and 468 of the IPC. The Hon’ble Apex Court, while acquitting her of the charged offences, held that: -

“Now let us apply the said principles to the facts of the present case. Certainly, Dr. Vimla was guilty of deceit, for though her name was Vimla, she signed in all the relevant papers as Nalini and made the insurance company believe that her name was Nalini, but the said , deceit did not either secure to her advantage or cause any non-economic loss or injury to the insurance company. The charge does not disclose any such advantage or injury, nor is there any evidence to prove the same. The fact that Dr. Vimla said that the owner of the car who sold it to her suggested that the taking of the sale of the car in the name of Nalini would be useful for income-tax purposes is not of any relevance in the present case, for one reason, the said owner did not say so in his evidence and for the other, it was not indicated in the charge or in the evidence. In the charge framed, she was alleged to have defrauded the insurance company and the only evidence given was that if it was disclosed that Nalini was a minor, the insurance company might not have paid the money. But as we have pointed out earlier, the entire transaction was that of Dr. Vimla and it was only put through in the name of her made minor daughter for reasons best known to herself. On the evidence as disclosed, neither was she benefited nor the insurance company incurred loss in any sense of the term. In



the result, we allow the appeal and hold that the appellant was not guilty of the offence under ss. 467 and 468 of the Indian Penal Code. The conviction and sentence passed on her are set aside. Fine, if paid, is directed to be refunded to the appellant, Appeal allowed.

(emphasis supplied)

28. In **Jibrial Diwan v. State of Maharashtra : (1997) 6 SCC 499**, it was the case of the prosecution that two forged letters were prepared on the letterhead of the Minister, and the same did not bear the signature of the Minister. While setting-aside the conviction of the accused for the offences under sections 417, 471 read with 465 of the IPC, following observations were made by the Apex Court: -

*“3. It bears repetition that the appellant was not the forger of those documents. Section 471 enjoins that whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document. Section 465 provides that whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. Now the words “dishonestly” and “fraudulently” have been defined respectively in Sections 24 and 25 of the Penal Code, 1860. “Dishonestly” has been defined to mean that whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing “dishonestly”. The word “fraudulently” has been defined to mean that a person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise. This Court in *S. Dutt (Dr) v. State of U.P.* [AIR 1966 SC 523 : (1966) 1 SCR 493] has explained the words “intent to defraud” as being not synonymous with the words “intent to deceive”. It requires some action resulting in a disadvantage which but for the deception the person defrauded would have avoided. Here by the delivery of forged letters, there is neither any wrongful gain to anyone nor any wrongful loss to*



another. The act of the appellant could not thus be termed to have been done dishonestly. Likewise the appellant cannot be said to have any intention to defraud because his action resulted in no disadvantage to anyone which but for the deception the person defrauded would have acted otherwise.
The basic ingredients of the act done “dishonestly” or “fraudulently” being missing, the charge under Section 471 read with Section 465 IPC was totally misplaced and the High Court fell into an error in convicting the appellant on those charges.”

(emphasis supplied)

29. The Hon’ble Apex Court, in **Criminal Appeal No. 3977 of 2025** titled **Vandana v. State of Maharashtra**, has categorically observed that: -

“7. It is apposite to note that to attract offence of Section 468 IPC, the prosecution must establish that the accused made a false document within the meaning of Section 464 IPC, with intent to cheat. Likewise, Section 471 IPC requires proof that the accused used a forged document as genuine, knowing or having reason to believe it to be forged at the time of its use.”

(emphasis supplied)

30. Recently, in the case of **Jupally Lakshmikantha Reddy v. State of A.P., 2025 SCC OnLine SC 1950**, the Apex Court allowed the criminal appeal and quashed proceedings against the appellant’s educational society under Section 420 of the IPC by holding that since the building of the appellant’s institution was below 15 metres in height, no Fire Department No-Objection Certificate (NOC) was legally required for obtaining or renewing recognition. Therefore, even if a forged NOC was submitted, it did not constitute “cheating” under Section 420 IPC *because no wrongful gain or wrongful loss was caused to anyone*. It was further held that the ingredients of forgery under Sections 465,



468, and 471 of the IPC were also not met, as there was no evidence connecting the appellant to the creation of the alleged forged document. It was held as under: -

“12. The ingredients of the offence of cheating are as follows.....

*Reading the ingredients in the backdrop of these definitions, **it is evident in order to attract the offence of cheating, a person must knowingly make a false statement which would induce another to part with property or to do or omit to do a thing which the latter would not do or omit unless deceived and thereby is likely to suffer damage/harm in body, mind, reputation or property.***

*14. In Dr. Sharma's Nursing Home v. Delhi Admn., this Court held **mere deception by itself would not constitute cheating unless the other essential ingredient, i.e., dishonest inducement is established.** This Court held as follows:*

*“...both the learned courts have rested their findings on deception only and did not go into the question whether the complaint and its accompaniments disclosed the other essential ingredient of the offence under Section 420 IPC, namely, dishonest inducement. “Dishonesty” has been defined in Section 24 IPC to **mean deliberate intention to cause wrongful gain or wrongful loss; and when with such intention, deception is practised** and delivery of property is induced then the offence under Section 420 IPC can be said to have been committed...”*

*15. In Hridaya Ranjan Prasad Verma v. State of Bihar, this Court reiterated that **Section 415 IPC contemplates two distinct situations**; the first where a person is dishonestly induced to deliver property, and the second where a person is induced to do or omit an act which, but for the deception, he would not have done or omitted. **In the former, the inducement must be fraudulent or dishonest, whereas in the latter it need only be intentional. Therefore, intention is the gist of the offence.***



16. It is strenuously argued the appellant had used a fake NOC from the Fire Department and thereby held out a false representation that he possessed a valid NOC to obtain recognition/renewal of affiliation for his institution. Uncontroverted allegations in the charge sheet including the order in the writ proceedings, unequivocally show NOC from the Fire Department was not necessary for grant of such recognition/renewal of affiliation as the height of the appellant's building was below 15 metres. Given this situation, the representation of the appellant that he possessed a valid NOC cannot be said to have induced the Education Department to grant recognition or renew the affiliation. **To attract penal consequences, it must be shown that the false representation was of a material fact which had induced the victim to either part with property or act in a manner which they would not otherwise do but for such false representation. In the absence of such vital link between the alleged false representation and the issuance of recognition/renewal of affiliation, the essential ingredient of offence is not satisfied.**

17. Ms. Prerna Singh has also argued that though the chargesheet has been filed under Section 420, the contours of the offence of forgery are evident as the appellant has knowingly used a fake document.

18. We are unable to accept her submission on this score too. There is nothing on record to show the appellant had manufactured the alleged fake document which is a sine qua non to attract Section 465 IPC. In fact, the original fabricated document had not been recovered.

19. In Sheila Sebastian v. R. Jawaharaj, this Court held to attract Section 464 IPC, the prosecution must establish that the accused had made the fake document. No material connecting the appellant to the making of the fake document has been adduced in the impugned charge sheet.

20. Similarly, offences under Section 468 IPC and Section 471 IPC are not attracted, as the requisite mens rea, i.e., dishonest intention to cause wrongful loss to the Education Department and wrongful gain to himself has not been demonstrated as the issuance of the recognition was not dependent on the production of the alleged forged NOC.”



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(emphasis supplied)

31. The facts of the present case clearly indicate that the complainant had not alleged any attempt of wrongful loss by the Petitioners. It was also admitted during the course of arguments that no wrongful loss ever occurred or could have accrued to the complainant because of the alleged act of Petitioners deceitfully putting complainant's signatures on the Affidavit. Therefore, the *mens rea* to cause wrongful loss to the complainant and wrongful gain to the Petitioners does not exist.

32. It thus becomes evident that the learned Magistrate proceeded mechanically and without undertaking the minimal judicial scrutiny mandated and impugned summoning order was issued based on vague allegations that do not disclose the essential ingredients of the alleged offence.

33. In such circumstances, continuation of proceedings against the Petitioners would be an abuse of the process of law and merits the exercise of the jurisdiction of this Court under Section 482 of the CrPC.

34. In view of the aforesaid discussion, the impugned summoning order is set aside. The present petition is allowed in the aforesaid terms. Pending applications, if any, also stand disposed of.

AMIT MAHAJAN, J

DECEMBER 10, 2025

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