

In Chamber

Case :- CRIMINAL MISC. WRIT PETITION No. - 26403 of 2019

Petitioner: Vikas Gupta and others

Respondents: State of U.P. and others

Counsel for Petitioner: Ram Autar Verma

Counsel for Respondents: AGA

Hon'ble Sudhir Agarwal, J.

Hon'ble Rajeev Misra, J.

1. Heard Shri Ram Autar Verma, learned counsel for petitioner and Shri Jai Narayan, learned A.G.A. for respondent nos. 1, 2 and 3.
2. On an application of urgency stating that a first information report has been lodged against petitioners on 20.12.2019 and police is going to arrest the petitioners, this writ petition along with the urgency application has been filed. On the request of learned counsel for the petitioners, we have taken up this matter today.
3. The present writ petition under Article 226 of the Constitution of India has been filed by five petitioners namely, Vikas Gupta; Meenu Gupta wife of Vikas Gupta; Shubhangi Gupta wife of Sri Anubhav Gupta; Anubhav Gupta son of Onkarnath Gupta and Kaushal Gupta alias Kamlesh Gupta wife of Shri Onkarnath Gupta. Vikas Gupta and Meenu Gupta are husband and wife and similarly, Anubhav Gupta and Shubhangi Gupta are husband and wife and Kaushal Gupta alias Kamlesh Gupta is mother of Vikas Gupta and Anubhav Gupta and mother-in-law of Meenu Gupta and Shubhangi Gupta.
4. A writ of certiorari has been prayed for quashing of First Information Report (hereinafter referred to as "FIR"), registered as Case Crime No. 1142 of 2019 dated 20.12.2019, registered at Police Station - Modi Nagar, District - Ghaziabad, under Sections 420, 467, 68, 471, 120B of I.P.C.

5. Learned counsel for petitioner contended that allegations of preparation of forged document is incorrect. FIR has been lodged against five accused i.e. petitioners who are members of the same family and three of the petitioners, namely, Meenu Gupta, Shubhangi Gupta and Kaushal Gupta *alias* Kamlesh Gupta are not Directors of Company and they have been falsely implicated. It is further stated that FIR in question was registered pursuant to an order passed by the Magistrate on application under Section 156(3) Cr.P.C. and in the said application, complainant has also filed copies of alleged sale deeds executed by petitioners, but those sale deeds are not registered and have no signatures of Vikas Gupta or anyone else. It is stated that petitioners have been falsely implicated and even if allegations contained in FIR are taken to be true, they do not constitute any offence under Sections 420, 467, 68, 471 and 120B IPC.

6. Learned AGA, on the contrary, submitted that bare perusal of the allegations contained in FIR shows that ingredients of sections under which FIR has been registered are satisfied and at this stage, no further enquiry can be made by this Court and since it is a matter of investigation, therefore, writ petition is misconceived.

7. Record shows that Shri Raghuvinder Singh impleaded as respondent-4, has filed an application under Section 156(3) Cr.P.C. before Chief Judicial Magistrate, Ghaziabad, which was considered and disposed of by Additional Chief Judicial Magistrate, Ghaziabad *vide* order dated 13.12.2019 and it directed police to register FIR and proceed for investigation accordingly. Consequently, FIR impugned in this writ petition was registered by police on 20.12.2019. Broadly, the allegations contained in FIR read as under :-

“महोदय, यह कि प्रार्थी मेसर्स मोदीनगर पेपर मिल्स प्राइवेट लि० स्थित मेजर आशाराम त्यागी रोड मोदीनगर, थाना मोदीनगर गाजियाबाद के निदेशक हैं। 2. यह कि प्रश्नगत फर्म में प्रार्थी के अतिरिक्त विक्षी संख्या-1 व 2 भी निदेशक हैं। 3. यह

कि इस फर्म में प्रार्थी पूर्व विपक्ष संख्या-3 निदेशक थी, जिसके द्वारा त्याग-पत्र दिये जाने पर दिनांक 28.01.2019 को प्रार्थी द्वारा उक्त कम्पनी ने निदेशक का पद भार ग्रहण किया गया था। 4. यह कि इस मध्य विपक्षी गण के मन में बदनियती आ गयी तथा विपक्षीगण द्वारा फर्जी प्रपत्र तैयार किये जिनके आधार पर फर्म के स्वामित्व की 26.00 वर्ग गज जमीन जिस पर पहले से ही कोटेक महेन्द्र बैंक लि०, शाखा पंजाबी बाग नई दिल्ली का करीब 26 करोड रुपये बकाया है और अन्य विपक्षी संख्या-3, 4 व 5 के साथ मिलकर विक्रय करने की साजिश कर रहे हैं। 5. यह कि विपक्षीगण द्वारा फर्जी तरीके से फर्म का एक रिजोल्यूशन दिनांकित 19.01.2018 बनाया हुआ है तथा इसी प्रकार के कोटेक महेन्द्र बैंक लि० के फर्जी एनओसी० दिखाकर प्लॉट काट काट कर विक्रय कर रहे हैं। इतना ही नहीं इन्हीं फर्जी प्रपत्रों के सहारे विपक्षीगण द्वारा विपक्षी संख्या-6 को 1500 वर्ग गल व 1300 वर्ग गज जमीन का भी विक्रय कर दिया है जबकि इस बाबत प्रार्थी से न तो कोई सहमत ली है तथा न कम्पनी अधिनियम के प्रावधानों के तहत ना ही की प्रस्ताव पास कराया है जिससे यह साबित होता है कि विपक्षी गण द्वारा प्रार्थी के भी फर्जी हस्ताक्षर किये हैं। 6. यह कि दिनांक 06.09.2019 को जब प्रार्थी ने विपक्षीगण से इस सम्बन्ध में बात करने की कोशिश की तो विपक्षी गण ने प्रार्थी के ऊपर अवैध असलातान दिया व धमकी दी कि यहाँ तो ऐसा ही होता है। ज्यादा बोले तो जान से हाथ धो बैठोगे। जिसके बाद प्रार्थी चुपचाप वापस आ गया तथा उक्त सभी दस्तावेज विपक्षीगण के कब्जे में हैं यदि विपक्षीगण को इन्हें प्रयोग करने से नहीं रोका गया तो विपक्षीगण अभी और भी विक्रय कर सकते हैं। 7. यह कि प्रार्थी विपक्षीगण द्वारा किये गये कृत्य की बाबत थाना मोदीनगर व श्रीमान वरिष्ठ पुलिस अधीक्षक से कई बार मिला। किन्तु कोई कार्यवाही नहीं हुई। तब विपक्षीगण के विरुद्ध मुकदमा दर्ज कर व कार्यवाही की बाबत दिनांक 20.09.19 को एक प्रार्थना-पत्र श्रीमान वरिष्ठ पुलिस अधीक्षक महोदय को आयोजित किया किन्तु उनके विरुद्ध कोई कार्यवाही नहीं की गयी है। अतः श्रीमान् जी से प्रार्थना है कि विपक्षीगण द्वारा किये गये उपरोक्त जालसाजी, फर्जी दस्तावेज तैयार करने तथा उन्हें असल जैसा प्रयोग कर प्रार्थी के साथ धोखाधड़ी करने की बाबत थाना मोदीनगर को विपक्षी गणों के विरुद्ध 1110 द० संहिता की धारा 420, 467, 468, 471, 120 बी के तहत मुकदमा दर्ज किये जाने के आदेश पारित करने की कृपा करें।”

8. The allegations in FIR consists of preparation of false documents for the purpose of showing authority of sale of property of the Company; preparation of forged resolution of the firm with back date of 19.01.2018

and on the basis of aforesaid two documents, transaction of sale of Company's property without consent of complainant who is Director of the company since 28.01.2019. It is also stated that when complainant sought to settle the matter with the accused, they threatened him with dire consequences and also administered threat of his life, hence, FIR was lodged.

9. It is not disputed that property which is allegedly sought to be sold by petitioners as per F.I.R. version own and belong to the Company, namely, M/s. Modinagar Paper Mills Ltd. Modinagar, Ghaziabad situate at Major Asharam Tyagi Road Modi Nagar, Ghaziabad. Record of the writ petition also contains Annexure 3C a copy of agreement for sale executed by petitioner-1, Vikas Gupta in his capacity as Managing Director of said company, wherein he has referred to Company's resolution dated 19.01.2018 in order to show his authority for execution of aforesaid agreement to sell. The aforesaid agreement to sell was executed on 04.05.2018 and is a registered document. It clearly mentions that Vikas Gupta, Managing Director of the Company, the vendor, is authorised to sell the property which was subject matter of aforesaid agreement. It is also not disputed by learned counsel for petitioner that complainant became Director of the Company on 28.01.2019. Petitioner has also placed on record the alleged resolution dated 19.01.2018 on Page 63 of Paper Book which contains signature of three persons, namely, Vikas Gupta., Dr. Anubhav Gupta and Dr. Shubhangi Gupta shown as Managing Director, Executive Director and Director, respectively. There is nothing on record to show that Shubhangi Gupta ceased to be Director on any subsequent point of time and therefore, document of Page 63 of writ petition belie the contention of learned counsel for petitioner that Shubhangi Gupta is not one of the Directors of Company. With respect to the others, it is a matter of investigation.

10. The fact remains that treating the facts stated in FIR as true on the

face of it, it cannot be said that offences under Sections 420, 467, 68, 471, 120B IPC are not made out. Lot of arguments have been advanced with respect to application of 420, 467, 68, 471, 120B IPC, but we find that if the allegations are taken to be true, ingredients of aforesaid provision are made out.

11. Section 420 is "cheating" which is defined in Section 415 and both these provisions read as under:

"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".

Explanation.--A dishonest concealment of facts is a deception within the meaning of this section."

"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."

12. In order to attract allegations of "cheating", following things must exist:

- (i) deception of a person;
- (ii) (A) **fraudulent or dishonest inducement of that person,**
 - (a) **to deliver any property to any person;** or,
 - (b) to consent that any person shall retain any property,
- (B) **intentional inducing that person to do or omit to do any thing,**
 - (a) **which he would not do or omit if he was not so deceived,**
 - and,

(b) such act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

13. Then in order to attract Section 420 I.P.C., essential ingredients are:

(i) cheating;

(ii) dishonest inducement to deliver property or to make or destroy any valuable security or any thing which is sealed or signed or is capable of being converted into a valuable security; and,

(iii) mens rea of accused at the time of making inducement and which act of omission.

14. In **Mahadeo Prasad Vs. State of West Bengal, AIR 1954 SC 724** it was observed that to constitute offence of cheating, intention to deceive should be in existence at the time when inducement was offered.

15. In **Jaswantrai Manilal Akhaney Vs. State of Bombay, AIR 1956 SC 575**, Court said that a guilty intention is an essential ingredient of the offence of cheating. For the offence of cheating, "mens rea" on the part of that person, must be established.

16. In **G.V. Rao Vs. L.H.V. Prasad and others, 2000(3) SCC 693**, Court said that Section 415 has two parts. While in the first part, the person must "dishonestly" or "fraudulently" induce the complainant to deliver any property and in the second part the person should intentionally induce the complainant to do or omit to do a thing. In other words in the first part, inducement must be dishonest or fraudulent while in the second part, inducement should be intentional.

17. In **Hridaya Ranjan Prasad Verma and others Vs. State of Bihar and another, 2000(4) SCC 168** Court said that in the definition of 'cheating', there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be

induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest. It was pointed out that there is a fine distinction between mere breach of contract and the offence of cheating. It depends upon the intention of accused at the time to inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. In order to hold a person guilty of cheating it would be obligatory to show that he had fraudulent or dishonest intention at the time of making the promise. Mere failure to keep up promise subsequently such a culpable intention right at the beginning, i.e, when he made the promise cannot be presumed.

18. In **S.W. Palanitkar and others Vs. State of Bihar and another, 2002(1) SCC 241**, while examining the ingredients of Section 415 IPC, the aforesaid authorities were followed.

19. In **Hira Lal Hari Lal Bhagwati Vs. CBI, New Delhi, 2003(5) SCC 257**, Court said that to hold a person guilty of cheating under Section 415 IPC it is necessary to show that he has fraudulent or dishonest intention at the time of making promise with an intention to retain property. The Court further said:

"Section 415 of the Indian Penal Code which defines cheating, requires deception of any person (a) inducing that person to: (i) to deliver any property to any person, or (ii) to consent that any person shall retain

*any property OR (b) intentionally inducing that person 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, anybody's mind, reputation or property. In view of the aforesaid provisions, the **appellants state that person may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the Section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.***"

(Emphasis added)

20. In **Devender Kumar Singla Vs. Baldev Krishan Singh 2004 (2) JT 539 (SC)**, it was held that making of a false representation is one of the ingredients of offence of cheating.

21. In **Indian Oil Corporation Vs. NEPC India Ltd., 2006(6) SCC 736** in similar circumstances of advancement of loan against hypothecation, the complainant relied on Illustrations (f) and (g) to Section 415, which read as under:

"(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats."

*"(g). A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; **but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contact and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.**" (emphasis added)*

22. Court said that crux of the postulate is intention of the person who induces victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not. Court also referred to its earlier decisions in **Rajesh Bajaj Vs. State NCT of Delhi, 1999(3) SCC 259** and held that it is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complainant should state in so many words

that the intention of the accused was dishonest or fraudulent.

23. In **Vir Prakash Sharma Vs. Anil Kumar Agarwal and another, 2007(7) SCC 373** it was held that if no act of inducement on the part of accused is alleged and no allegation is made in the complaint that there was any intention to cheat from the very inception, the requirement of Section 415 read with Section 420 IPC would not be satisfied. The Court relied on the earlier decisions in **Hridaya Ranjan Prasad Verma (supra)** and **Indian Oil Corporation Vs. NEPC India Ltd.(supra)**.

24. The aforesaid authorities have been referred to and relied on in reference to offence under Section 420 I.P.C. by a Division Bench of this Court in **Sh. Suneel Galgotia and another Vs. State of U.P. and others 2016 (92) ACC 40**.

25. Section 467 IPC deals with forgery of valuable security, will, etc. and reads as under:-

"467. Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine".

26. The essential ingredients of Section 467 IPC as is evident from a bare perusal of above provision are:-

- (i) accused has committed forgery;
- (ii) such forgery was committed in relation to a document which

purports to be;

(a) valuable security; or

(b) a will; or

(c) an authority to adopt a son; or

(d) which purports to give authority to any person to make or transfer any valuable security; or

(e) to receive the principal, interest or dividends thereon; or

(f) to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money; or

(g) an acquittance or receipt for the delivery of any movable property or valuable security.

27. In order to bring an offence under Section 467 IPC, all above ingredients must be satisfied.

28. Section 471 IPC talks of use of forged document and reads as under:-

"471. Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record."

29. Looking to entire facts and circumstances of case, we do not find any merit in writ petition justifying quashing of FIR in question and whether petitioners have actually committed offence or not or any of them is involved in the matter or not, is a matter of investigation, which is not to be taken note of by this Court at this stage.

30. We make it clear that observations made by this Court are only for the purpose of considering this writ petition on merits as to whether FIR in question should be deserve to be quashed or not and shall not prejudice the investigation or proceedings before the Magistrate, who

shall proceed in the matter independently.

31. The writ petition is dismissed accordingly.

Order Date : 27.12.2019

I. Batabyal/AK