

GHANSHYAM SHARMA

v.

SURENDRA KUMAR SHARMA & ORS.

(Criminal Appeal No.1838 of 2014)

AUGUST 26, 2014

[J. CHELAMESHWAR AND A.K. SIKRI, JJ.]

Code of Criminal Procedure, 1973 - s.482 - Appellant withdrew money from bank, went to the house of respondents accompanied by first respondent while leaving the money in the car of first respondent - Glass of the car subsequently broken and the money stolen - Chargesheet against respondents u/s. 406 and 420 IPC - Trial Court summoned the respondents - They approached High Court u/s. 482 CrPC - Criminal proceedings quashed by High Court - Legality of - Held: High Court grossly erred in quashing the proceedings against the respondents - Argument before the High Court was that offences u/ss. 406 and 420 IPC were not made out on the facts alleged in the FIR - High Court opined that there was no entrustment of the money and at best it was a case of theft falling u/s.379 IPC - Thus, even according to High Court, the case fell u/s.379 IPC - Whether respondents are guilty u/ s.379 IPC or not is a matter of evidence - The fact that the police chose to file chargesheet u/ss.406 and 420 IPC is not conclusive regarding the offences for which the respondents-accused are to be tried - The trial Court can always frame appropriate charge if there is sufficient material from the report of the police available before it - In case material is insufficient to frame a charge, the trial Court may either discharge the accused or may direct further investigation in the matter - Penal Code, 1860 - ss. 379, 406 and 420.

It was alleged that there was an agreement between the appellant and the contesting respondents (1 to 3)

A whereunder the said respondents agreed to sell a plot of land admeasuring 400 sq. yards to the appellant for an amount of Rs.44,00,000/-. It was alleged that as per the agreement, the appellant did, in fact, make some payment.

B On 11.7.2009, the appellant complained to the police that the father of the contesting respondents had called the appellant on telephone and asked the appellant to make the payment of the balance amount to the first respondent. Accordingly, the first respondent
C approached the appellant. Both of them went to the bank in a car belonging to the first respondent wherein the appellant withdrew an amount of Rs.16,68,000/- and then proceeded to the house of the father of the respondents. When they were about to enter the house, the first
D respondent insisted that the appellant leave the money in the car itself. The appellant left the money in the car and went into the house of the respondents. While the appellant and the father of the respondents were discussing, the first respondent went out of the house and returned after a while to inform the appellant that the
E glass of the vehicle, in which money was kept, was broken and the money was stolen. In the abovementioned background, the appellant lodged a complaint with the police praying that action be taken against the respondents. The police investigated the case
F and filed a chargesheet under Section 406 and 420 IPC. The trial Court summoned the accused-respondents. The respondents approached the High Court under Section 482 Cr.P.C. praying that the criminal proceedings be quashed. The said application was allowed by the High
G Court and hence the instant appeal.

Allowing the appeal, the Court

HELD:1. The basic facts that the appellant withdrew money from the bank, went to the house of the
H respondents accompanied by the first respondent and

left the money in the car of the first respondent do not appear to be in dispute. On the other hand, from the impugned judgment it appears that the argument before the High Court was that the offences under Section 406 and 420 IPC are not made out on the facts alleged in the FIR. The High Court opined that there was no entrustment of the money in the instant case and at best it was a case of theft falling under Section 379 IPC. This Court does not propose to examine the correctness of the findings recorded by the High Court in an enquiry that there was no entrustment of money. The fact remains that the appellant lost money which was kept in the car of the first respondent. Even according to the High Court, the case would fall under Section 379 IPC. The High Court grossly erred in quashing the proceedings against the respondents with a certificate that it is one of the rarest cases where the court is required to quash the proceedings. [Paras 8, 9, 10] [451-F-G; 452-D; 453-C, D]

2. Whether the respondents are guilty under Section 379 IPC or not is a matter of evidence. The fact that the police chose to file a chargesheet under Section 406 and 420 IPC is not conclusive regarding the offences for which the respondents-accused are to be tried. The trial Court can always frame an appropriate charge if there is sufficient material from the report of the police available before it. In case where the material is insufficient to frame a charge, the trial Court may either discharge the accused or may direct further investigation in the matter. Before deciding as to which one of the three courses of action mentioned above is to be resorted to, the trial Court must examine the content of the complaint, the evidence gathered by the investigating agency and also scrutinize whether the investigating agency proceeded in the right direction. The impugned order of the High Court is accordingly set aside. [Paras 11, 12] [453-E-H]

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No.1838 of 2014.

From the Judgment and Order dated 12.09.2012 of the
High Court of Judicature at Allahabad in Criminal Misc
B Application No. 34280 of 2011.

Shiv Ram Sharma for the Appellant.

C.U. Singh, S.K. Aggrawal, Rakesh Bhargava, Saurav
Agrawal, Apporva Agrawal, Mushtaq Ahmad, Ravi Prakash
C Mehrotra, Abhinav Malik for the Respondents.

The Judgment of the Court was delivered by

CHELAMESWAR, J. 1. Leave granted.

D 2. Aggrieved by the judgment and order dated 12th
September, 2012 in Criminal Misc. Application No.34280 of
2011, the defacto complainant in case No.1743/IX/2009,
arising out of Case Crime No.246 of 2009 on the file of the 1st
Additional Chief Judicial Magistrate, Mathura, preferred this
E appeal.

3. The respondents are the accused in the
abovementioned case. By the impugned order, the High Court
quashed the proceedings in the abovementioned criminal case
on the file of the trial Court.

F 4. It is alleged that there was an agreement between the
appellant and the contesting respondents (1 to 3) whereunder
the said respondents agreed to sell a plot of land admeasuring
400 sq. yards to the appellant herein for an amount of
G Rs.44,00,000/-. It is alleged that as per the agreement, the
appellant did, in fact, make some payment.

5. On 11.7.2009, the appellant complained to the police
that the father of the contesting respondents herein had called
the appellant herein on telephone and asked the appellant to
H

make the payment of the balance amount to the first respondent herein. Accordingly, the first respondent approached the appellant. Both of them went to the bank in a car belonging to the first respondent wherein the appellant withdrew an amount of Rs.16,68,000/-. Both of them proceeded to the house of the father of the respondents. When they were about to enter the house, the first respondent insisted that the appellant leave the money in the car itself. The appellant left the money in the car and went into the house of the respondents. While the appellant and the father of the respondents were discussing, the first respondent went out of the house and returned after a while to inform the appellant that the glass of the vehicle, in which money was kept, was broken and the money was stolen.

6. In the abovementioned background, the appellant lodged a complaint with the police praying that action be taken against the respondents.

7. The police investigated the case and filed a chargesheet under Section 406 and 420 IPC. The trial Court summoned the accused (respondents herein). The respondents approached the High Court under Section 482 Cr.P.C. praying that the criminal proceedings be quashed. The said application was allowed by the High Court and hence the instant appeal.

8. The basic facts that the appellant withdrew money from the bank, went to the house of the respondents accompanied by the first respondent and left the money in the car of the first respondent do not appear to be in dispute. On the other hand, from the impugned judgment it appears that the argument before the High Court was that the offences under Section 406 and 420 IPC are not made out on the facts alleged in the FIR. The submissions made before the High Court can be culled out from the impugned order and are as follows:

“Two fold submissions have been made by the learned counsel for the applicants:

- A 1. That the facts disclosed in the report as well as in the statement of the witnesses, do not constitute the substantive offence under Section 406 as there is no entrustment of the property.
- B 2. That the amount of Rs.16,68,000/-was required to be paid by the complainant in lieu of the sale consideration as such offence under Section 420 is not made out as no inducement was made by the applicants to deliver the property to the applicants. Even if it is assumed that money was handed over this would be discharge of liability in respect of the purchase of the plot by the complainant. It would not constitute entrustment as the complainant had transferred this money without retaining any domain over the said property and the transferee had absolute right to dispose of the same."
- C
- D 9. The High Court opined that there was no entrustment of the money in the instant case and at best it was a case of theft falling under Section 379 IPC.
- E "What is being alleged in the present case is that the money which was carried by the complainant for discharge of his liability for paying remaining sale consideration which amount was kept in the vehicle owned by the applicants. There was no specific agreement between the applicant and the accused persons for creation of
- F dominion for the said property which could constitute an entrustment. Even the dominion over the property is not being reflected in the statement of the witnesses as also of the complainant. All that is said that the money was kept in the vehicle which was found missing after the
- G complainant and applicants came out of the house of one of the applicants. By any stretch of imagination it cannot be said that the property was entrusted to the accused persons. It is admitted case of the persons that the money was found missing from the vehicle. The question of
- H misappropriating of the same as such does not arise.

There is no evidence on record that the said money was taken by the accused. The money was found missing from the vehicle. This at best can be an offence under Section 379. In view of this, I do not find any reason to allow the proceedings to continue. Since both the offences under Section 420 and 406 are not made out, it is one of the rarest cases where the court is required to quash the proceedings.”

10. We do not propose to examine the correctness of the findings recorded by the High Court in an enquiry that there was no entrustment of money. The fact remains that the appellant lost money which was kept in the car of the first respondent. Even according to the High Court, the case would fall under Section 379 IPC. The High Court, in our opinion, grossly erred in quashing the proceedings against the respondents with a certificate that it is one of the rarest cases where the court is required to quash the proceedings.

11. Whether the respondents are guilty under Section 379 IPC or not is a matter of evidence. The fact that the police chose to file a chargesheet under Section 406 and 420 IPC is not conclusive regarding the offences for which the respondents-accused are to be tried. The trial Court can always frame an appropriate charge if there is sufficient material from the report of the police available before it. In case where the material is insufficient to frame a charge, the trial Court may either discharge the accused or may direct further investigation in the matter. Before deciding as to which one of the three courses of action mentioned above is to be resorted to, the trial Court must examine the content of the complaint, the evidence gathered by the investigating agency and also scrutinize whether the investigating agency proceeded in the right direction.

12. We, therefore, allow the appeal and set aside the impugned order.”