

AFR

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Court No. - 74

Case :- APPLICATION U/S 482 No. - 1488 of 2020

Applicant :- Sanjeev Chaddha

Opposite Party :- State Of U.P. And Anr

Counsel for Applicant :- Avanish Kumar Shukla, Mithilesh Kumar Shukla

Counsel for Opposite Party :- Dinesh Kumar Singh, G.A.

Hon'ble Saurabh Shyam Shamsbery, J.

1. Heard Sri Mithilesh Kumar Shukla, learned counsel for applicant and Sri Rajiv Chaddha (complainant in person) and Sri Rakesh Kumar Mishra, learned A.G.A. for State.
2. Applicant has approached this Court to quash a charge-sheet dated 28.01.2019 under Section 406 I.P.C, Police Station-Kidwai Nagar, District- Kanpur Nagar (arising out of Case Crime No.344 of 2017), cognizance as well as summoning order dated 08.02.2019 passed in Criminal Case No. 2330 of 2019, pending before the Court of A.C.M.M, Court No.-7, Kanpur Nagar.
3. Facts of present case are unfortunate, that two real brothers are at loggerheads and their relation became so inimical that after death of their father, they are now entangled in present criminal proceeding. The complainant, an Advocate, has alleged that applicant, his elder brother, has committed offence of criminal breach of trust that he has not returned Rs. 2.20 lakh given to him on different dates for his

business, but despite earlier repeated assurance of returning it, he after death of their father, refused to return it.

4. The complainant has also alleged that on basis of an alleged Will, applicant has not only opened a joint account with his father but after his death, he withdrew money without his consent. An FIR was lodged by the complainant against his elder brother i.e. applicant for above referred offence on 12.11.2017, wherein after investigation, a charge-sheet was filed on 28.01.2019, for an offence under Section 406 I.P.C., only for allegation that applicant has not returned Rs.2.20 lakh. The other allegations were not found to be true. In this regard, 'brief facts of case' as mentioned in charge-sheet at its serial No. 16, being relevant are reproduced hereinafter :-

“ महोदय निवेदन है कि मुकदमा उपरोक्त वादी श्री राजीव चड्ढा की तहरीर के आधार पर पंजीकृत होकर विवेचना उ०नि० श्री प्रदीप कुमार मौर्या को सुपुर्द हुई उनके माघ मेला ड्युटी चले जाने के उपरान्त विवेचना उ०नि० श्री विशेष कुमार को सुपुर्द हुई उनका स्थानान्तरण हो जाने के बाद यह विवेचना मुझ उ०नि० को प्राप्त हुई अब तक की तमामी विवेचना बयान वादी, बयानात गवाहान, निरीक्षण घटनास्थल आदि में अभियुक्त संजीव चड्ढा पुत्र स्व० वीरेन्द्र नारायण चड्ढा नि० १९८ एन ब्लाक किदवई नगर कानपुर नगर द्वारा अपने भाई वादी मुकदमा श्री राजीव चड्ढा से दो लाख बीस हजार रुपया कारोबार के सिलसिले में लिया था और यह कहा था शीघ्र ही वापस कर देंगे लेकिन अभियुक्त द्वारा अमानत में खयानत करके बड़े भाई का रुपया हड़प लिया है जिसका यह कार्य धारा ४०६ भादवि की हद को पहुंचता है। अभियुक्त संजीव चड्ढा उपरोक्त का चालान जरिये आरोप पत्र सं० 19/2019 दिनांक 28.01.2019 को माननीय न्यायालय किया जा रहा है अतः महोदय से अनुरोध है कि सबूत तलब कर दण्डित करने कि कृपा करें।”

(Emphasis Supplied)

5. On above referred charge-sheet, cognizance of offence was taken and a case was registered on 08.02.2019. On same day, summons were issued to present applicant. The order dated 08.02.2019 is reproduced hereinafter :-

“08-02-2019- आज थाना किदवई नगर से मु० अ० सं० 344/2017 में आरोप पत्र मय केस डायरी के प्रस्तुत।

एफ० आई० आर० केस डायरी आरोप पत्र का अवलोकन किया। अभियुक्त संजीव चढ्ढा के विरुद्ध धारा 406 आई० पी० सी० का केस बनना पाया जाना है। संज्ञान लेने हेतु आधार पर्याप्त है। संज्ञान लिया जाना है। मुकदमा दर्ज रजिस्टर हो। विवेचक द्वारा अभियुक्त को न्यायालय में उपस्थित हेतु नोटिस तामीला कराया गया है। अभियुक्त जरिये बी० डब्लू० दिनांक- 05-03-2019 को तलब हो।”

(Emphasis Supplied)

6. The applicant has challenged the above referred charge-sheet, cognizance as well as summoning order in present application filed under Section 482 Cr.P.C., which is pending for last four years. During proceedings of present case, at a later stage, since both parties, being real brothers, have shown readiness to negotiate following order dated 21.02.2024 was passed :-

“Heard Sri Mithlesh Kumar Shukla, learned counsel for the applicant, Sri Rajiv Chadda, opposite party no.2, in person, who is an Advocate of this Court and Sri Vijay Kumar assisted by Sri Ajay Kumar Singh, learned AGA for the State.

This matter was fixed for hearing in chamber today. Applicant and opposite party no.2 are real brothers and they are present in Court today. On the request of both the parties, matter was heard today.

Some dispute with regard to the Will executed by their father arose between them. In the negotiation held between the parties through learned counsel for the parties assisted by learned AGA, they arrived at an amicable settlement of the dispute to be reduced in writing and to be filed before this Court by 02.04.2024. It is also agreed upon between the parties that the applicant shall also consult his sister Mrs.

Priti Kapoor, who is presently residing in Agra. The applicant and opposite party no.2 shall extend their No Objection Certificates in continuation to the arrangement of the house situated at Preetam Nagar, Prayagraj as well as Kidwai Nagar, Kanpur Nagar, so that names of the applicant and opposite party no.2 may be mutated in the records of the respective Municipal Corporations.

So far as the payment of amount as mentioned in the Will executed by the father of the parties is concerned, as per negotiation, the settled amount is Rs.4.95 lakhs for which a provision is made in paragraph 5 of the Will dated 26.5.2016 by Late V.N. Chadda, former ADJ plus Rs.5.00 lakhs, as settlement amount, total of which comes to Rs.9.95 lakhs. The parties have agreed that Rs.2.20 lakhs has to be deducted from the total amount, which is already accepted by opposite party no.2. Now, opposite party no.2 is entitled for Rs.7.75 lakhs out of which, Rs.4.95 lakhs is lying in the Bank which, he would receive after completing necessary formalities with the Bank. Rest amount of Rs.2.80 lakhs shall be paid by the applicant through a Demand Draft before this Court within 30 days from today through his counsel, Sri M K Shukla.

So far as transaction of shares, a SBBL gun and a Rifle of the father of the applicant and opposite party no.2 is concerned, that will be settled between them to which, opposite party no.2 is entitled to receive. The applicant and the sister of the parties shall also give NOCs to opposite party no.2 to get his name entered according to the provisions of the Arms Act.

A Wagon-R Car, bearing Registration No.UP 78 CK 8403, shall stand transferred according to the arrangement made in the

Will and opposite party no.2 shall provide NOC in favour of the applicant.

Put up this case on 02.04.2024 at 3:30 pm in Chamber.

Interim order, if any, is extended till the next date of listing.

In view of the aforesaid proposed agreement, sister of the applicant and opposite party no.2, Mrs Priti Kapoor, may make herself present before this Court on the next date, if so desired.

However, it is made clear that the terms and conditions mentioned above, are drawn on the basis of the negotiations made in the presence of the applicant and opposite party no.2 as well as their respective counsels. Therefore, in case of any failure for agreement upon the aforesaid conditions, no right of any party shall be prejudiced.”

7. Thereafter, parties were granted time to finalise negotiation and, therefore, present matter was adjourned on various dates i.e. 04.07.2024, 02.04.2024, 09.04.2024, 09.05.2024, 22.05.2024 and lastly on 20.08.2024, however, when parties have not able to reach to any mutual agreement, the Court decided to hear it finally. During final hearing also, the Court tried to mediate, however, unfortunately, adamant approach of parties, particularly of the complainant, no final agreement could arrive and matter was heard finally.

8. Sri Mithilesh Kumar Shukla, learned counsel for applicant has submitted that charge-sheet was filed only for offence under Section 406 I.P.C. on an allegation that complainant has paid Rs.2.20 lakh on different dates to applicant i.e. his elder brother for business purpose, however, despite assurance same was not returned. All other allegations about withdrawing

money from a joint account by the applicant by way of cheating and of a forged Will were found false.

9. Learned counsel also submitted that during negotiations, the applicant has returned the said amount (Rs.2.20 lakh) to the complainant, which has not been seriously disputed by the complainant appearing in person. Learned counsel by referring the contents of Section 406 I.P.C. submitted that there was no entrustment, rather if allegations are considered to be true, it would be a commercial dispute, i.e. a civil dispute. The complainant has pointed it with colours of criminality.

10. The complainant has not stated during investigation that money was given as an entrustment. There was no written agreement between parties. Learned counsel also submitted that summoning order as referred has not assigned any reasons that there are sufficient grounds to proceed.

11. The above submissions are opposed by Sri Rajiv Chaddha, the complainant appearing in person. He submitted that applicant has committed cheating also. The alleged Will is a document of fraud, however, failed to convince the Court on basis of above referred brief facts of charge-sheet as well as evidence collected during investigation. The only allegation which was found sufficient to file charge-sheet was that amount of Rs.2.20 lakh was not returned to complainant.

12. The allegation of cheating was not even found sufficient to file charge-sheet. The complainant has also not filed any civil litigation to challenge the Will. The argument of unfair investigation could not be taken in present application and for that there may be an alternative remedy.

13. In order to appreciate the rival submission, I have also carefully perused the case diary, provided by the complainant that applicant has provided relevant documents such as copy of the Will and details of opening of joint account. The Investigating Officer has also considered the report submitted by concerned Bank that it was a joint account duly signed by applicant and his father and operation of account was ‘either of survival’, therefore, there is no error committed during investigation for non-filing the charge-sheet for offence of cheating.

14. Sri Rakesh Kumar Mishra, learned A.G.A. for State has supported the charge-sheet but has not denied the ingredients of Section 406 I.P.C., in given facts may not be made out.

15. In aforesaid circumstances, the Court proceeds to consider whether on basis of material available, offence of criminal breach of trust would be made out or not. In this regard, following paragraphs of a judgment passed by Supreme Court in **Deepak Gaba and others Vs. State of U.P. and another (2023) 3 SCC 423**, being relevant are reproduced hereinafter :-

“15. For Section 405IPC to be attracted, the following have to be established:

(a) the accused was entrusted with property, or entrusted with dominion over property;

(b) the accused had dishonestly misappropriated or converted to their own use that property, or dishonestly used or disposed of that property or wilfully suffer any other person to do so; and

(c) such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract

which the person has made, touching the discharge of such trust.

16. *Thus, criminal breach of trust would, inter alia, mean using or disposing of the property by a person who is entrusted with or otherwise has dominion. Such an act must not only be done dishonestly, but also in violation of any direction of law or any contract express or implied relating to carrying out the trust. [Sudhir Shantilal Mehta v. CBI, (2009) 8 SCC 1 : (2009) 3 SCC (Cri) 646].*

17. *However, in the instant case, materials on record fail to satisfy the ingredients of Section 405IPC. The complaint does not directly refer to the ingredients of Section 405IPC and does not state how and in what manner, on facts, the requirements are satisfied. Pre-summoning evidence is also lacking and suffers on this account. On these aspects, the summoning order is equally quiet, albeit, it states that “a forged demand of Rs 6,37,252.16p had been raised by JIPL, which demand is not due in terms of statements by Shubhankar P. Tomar and Sakshi Tilak Chand”. A mere wrong demand or claim would not meet the conditions specified by Section 405IPC in the absence of evidence to establish entrustment, dishonest misappropriation, conversion, use or disposal, which action should be in violation of any direction of law, or legal contract touching the discharge of trust. Hence, even if Respondent 2 complainant is of the opinion that the monetary demand or claim is incorrect and not payable, given the failure to prove the requirements of Section 405IPC, an offence under the same section is not constituted. In the absence of factual allegations which satisfy the ingredients of the offence under Section 405IPC, a mere dispute on monetary demand of Rs 6,37,252.16p, does not attract criminal prosecution under Section 406IPC.*

16. As referred above, for purpose of Section 406 Cr.P.C., the requirement for commission of an offence of criminal breach of trust is that there must be entrustment with property, which was dishonestly misappropriate or converted to his own use and it must be in violation of any direction of law or any legal

contract express or implied, however, in present case, neither there was an 'entrustment' in such sense nor there was any proof that it was 'dishonestly misappropriate' nor there was any evidence that such act was in violation of any legal contract express or implied, therefore, on basis of material, none of ingredient of offence of criminal breach of trust is made out.

17. The Court at this stage, also takes note that alleged amount has already been returned during pendency of this application, when parties were trying to negotiate. The proceedings appears to be initiated by the complainant only to put pressure on his elder brother to negotiate since there is a Will wherein the complainant is not a beneficiary.

18. The said Will has been alleged to be a creature of fraud but no civil proceeding has been still initiated by complainant. The facts of present case are not only squarely covered by facts as well as on law as observed in **Deepak Gaba (supra)** but it is a fit case to invoke inherent jurisdiction in terms of paragraph 102(7) of **State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426** that present criminal proceedings was initiated by the complainant only for purpose of wrecking vengeance. For reference para 102(7) of Bhajan Lal (supra) is reproduced hereinafter:

"(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."

19. In the aforesaid circumstances, not only the ingredients of Section 406 I.P.C. are not made out but proceedings are also creature of malafides and were initiated only to harass the applicant by giving cloak of a criminal case to a dispute which was essentially of a civil nature, therefore, entire proceedings arising out of charge-sheet dated 28.01.2019 under Section 406 I.P.C., Police Station- Kidwai Nagar, District- Kanpur Nagar (arising out of Case Crime No. 344 of 2017) as well as cognizance and summoning order dated 08.02.2019 passed by the Court of A.C.M.M., Court No.-7, Kanpur Nagar are hereby quashed and the complainant is directed to pay Rs.25,000/- as a cost of litigation to the applicant within four weeks and a proof of it be placed on record of this case.

20. The Court deems fit to conclude this judgment with a parting remark that we always cherish sacrifice of the Bharat (भरत), younger brother of the Bhagwan Shri Ram but the complainant for his conduct towards his elder brother could be termed as a 'Kalyugi Bharat (कलयुगी भरत)'.

21. Accordingly, Application is **allowed**.

Order Date :- 09.09.2024

P. Pandey