



[2024:RJ-JD:38144]

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR****S.B. Criminal Misc. (Pet.) No. 776/2018**

Madanlal Pareek son of Shri Rambakshram, by caste Pareek, resident of Barjangsar, at present resident of Ward No.19, Sardarshahar, District Churu.

----Petitioner

Versus

1. State of Rajasthan
2. Madanlal Pareek son of Shri Jagdish Prasad Pareek, resident of Barjangsar, at present resident of Ward No.9, Sardarshahar, District Churu.

----Respondents

For Petitioner(s) : Mr. Sheetal Kumbhat.
For Respondent(s) : Mr. Shrawan Singh, PP.
Ms. Priyanka Borana on behalf of
Mr. Dharendra Singh, Sr. Advocate.

HON'BLE MR. JUSTICE RAJENDRA PRAKASH SONI**Order****REPORTABLE****18/09/2024**

1. In this petition under Section 482 Cr.P.C., the petitioner has sought quashing of FIR No. 76/2018 dated 23.02.2018 under Sections 420, 406 IPC, registered at Police Station Sardarshahar, District Churu and the proceedings, if any, arising out therefrom.
2. The facts may be briefly noticed.
3. That on 23.02.2018, complainant Madan Lal Pareek S/o Jagdish Prasad Pareek had submitted a written report at Sardarsahar (District Churu) Police Station to the effect that he had lent a total sum of ₹70,00,000 to the petitioner-accused between 01.04.2013 and 28.06.2014. This amount was lent at the interest rate applicable in banks. The petitioner has now refused



to repay the amount; therefore, it was requested that money of complainant be returned back to him.

4. Learned counsel appearing on behalf of the petitioner has submitted that bare perusal of the first information report would reveal that the allegations as contained in the complaint are purely civil in nature and the requisite averments so as to make out a case of cheating and criminal breach of trust are absent. Hence, it does not disclose the commission of the alleged offence. Moreover, instead of filing a money recovery civil suit, complainant has lodged the present F.I.R. and has attempted to give the cloak of a criminal offence to the present dispute which is purely civil in nature, just to harass the petitioner and for recovery of a time barred loan amount. According to him, it was a fit case for quashing of the FIR and all proceedings pursuant thereto.

5. Learned Public prosecutor assisted by learned counsel appearing on behalf of the complainant has opposed this prayer and argued that a clear case under Section 406 and 420 of the IPC was made out against the petitioner as borne out by the material collected and indicated. Learned counsel for the complainant has supported the impugned FIR and submitted that from the allegations levelled in the FIR, offence under Sections 406 and 420 is *prima facie* made out against petitioner-accused. Petitioner took a loan of a huge amount and still he failed to make payment, therefore it is evident that petitioner was not intending to make payment from beginning. It is his contention that if the matter is allowed to proceed, it is certain that it would lead to conviction of the petitioner under Section 406 and 420 of the IPC.



Therefore, this Court ought not to exercise its jurisdiction under Section 482 Cr.P.C. and quash the FIR.

6. I have considered the arguments advanced by the parties.

7. Before going into rival contentions, it would be appropriate to have a look at the first information report filed by Respondent No. 2 in the police station, which formed the foundation for the police for registration of the FIR. In sum and substance, what was alleged in the said complaint was as follows:-

सेवा में,

अतिरिक्त पुलिस अधीक्षक
चूरु

विषय:- मैसर्स स्टार स्टील के मालिक श्री मदनलाल पुत्र श्री रामबक्सराम पारीक बरजांगसर, तहसील सरदारशहर जिला चूरु हाल मैसर्स स्टार स्टील, बीकानेर रोड सरदारशहर जिला चूरु के द्वारा रुपये 70,00,000 (अखरे सत्तर लाख रुपये) का भुगतान नहीं करने बाबत।

महोदय,

उपरोक्त विषयान्तर्गत सविनय अनुरोध है कि मेरे द्वारा दिनांक 01.04.2013 को रुपये 16,00,000/-, दिनांक 01.04.2013 को रुपये 30,00,000/- दिनांक 01.04.2013 को रुपये 10,00,000/-, दिनांक 03.06.2013 को रुपये 9,00,000/-, दिनांक 28.06.2014 को रुपये 5,00,000/- (कुल सत्तर लाख रुपये) 70,00,000/- जिसकी लिखापढ़ी दिनांक 29.09.2014 को हुई (प्रति सलग्र है) यह रकम बैंक ब्याज पर दी गई थी तथा रकम जल्दी से जल्दी रकम भुगतान का कहा गया। लेकिन अब रकम देने से मना कर दिया। इस कारण मेरा आपसे सविनय अनुरोध है कि कृपया बिना किसी विलम्ब के कार्यवाही कर मुझे तेरी रकम दिलवाकर अनुग्रहित करवाये, ताकि मैं मेरी आजीविका एवं परिवार का जीवन निर्वाह कर सकूँ।

अग्रिम सधन्यवाद



8. In view of above facts of F.I.R, I am not in agreement with the submissions made by Ms. Priyanka Borana and Public Prosecutor that if the matter is allowed to proceed, it would certainly lead to conviction of the petitioner for the offence punishable under Sections 406 and 420 of the IPC.

9. The sole foundation of the above stated FIR appears to be recovery of money advanced as loan. There is no dispute that the FIR referred to above, came to be registered at the instance of the complainant on account of the alleged non-payment of a loan amount taken by the petitioner from the complainant.

10. Section 406 IPC relates to the punishment provided for criminal breach of trust which is explained in Section 405 IPC. It is well settled that before there can be criminal breach of trust, there must be entrustment. The law clearly recognizes a difference between simple advancement/investment of money and entrustment of money. A mere breach of a promise, agreement or contract does not, *ipso facto*, constitute the offence of the criminal breach of trust contained in Section 405 Indian Penal Code without there being a clear case of entrustment.

11. In a case of advancement of money as a loan for consideration of interest, there is no question of entrustment and therefore, there would be no question of criminal breach of trust. Consequently, no offence punishable under Section 406 IPC can be said to have been committed by the petitioner even if all the material placed on record is taken at face value.

12. Now coming to the charge under Section 415 punishable under Section 420 of Indian Penal Code, in the context of



contracts, the distinction between mere breach of contract and cheating would depend upon the fraudulent inducement and *mens rea*. The mere inability of the petitioner to return the loan amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, as it is this *mens rea* which is the crux of the offence. Even if all the facts in the complaint and material are taken on their face value, no such dishonest representation or inducement could be found or inferred.

13. The legislature intended to criminalise only those breaches which are accompanied by fraudulent, dishonest or deceptive inducements, which resulted in involuntary and in-efficient transfers, under Section 415 of Indian Penal Code.

14. After hearing learned counsels for the parties, I am of the considered view that the only issue which requires determination is "Whether or not the dispute between the parties is of civil nature". In sum and substance, there can be no escape but to hold that the dispute is purely of civil nature and initiation of criminal proceedings in relation thereto is a clear abuse of the process of law.

15. Impugning the FIR in question, the petitioner has raised two-fold contentions. First, that the dispute between the parties is purely of civil nature. Second, he contended that the impugned FIR is a device to arm-twist the petitioner to recover a loan amount, which is not permissible under the law. Both contentions hold water.





16. *Prima facie* an offence under Section 406 or 420 of IPC pertaining to criminal breach of trust and cheating is not made out in the given factual scenario as also requisite averments so as to make out a case of cheating are absent.

17. Any further observation, at this stage, may unnecessarily prejudice other rights of the parties, if any. The continuation of proceedings is an abuse of the process of the Court.

18. Consequently, for the reasons afore-stated, this petition is allowed and the impugned FIR and the proceedings arising therefrom are hereby quashed.

19. The petition is allowed in the aforesaid terms.

(RAJENDRA PRAKASH SONI),J

Mohan/-