(2024) 04 CHH CK 0050

In the Chhattisgarh High Court

Case No : Criminal Miscellaneous Petition No. 1239 Of 2023

Avnesh Singh Chauhan APPELLANT

Vs

State Of Chhattisgarh RESPONDENT

Date of Decision : 26-04-2024

Acts Referred:
Indian Penal Code, 1860 — Section 415, 420
Code Of Criminal Procedure, 1973 — Section 482

Citation : (2024) 04 CHH CK 0050

Hon'ble Judges : Naresh Kumar Chandravanshi, J

Bench : Single Bench

Advocate : Ashish Gupta, Satish Gupta, Aman Tamrakar

Final Decision : Dismissed

Judgement

1. The petitioner has preferred this petition under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') praying for quashment of FIR No. 99/2019 dated 9-2-2019, charge sheet bearing Criminal Case No. 240/2021 (Annexure P-1) pertaining to above FIR for the offence under Section 420 of the I.P.C. pending before the Chief Judicial Magistrate, Baloudabajar, Distt. Baloudabajar.

2. Brief facts of the case are that on 09-02-2019, the complainant Rajendra Kumar Bhatt, submitted a written complaint to the Police Station City Kotwali, Baloudabajar to the effect that, he has a savings account number 628201065353 in ICICI Bank, branch Baloudabajar. In the month of September, 2017, he went to above branch of ICICI bank for investing money. The petitioner, who was posted in that branch as Dy. Branch Manger, said him that the interest rate available in the ICICI bank is very less, if he invests money in Admiral Market, he will get good interest as, companies like Admiral Market, Forece Market Trading Photes, Life Forece etc. are very trustworthy, where the money remains safe and profitable. The petitioner gave all kinds of allurements. Under the influence of such things, the Complainant invested Rs. 4,00,000/- in Admiral Market for one

year by giving check number 29967 of ICICI Bank, Baloudabajar branch on 12-09-2017. The petitioner assured him that he will get interest of Rs 4,000/- and its maturity date is 15-09-2018. From October, 2017 to December 2017, interest kept getting deposited in complainant's account, but after that, the interest stopped coming from the month of January 2018. When complainant told the petitioner about non-payment of interest to him, petitioner always assured him that complainant will get interest and principal amount, but the same has not been given to him, therefore, he lodged instant complaint. Based on above complaint, instant FIR has been registered and after investigation, charge sheet for offence under Section 420 of the IPC has been filed against the petitioner before the Chief Judicial Magistrate, Baloudabajar, for quashing of which, instant CRMP has been filed.

3. Learned counsel for the petitioner submits that, the petitioner has been falsely implicated in this case. The complainant on his own has invested Rs. 4,00,000/- in the Admiral Market and also got interest of Rs. 4,000/- per month from October, 2017 to December, 2017. When interest stopped coming in his account, he started blackmailing the petitioner saying that if the petitioner does not give him interest of Rs. 4,000/- per month, then he will implicate petitioner. It is further submitted that considering the above facts, the petitioner has been granted anticipatory bail by this Court vide Annexure P-3. It is submitted that the FIR in question has been lodged to defame the petitioner with ulterior motive by the complainant/respondent No. 4. The complainant has given Rs. 4,00,000/- to Sushil Muley/ respondent No. 5, who is proprietor of Admiral Market and memorandum of understanding was executed between them, the petitioner has nothing to do with the transaction between them. Said respondent No. 5 has not been made accused in the charge sheet. It is submitted that the incident is of the year 2017, whereas FIR has been lodged on 9-2-20219, therefore, there is long delay in lodging the FIR. The chances of ultimate conviction are meek in the matter and no useful purpose is likely to be served by allowing criminal proceedings to continue. Hence, learned counsel for the petitioner submits that instant petition may be allowed and the FIR in question and the charge sheet pertaining to above FIR may be quashed.

4. Learned counsel appearing for the State submits that the allegation leveled against the petitioner fulfill the ingredients of Section 420 of the I.P.C. The petitioner while working in the ICICI Bank, induced the complainant to invest his money in Admiral Market alluring of getting more interest, but when complainant invested his money in Admiral Market, neither interest nor principal amount has been paid to him, thereby the petitioner has cheated the complainant, therefore, the instant petition deserves to be dismissed.

5. Learned counsel for the respondent No. 5 supported the contention made by learned counsel for the State.

6. Heard learned counsel for the parties and perused the material available on record.

7. In the instant case, the allegation made against the petitioner is that, at the relevant time, he was working as Dy. Branch Manager of Baloudabajar branch of ICICI bank. The complainant went to the aforesaid branch of the ICICI bank for investment /deposit of his money in ICICI bank, but the petitioner induced him to invest money in Admiral Market, on the pretext of getting more interest. On being induced by the petitioner, the complainant invested Rs. 4,00,000/- in the Admiral Market. He also got interest of Rs. 4,000/- per month from October, 2017 to December, 2017, but thereafter he did not get any interest, even principal amount has not been returned to him, thus, he has been cheated by the petitioner.

8. Section 420 of the IPC deals with cheating, which provides that 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 being 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. On perusal of aforesaid provision, it is clear that to bring an offence under Section 420 of the IPC, following are the necessary ingredients :

1. The person cheated must be dishonestly induced to:

a) Deliver property to any person, or

b) Make, alter, or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.

Therefore, cheating is an essential ingredient for an act to constitute the offence under Section 420 IPC. Cheating is defined under Section 415 IPC, and the essential elements of cheating are as follows:

a. There should be fraudulent or dishonest inducement of a person by deceiving them.

b. The person who was induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property.

c. The person who was induced should be intentionally induced to do or omit to do anything which they would not have done or omitted if they were not deceived.

9. The ingredients of cheating were explained by the Hon'ble Supreme Court in S.W. Palanitkar v. State of Bihar [(2002) 1 SCC 241] as under:

"10. The ingredients of an offence of cheating are:

(i) there should be fraudulent or dishonest inducement of a person by deceiving him,

(ii)(a) the person so deceived should be induced to deliver any property to any person or to consent that any person shall retain any property; or

(ii)(b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) in cases covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property."

10. While discussing the essential ingredients as defined under Section 420 of IPC, the Hon'ble Supreme Court in the case of Vijay Kumar Ghai and Ors. vs. The State of West Bengal and Ors. [2017(7) SCC 124] has observed thus:-

"To establish the offence of Cheating in inducing the delivery of property, the following ingredients need to be proved:-

1. The representation made by the person was false.

2. The accused had prior knowledge that the representation he made was false.

3. The accused made false representation with dishonest intention in order to deceive the person to whom it was made.

4. The act where the accused induced the person to deliver the property or to perform or to abstain from any act which the person would have not done or had otherwise committed."

11. If facts of the instant case are seen in the light of above legal scenario, in the instant case, the complainant came to the branch of the ICICI bank, where, he was having saving account and where the petitioner was posted as Dy. Branch Manager, for investment/deposit of his money, but the petitioner, instead of favouring his own ICICI Bank, he induced the complainant /respondent No. 4, to invest his money in some other financial company alluring to get more interest, and on his inducement, the complainant deposited Rs. 4,00,000/- in Admiral Market, and then except interest for 3 months, he got nothing except assurance by the petitioner. During investigation, the police has collected sufficient material to connect the petitioner with the crime, therefore, the ingredients of cheating as mentioned above are available in the instant case.

12. Therefore, in view of the above discussion, this Court is of the considered opinion that, in the instant case, necessary ingredients for attracting the provisions of Section 420 of the IPC are available against the petitioner, therefore, instant petition filed for quashing of FIR No. 99/2019 and Criminal Case No. 240/2021 pending before the Chief Judicial Magistrate, Baloudabajar, Distt. Baloudabaja-Bhatrapara, pertaining to above FIR, deserve to be dismissed being sans substance.

13. In view of above, instant CRMP is dismissed.

14. In view of above, all pending IAs are also disposed of.

