(2019) 07 MP CK 0135

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 51016 Of 2018

Babulal S/O Late Jhamanlal Jain	APPELLANT
Vs	
Neelam Nagar And Another	RESPONDENT

Date of Decision : 19-07-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Order 5 Rule 20
Constitution Of India, 1950 — Article 226
Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 156(3), 200, 202, 203, 204, 482
Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 — Section 50(1)(2), 50(2), 50(3), 50(4), 50(7), 53
Indian Penal Code, 1860 — Section 415, 420

Citation : (2019) 07 MP CK 0135

Hon'ble Judges : Shailendra Shukla, J

Bench : Single Bench

Advocate : A.S. Garg, Jitendra Verma Vijay K. Assudani

Final Decision : Dismissed

Judgement

1. This order seeks to dispose of petition filed under Section 482 of Cr.P.C. by the applicant - Babulal S/o Late Jhamanlal Jain seeking quashment of complaint filed against him as well as proceedings initiated against him under Section 420 of IPC, quashment of non-bailable warrant as well as perpetual warrant dated 08.11.2016 and also quashment of order dated 12.07.2018 passed by the Trial Court for directing the non-applicants not to take any coercive action against him.

2. The applicant submits that he along with Mohan Agrawal and Manish Agrawal were owners and occupier of agricultural land bearing Survey No.572/5 ad-measuring 0.419 (not specified whether acre or hectare) situated at Village Pipalihyana, Patwari Halka No.15/2, Tehsil and District Indore. One Smt. Neelam Nagar entered into agreement to purchase the land in question from the present applicant. Consequently, the land was purchased by the complainant vide agreement dated 18.12.1997. After execution of this agreement, Power of

Attorney was also executed by the applicant at the request of the complainant and possession was handed over on 17.12.1997. Thereafter, Indore Development Authority (IDA) exercising powers under the Land Acquisition Act issued notification dated 04.05.2003 acquiring land in question under the Scheme No.140, in pursuance to the aforesaid acquisition of IDA vide letter dated 22.07.2003 published a notification inviting objections in respect of the aforesaid land. After completion of the land acquisition proceedings, IDA passed an award dated 06.08.2005. The applicant has never accepted the award passed by the IDA in respect of the land in question and on the contrary, co-owner Mohanlal Agrawal submitted objections stating that the land in question was sold vide agreement dated 19.12.1997 and thereafter filed a writ petition under Article 226 of the Constitution of India to release the aforesaid land in pursuance of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The Court was pleased to issue notice and thereafter matter has been admitted for final hearing.

3. It has further been submitted that the non-applicant No.1 purchased a property vide agreement dated 18.12.1997 and thereafter Power of Attorney was also executed on the same day and after six years, IDA acquired the aforesaid land but complaint was filed by the non-applicant Nos.1 and 2 alleging that the present applicant has sold the property which was already acquired by the IDA under the Scheme No.140. It is submitted that the complainant had not been able to establish prima-facie case against the applicant and even if the allegations made in the complaint are taken at face value and accepted, it does not prima-facie constitute any offence and make out any case against the applicant.

4. Learned Senior Counsel for the applicant submits that the Magistrate called for the report exercising the power under Section 156(3) of Cr.P.C. in pursuance thereof, police submitted a report stating that the matter between the parties is of civil nature and it does not constitute an offence under Section 420 of IPC. This report was ignored and cognizance was taken under Section 420 of IPC and bailable warrant was issued to secure presence of the applicant.

5. It is further submitted that the learned Trial Court, without making any enquiry as to the allegations against the applicant and the role of the applicant has erroneously taken cognizance under Section 420 of IPC. Mens rea on the part of the accused should have been established before taking cognizance in respect of offence of cheating. In order to constitute the offence of cheating, the intention to deceive should be in existence at the time when the inducement was offered. No such allegations are found in the complaint that the applicant had malafidely or dishonestly sold the property to the non-applicants and therefore, no case under Section 420 of IPC is made out. It has also been mentioned that the incident is of the year 1997 whereas complaint was filed in the year 2006 and an explanation has been given that dispute is purely civil in nature, as to the complaint has been filed after such a huge delay.

6. As per the applicant, the High Court has taken notice of all the circumstances in respect of co-accused Manish and had stayed execution of non-bailable warrant issued against in respect of offence under Section 420 of IPC, that the applicant is permanent resident of State of Rajasthan whereas, Trial Court had been sending summons and warrants at the address given by the non-applicants i.e. 20-B, Dhenu Market, Indore and it is because of this reason that summons/ bailable warrant were never served upon the applicant and therefore, without service of bailable warrant, non-bailable warrant has been issued inappropriately.

7. The grounds which have been taken by the applicant are that he has no direct or indirect connection with the crime, that there was no prima-facie case against the applicant and taken at face value, no offence is constituted against the applicant, that applicant himself has never accepted the award passed by the IDA, that the complaint has been filed very belatedly, that learned Trial Court ignored the report under Section 156(3) of Cr.P.C. and without considering the same took cognizance under Section 420 of IPC, that the complainant could not establish mens rea on the part of the applicant, that applicant belonged to State of Rajasthan and therefore, bailable warrant or summons could not be served upon him, that the complainant has maliciously instituted with another motive of wreaking vengeance.

8. Further submission is that for involvement of ingredients of Section 420 of IPC, complainant should have shown that the intentions to deceive exists from the initial stage. The impugned acts by the applicant cannot be considered to be fulfilling ingredients of Section 415 of IPC. Grave injustice would be caused if the private complaint against the applicant is allowed to be continued and on these grounds, quashment has been sought.

9. The non-applicants have filed their written reply, in which it has been stated that it is well established that power of quashing FIR/complaint under Section 482 of Cr.P.C. has to be exercised in rarest of rare case and the yardstick is that all the allegations taken to be true do not not disclose the offence and it is only then that the complaint can be quashed. The non-applicants submit that in the complaint it has been stated that the accused persons had categorically informed the complainant that the land is not included in the scheme of IDA and that they will get the development permission and the building permission from the Town & Country Planning Department and IDA whereas, land at the time of execution of the agreement of sale was very much in the Scheme No.140 under declaration on 21.05.1997. The question whether the applicant had knowledge or not, is only to be decided by leading evidence and therefore, it is not a fit case for exercising power under Section 482 of Cr.P.C. The complainant submits that the complaint in question was raised wayback on 25.11.2009 but the applicant and co-accused persons have been delaying the process of service upon them and when after a very long delay of 12 years, services could be effected and it is only then the present petition has been filed. It has been stated that knowing fully well that the disputed land had been brought into the scheme of IDA, the non-applicants

were allured into executing the agreement on promise that the land was free from all encumbrances and was not included in the scheme of IDA and the same shall be sold at very attractive price to the non-applicants. Thus, it is prayed that the petition be dismissed with exemplary costs. It has been stated that the non-applicants were told that straightaway sale deed would be executed but what was executed was agreement to sale. As the agreement to sale contained complete stamp duty and also contained averments regarding involvement of possession, there was no reason to not execute the sale deed. This also shows that since the disputed land was already brought in the scheme of IDA, no registered sale deed could have been executed and therefore, agreement to sale was deceptively executed. Regarding the statements of the applicant that survey number of the disputed land was not included in the declaration published under Section 50(1)(2) of the Adhiniyam, the complainant submitted that the survey number is only published when the scheme becomes final under Section 50(7) of the Adhiniyam. It has been stated that in the "declaration of intent" merely boundaries of land are specified and for this, survey numbers of land which are situated under the peripheral boundaries are mentioned but the survey numbers of land which are included in the scheme are never mentioned. The complainant submits that after publication of "declaration of intent", IDA is required to publish declaration in gazette and in two local newspapers within 30 days wherein also boundaries of the scheme are given and in this case, declaration was published in gazette on 13.06.1997 and in Dainik Nai Duniya newspaper on 18.06.1997. Thereafter, provisions under Section 50(3), 50(4) and 50(7) of the Adhiniyam are required to be complied with which are respectively invitation of objections, approval or release of land after considering the objections and ultimately finalization of the scheme. Even when the objections are invited, only the boundaries of the scheme are notified in the gazette and the submission of the applicant that he came to know only on 14.03.2003 that publication was made as per Section 50(7) of the Adhiniyam is a patent lie and is an attempt to mislead the Court. It has been emphatically stated by the complainant that the applicant was having knowledge since 21.05.1997 and therefore, they decided to sell the land to the non-applicants. The complainant submits that the police arriving at a conclusion that the dispute is civil in nature and gave such an opinion because they had assumed that the disputed land was included subsequently in the scheme and thus, police report does not deserve to be accepted. The non-applicants further submits that at the time of taking cognizance of an offence, it is not required on the part of the Magistrate to write detailed/speaking order. It is also submitted that the applicant who has been avoiding the judicial process since last 12 years has no right to challenge the proceedings and all the ingredients of Section 420 of IPC are made out in this matter.

10. The question before this Court is whether in view of the grounds contained in the petition filed under Section 482 of Cr.P.C., the complaint filed by the Respondent against the applicant deserves to be quashed ?

11. First of all, the scope of the High Court in granting relief of quashment of FIR/

complaint is required to be reiterated which has already been settled by the Apex Court through its judgments. The most important of these citations is of State of Haryana vs. Bhajan Lal, 1992 SCC (Cri) 426, the broad principles in relation to exercise of powers under Section 482 Cr.P.C. laid down as under :-

"(1) Where the allegations made in the first information report of the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any , accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under order of a Magistrate within the purview of Section 155 (2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order or a Magistrate as contemplated under Section 155 (2) of the Code.

(5) Where the allegations made in the FIR or complaint are so assured and inherently improbable or the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal par engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) When 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."

12. As far as the power to grant relief under Section 482 of Cr.P.C. is concerned, the Apex Court in the case of Som Mittal vs. Government of Karnataka, AIR 2008 SC 1026 has observed that this power can be exercised sparingly with circumspection and in rarest of rate cases.

13. In the case of Karnataka vs. Muniswami, AIR 1977 SC 1489, it has been held that the power under Section 482 of Cr.P.C. can be exercised for quashing FIR/ complaint when it is clear that there has been an attempt to abuse process of Court and also for securing ends of justice. Thus, it can be seen that powers under Section 482 of Cr.P.C. can be exercised albeit very rarely to prevent abuse of process of Court and also provided that the matter as such which falls under

condition Nos.1 to 7 laid down in Bhajan Lal (supra).

14. Learned counsel for the applicant submits that the matter is purely civil in nature and the facts did not disclose commission of offence and process of this Court has been sought to be abused by depicting a case which is civil in nature as criminal case therefore, relief can be provided under Section 482 of Cr.P.C. Learned counsel for the applicant has referred to the case of Rashmi Jain vs. State of Uttar Pradesh & another, 2014 (13) SCC 553, in which dispute was "admittedly" purely civil in nature. However, the High Court had declined to exercise its power under Section 482 of Cr.P.C. noting that at the initial stage in which prima-facie case is to be seen and there are number of disputed questions of fact which could not be adjudicated upon under Section 482 of Cr.P.C. The Apex Court in para-7 of the judgement has noted that the non-applicant No.2 had herself admitted that the dispute involved was purely civil in nature. The admission on the part of the non-applicants that the dispute was of civil nature paved way for the Apex Court to hold that the matter which was essential civil in nature was being given cloak of criminal case, which was an abuse of process of Court and relief was granted. Another case cited is of Suresh vs. Mahadevappa Shivappa Danannava & another, 2005 (3) SCC 670, in which it has again been held that the matter is purely civil in nature and could not be given the dressing of a criminal case.

15. In all these cases, offence allegedly shown to be involved was that of cheating under Section 420 of IPC.

16. Learned counsel for the applicant has referred to the case of Rashmi Jain (supra) in which observations of the Apex Court in another citation was referred. In the case of Hridaya Ranjan Prasad Verma vs. State of Bihar & another, 2000 (4) SCC 168, it it has been observed in para-15 as under :-

15. "In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of 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. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

17. Further, in another case cited which is S. W. Palantikar & others vs. State of Bihar & another, 2002 (1) SCC 241 was again cited by the learned counsel for the applicant. In this citation, the Apex Court has referred to another citation of the Apex Court in para-13 of the judgement, which is being reproduced as

under :-

13. In G.V. Rao v. L.H.V. Prasad & Ors., [2000] 3 SCC 693, this Court in para 7 has stated thus :-

"As mentioned above, Section 415 has two parts. While in the first part, the person must "dishonestly" or "fraudulently" induce the com-plainant to deliver any property; in the second part; the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional. As observed by this Court in Jaswantrai Manilal Akhaney v. State of Bombay, AIR (1956) SC 575 a guilty intention is an essential ingredient of the offence of cheating. In order, therefore, to secure conviction of a person for the offence of cheating, "mens rea" on the part of that person, must be established. It was also observed in Mahadeo Prasad v. State of W.B., AIR (1954) SC 724 that in order to constitute the offence of cheating, the intention to deceive should be in existence at the time when the inducement was offered" (emphasis supplied).

18. In yet another case of Ajay Mitra vs. State of MP & others, 2003 (3) SCC 11, paras-15 and 16 of the judgement are of special relevance, which are reproduced as under :-

15. Section 420 IPC says that "Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person shall be punished with imprisonment..."

Cheating has been defined in Section 415 IPC and it says that "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"."

16. A guilty intention is an essential ingredient of the offence of cheating. In other words 'mens rea' on the part of the accused must be established before he can be convicted of an offence of cheating. (See Jeswantrai Manilal Akhaney v. The State of Bombay AIR 1956 SC 575). In Mahadeo Prasad v. State of West Bengal AIR 1954 SC 724, it was held as follows :

"Where the charge against the accused is under S.420 in that he induced the complainant to part with his goods, on the understanding that the accused would pay for the same on delivery but did not pay, if the accused had at the time he promised to pay cash against delivery an intention to do so, the fact that he did not pay would not convert the transaction into one of cheating. But if on the other hand he had no intention whatsoever to pay but merely said that he would do so in order to induce the complainant to part with the goods then a case of cheating would be established."

19. Learned counsel for the applicant has also refereed to the Co-ordinate Bench decision of Amit vs. State of MP passed in M.Cr.C. No.1244/2016 decided on 28.07.2016, following excerpts of this judgement are of relevance :-

It has been held in S.B. Goenka v. Rajendra Prasad Agarwalla, 1982 Cri. LJ 1228 that every breach of contract does not constitute an act of cheating and that dishonest intention cannot be inferred from the mere fact that the accused person did not subsequently fulfil the promise. It was further observed that in the absence of materials for the satisfaction of the Magistrate that the accused person had any dishonest intention at the time the alleged promise or inducement was made, an offence of cheating cannot be said to have been established and in such cases, the dispute would be purely of a civil nature and the proceeding initiated in the criminal Court would be an abuse of process of the Court.

On perusal of the written complaint submitted by respondent No.2 before Superintendent of Police, Dhar, which happens to be the basis of prosecution, it is found that the same only discloses that the petitioner and respondent no.2 had entered into a number of transactions with regard to sale and purchase of agricultural crop and that, allegedly, the petitioner failed to pay the sale consideration.

As a matter of fact, default on the part of a purchaser to pay the sale consideration simplicitor cannot be said to be an act of 'cheating' as defined in Section 415 of IPC. To constitute 'cheating', there must be a dishonest or fraudulent deception at the very inception and it should further be shown that on the basis of such deception the complainant or some other person was persuaded to do or omit to do some act to his detriment.

20. The crux of the observations of the various judgements referred to above is that in order to bring an act into the realm of cheating, intention to deceive should be shown to be existing at the time when alleged promise or inducement was made and it should further be shown that on the basis of such deception, complainant was persuaded to do some acts to his detriment.

21. Learned counsel for the applicant submits that facts of the case in hand was that there is no material on record to show prima-facie that the applicant was having knowledge that the disputed property has been brought into the fold of declaration of IDA seeking to include the disputed land in the new scheme and therefore, there being no material on record to show awareness of the applicant regarding declaration, it could not be stated that he had an intention to deceive from the very beginning. As per the counsel for the applicant, agreement to sale was bonafide. He submits that there was no mention of the survey number of disputed land in the declaration dated 21.05.1997 and therefore, it could not have been imagined that the disputed land was also included in the scheme of IDA. It has further been stated that publication in the news-papers had not come

to his knowledge and the applicant was not aware of any such declaration.

22. Per contra, learned counsel for the non-applicants submits that in the resolution dated 21.05.1997, those survey numbers have been mentioned which are situated in the periphery (boundaries) of the overall area which is subject matter of new scheme and in the declaration, it has been specifically mentioned that the scheme would comprise of all such land which is contained in area of whose periphery mentioned survey numbers are situated. The word "chaturseema" has been used showing that all such lands which are contained in an area on whose periphery the depicted survey numbers are shown shall be included for the purpose of the scheme. Thus, the applicant was deemed to be having knowledge. It has been further averred by the counsel for the non-applicants that the knowledge about this declaration to the applicant can also be discerned from the circumstantial evidence which is that the applicant approached the non-applicants to sell the land subsequent to the declaration alluring them with attractive sale consideration, that the applicant was dithering to execute the sale deed because that would have been exposed him as he would have been required to get the development permission from the Town & Country Planning Department and map sanctioned from the Indore Municipal Corporation which was not possible in view of declaration. Learned counsel for the non-applicants has submitted that there was nothing required to be done by the non-applicants and they had paid full stamp duty as applicable on conveyance. However, the applicant deliberately was not inclined to execute the sale deed. Learned counsel for the non-applicants submits that these circumstances amply show that the applicant was aware of the declaration of IDA and still has projected in the agreement that the land was free from all circumferences and it is not in any scheme of IDA.

23. Thus, whereas the applicant submits that non-mentioning of disputed land in the declaration of IDA dated 21.05.1997 itself shows that the applicant was not having knowledge of any scheme whereas, the counsel for the non-applicants submit that the declaration clearly mentioned that it included all such lands which existed within an area whose boundaries have been depicted by showing survey numbers which lie on the peripherals of the area. This apart, counsel for the applicant submits that there were prevailing circumstances as aforesaid which pointed out that applicant was having knowledge.

24. It has been further stated by the counsel for the non-applicants that even assuming that applicant came to know about the disputed land being included in the proposed scheme No.140 in the year 2003, then also applicant sat quite failing to offer any relief to the non-applicants, which would have included return of money etc. In the end, learned counsel for the non-applicants submits that malafides on the part of the applicant can be understood from the fact that even after process was issued in the year 2006, applicant failed to appear before the Trial Court and it is the applicant who is liable for abuse of process of Court and not the non-applicants.

25. The applicant in order to reinforce submission that publication in news-papers would not automatically show that he was having knowledge about the scheme has referred to a citation of Bapurao vs. Smt. Jamunabai & others, AIR 1983 SC 186, in which it has been alleged that the deceased being a prominent citizen and his death was reported in news-papers, held, was not sufficient for declining grant of relief. This citation is in respect of a news-paper publication regarding a private person. Matter in hand is different wherein scheme of government functionary was published in compliance of statutory requirement. One can see number of legislations prescribing for publishing in news-papers such as Order 5 Rule 20 of CPC and Section 50(3) of the Adhiniyam. When publication is made in compliance of any such provisions of an Act, due importance has to be attached to the same and the presumption is that once such publication has been made, concerned persons would be assumed to have been apprised of the scheme of the government.

26. Learned counsel for the applicant submits that even presuming that such publication had come to the knowledge of the applicant, publication itself does not specify disputed survey numbers. Further map of the scheme should have been published along with declaration which would have shown that the disputed land is part of the scheme.

27. Above submissions of the learned counsel for the applicant are not acceptable. The declaration very explicitly shows that all such lands are included in the Scheme No.140 which lie withing the area surrounded by such land, whose survey numbers have been depicted. This in itself would have made the applicant aware about his land being included in such scheme. Submission regarding publication was not accompanied with a publication map is also not a proper submission as the provisions under Section 50(3) of the Adhiniyam did not prescribe for publication of map as well. Thus, knowledge was attributable to the applicant. This fact coupled with other circumstances as already mentioned by the non-applicants which purportedly show knowledge about the scheme to the applicant are such instances which cannot at this stage can be stated to be having substantial evidentiary value. The probity of such circumstances can be evaluated only after appreciation of evidence. Thus, applicant has not been able to show that the matter is purely civil in nature and it has also not been shown that intention to deceive was not there since beginning in the mind of the applicant.

28. It would be pertinent to mention that on one hand, applicant had entered into agreement of sale of land with the non-applicants and on the other hand, applicant participated in the land acquisition proceedings. It is a different matter that applicant has not withdrawn money awarded as compensation, but the bonafides of the applicant cannot be determined from non-withdrawal of compensation but the bonafides could better have been shown if the applicant, on receiving notice for appearance before the Land Acquisition Authority, would have approached the non-applicants with an offer of compensation in view of

acquisition of the land by IDA. Further, on perusal of order-sheets before the Trial Court show that after issuance of process in the year 2006, presence of applicant could not be brought about before the Trial Court for as many as 10 years. One of the accused person even tried to procure anticipatory bail but could not succeed and applicant was declared absconder on 08.11.2016. The order-sheets thus display concerted efforts on the part of the applicant to avoid his presence before Court forcing the Trial Court to take extreme action of declaring the applicant absconder.

29. Further submissions by the counsel for the applicant is that JMFC has taken cognizance of the complain mechanically and has not applied his mind and the impugned order being non-speaking order is liable to be interfered with petition under Section 482 of Cr.P.C.

30. The applicant has filed copies of the order-sheets of the JMFC Court. Perusal of the order-sheets show that after the complaint was filed, the statements under Sections 200 and 202 of Cr.P.C. were recorded on 05.09.2005 and the matter was further inquired under Section 202 of Cr.P.C. directing the Station House Officer, Police Station Sanyogitaganj, Indore to submit a report. On 25.11.2006 order-sheet that was written is reproduced as under :-

25.11.2006

परिवादी द्वारा श्री हार्डिया अधि. परिशीलन किया गया अभियुक्तगण के विरूद्ध धारा 420 भादवि में प्रकरण पंजीबद्ध करने के पर्याप्त कारण विद्यमान है अतः अभियुक्त अशोक, मोहन, मनीश, बाबूलाल के विरूद्ध उक्त धारा में प्रकर पंजीबद्ध किया जावे।

परिवादी द्वारा तलवाना अदा किए जाने पर अभियुक्तगण को परिवाद की प्रति सहित उप. हेतु समन जारी हो।

प्रकरण उप. हेतु दि.

पदमेश शाह

जेएमएफसी

31. The cognizance of a case is taken by Court under Section 204 of Cr.P.C. which is reproduced as under :-

"204. Issue of process.- (1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be -

(a) summons-case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) ... ...

(3) ... ...

(4) ... ...

(5) ... ..."

32. The first ground taken was that the JMFC has taken the cognizance of the complaint mechanically and has not applied his mind and the impugned order is non speaking order.

33. When the cognizance was taken as above, statements under Sections 200 and 202 of Cr.P.C. along with the report of the police was placed on the record.

34. The submission of learned counsel for the applicant that the report filed by the police under Section 156 (3) of Cr.P.C. is not correct. The report was filed under Section 202 of Cr.P.C.

35. Now the question as to whether the order taking cognizance ought to be speaking order or not.

36. Learned counsel for the applicant has invited the attention of this Court to a citation of the Apex Court in this respect. In the case of S.W. Palantikar vs. State of Bihar [(2002) 1 SCC 241], the Apex Court in para 23 has held as under :-

"23. Many a times, complaints are filed under Section 200 Cr.P.C. by the parties with an oblique motive or for collateral purposes to harass, to wreck vengeance, pressurize the accused to bring them to their own terms or to enforce the obligations arising out of breach of contract touching commercial transactions instead of approaching civil courts with a view to realize money at the earliest. It is also to be kept in mind that when parties commit a wrongful act constituting a criminal offence satisfying necessary ingredients of an offence, they cannot be allowed to walk away with an impression that no action could be taken against them on criminal side. A wrongful or illegal act such as criminal breach of trust, misappropriation, cheating or defamation may give rise to action both on civil as well as on criminal side when it is clear from the complaint and sworn statements that necessary ingredients of constituting an offence are made out. May be parties are entitled to proceed on civil side only in a given situation in the absence of an act constituting an offence but not to proceed against the accused in a criminal prosecution. Hence before issuing a process a Magistrate has to essentially keep in mind the scheme contained in the provisions of Section 200-203 of Cr.P.C. keeping in mind the position of law stated above and pass an order judiciously and not mechanically or in routine manner."

37. Seeking recourse to the above citation, learned counsel submits that the impugned order does not show judicious application of mind and has been passed in mechanically or in routine manner contrary to the principle laid down by the Apex Court.

38. Per contra, learned counsel for the Respondents have submitted that the Trial Court, at the time of taking cognizance, has only to show its satisfaction

regarding existence of prima-facie case and expression of such terms in the impugned order is sufficient by itself and a detailed order is not necessary. Citation to that effect has been filed which is Mohinder Singh vs. Gulwant Singh and others [(1992) 2 SCC 213] (judgment by three-Judge Bench). Para 11 and 12 of this citation is of relevance which are reproduced as under :-

"11. This Court as well as various High Courts in a catena of decisions have examined the gamut and significance of Section 202 of the Code and settled the principle of law, the substance of which is as follows :

12. The scope of enquiry under Section 202 is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should issue or not under Section 204 of the Code or whether the complaint should be dismissed by resorting to Section 203 of the Code on the footing that there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if any. But the enquiry at that stage does not partake the character of a full dress trial which can only take place after process is issued under Section 204 of the Code calling upon the proposed accused to answer the accusation made against him for adjudging the guilt or otherwise of the said accused person. Further, the question whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of the enquiry contemplated under Section 202 of the Code. To say in other words, during the course of the enquiry under Section 202 of the Code, the enquiry officer has to satisfy himself simply on the evidence adduced by the prosecution whether prima facie case has been made out so as to put the proposed accused on a regular trial and that no detailed enquiry is called for during the course of such enquiry. Vide Vadilal Panchal v. Dattatraya Dulaji Ghadigaonker and Anr. and Pramatha Nath Talukdar v. Saroj Ranjan Sarkar [1962] 2 SCC 297."

12. In the present case, the High Court appears to have exceeded the scope of the enquiry contemplated under Section 202 of the Code and has gone into the question of sufficiency of evidence for conviction of the offence of bigamy. Further, in view of the admission made by the learned Counsel for the respondents admitting before us the marriage of Darshan Singh with Mohinder Pal the conclusion arrived at by the Court in the impugned order that the complaint does not contain any allegation of the performance of the marriage of Mohinder Pal with Darshan cannot be sustained and is liable to be set aside."

39. Further learned counsel for the non-applicants has also cited the Apex Court judgment in Kewal Krishan vs. Suraj Bhan & another [1980 (Supp) SCC 499]. In this citation the following part of para 10 is of relevance which is reproduced below :-

"10. In the instant case, there was prima facie evidence against Suraj Bhan accused which required to be weighed and appreciated by the Court of Session. At the stage of Sections 203 and 204, Criminal Procedure Code in a case exclusively triable by the Court of Session, all that the Magistrate has to do is to see whether on a cursory perusal of the complaint and the evidence recorded during the preliminary inquiry under Sections 200 and 202, Criminal Procedure Code, there is prima facie evidence in support of the charge leveled against the accused. All that he has to see is whether or not there is "sufficient ground for proceeding against the accused. At this stage, the Magistrate is not to weigh the evidence meticulously as if he were the trial court. The standard to be adopted by the Magistrate in scrutinising the evidence is not the same as the one which is to be kept in view at the stage of framing charges."

40. Thus, in the citation of S.W. Palantikar (supra) whereas the Apex Court has laid down that JMFC while taking cognizance should pass an order judiciously and not mechanically or in routine manner, it has also laid down in the case of Kewal Krishan (supra) and Mohinder Singh (supra) that the Magistrate at the stage of cognizance has to express satisfaction whether a prima-facie case is made out against the accused or not.

41. The question whether the order taking cognizance needs to be an speaking order or not is the moot question ?

42. Citation of the Apex Court in Dy. Chief Controller of Imports & Exports vs. Roshanlal Agarwal and others [(2003) 4 SCC 139] is of relevance. The Apex Court in para 9 of the judgment has observed as under :-

"9. In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not, whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons. This question was considered recently in U.P. Pollution Control Board v. M/s Mohan Meakins Ltd. & Ors., AIR 2000 SC 1456 and after noticing the law laid down in Kanti Bhadra Shah v. State of West Bengal, AIR 2000 SC 522, it was held as follows :

"The legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process. There is no such legal requirement imposed on a Magistrate for passing detailed order while issuing summons. The process issued to accused cannot be quashed merely on the ground that the Magistrate had not passed a speaking order."

43. In U.P. Pollution Control Board vs. Mohan Meakins Ltd. [AIR 2000 SC 1456], it has been laid down that the legislature has stressed the need to record reasons in certain situation such as dismissal of a complaint without issuing process. There is no such legal requirement imposed on a Magistrate for passing detailed order while issuing summons. In the case of Nupur Talwar vs. CBI [AIR 2012 SC 1921] also it has been held that absence of reasons for issuing process does not vitiate order. Thus the impugned order does not suffer from any infirmity.

44. The applicant submits that he had migrated to Rajasthan and therefore, warrants could not be served upon him. However, it is clear that he has been appearing before the concerned authority in the proceedings for determining the award under the land acquisition proceedings at Indore even though he was residing at Rajasthan. In this matter, not only the applicant but all other co-accused persons who were residing at Indore had been appearing before the concerned Court leading to issuance of perpetual warrant against them. Such absence by all the accused persons show strategy to prolong the proceedings indefinitely.

45. The averment in the petition that the complaint was filed belatedly in the year 2005 is also not tenable because the complainant states in para-7 of the complaint that he came to know that the disputed land is included in Scheme No.140 on 01.06.2005 when the Collector, Indore and officers of IDA arrived at the disputed land for measurement purpose.

46. For a person to get relief under Section 482 of Cr.P.C., he is also required to establish his bonafides. As already described, the proceedings of the Trial Court are not reflective of bonafides on the part of the applicant.

47. In the end, applicant seeks to project another anomaly in the complaint case in as much as complainants who have been deceived, have not deposed before the Court and instead Power of Attorney on behalf of the applicant namely, Narendra Narang has deposed and citation of Janki Vashdeo Bhojwani & another vs. Indusind Bank Ltd. & others, 2005 (1) MPLJ 421 has been submitted in which it has been laid down that the Power of Attorney cannot depose in place and instead of the principal therefore, Trial Court could not have relied upon the statements of Narendra Narang and issued process.

48. On perusal of this citation, it appears that above observation was made while considering an appeal by the Apex Court against the judgment of the High Court. It has already been made clear that at the stage of issuance of process, which is order under Section 204 of Cr.P.C., it is not required to be seen as to whether material relied upon by the applicant would stand the test of reliability or not. Opportunity for making submissions regarding this aspect, would be available to the applicant at the time of framing of charges, final arguments etc. At this stage, aforesaid lacuna is not material while considering this petition under Section 482 of Cr.P.C. Consequently, the applicant has failed to show that the facts of the case were such that the dispute in question was purely civil in nature and there was deliberate attempt on the part of the non-applicants to give it a colour of criminal case. Further, it could not be stated at this stage that there was no intention to deceive from inception on the part of the applicant. Ultimately, applicant has not been able to show that his case falls within any of the conditions outlined by the Apex Court in the case of Bhajan Lal (supra) This Court is not obliged to grant any relief to the applicant in exercise of its powers vested under Section 482 of Cr.P.C.. Consequently, this petition stands dismissed.