
(2024) 04 RAJ CK 0137

In the Rajasthan High Court

Case No : Criminal Miscellaneous (Petition) No. 4341 Of 2021

Ghanshyam Soni And Others

APPELLANT

Vs

State Of Rajasthan And Others

RESPONDENT

Date of Decision : 30-04-2024

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 384, 406, 420

Hindu Marriage Act, 1955 — Section 13B

Code Of Criminal Procedure, 1973 — Section 482

Citation : (2024) 04 RAJ CK 0137

Hon'ble Judges : Kuldeep Mathur, J

Bench : Single Bench

Advocate : Devendra Mehlana, Mukhtiyar Khan, Sanjeev Beniwal

Final Decision : Dismissed

Judgement

Kuldeep Mathur, J

By way of filing the present criminal misc. petition, the petitioners have prayed for the following reliefs:-

"It is therefore, respectfully prayed that your Lordships may graciously be pleased to accept and allow the present criminal misc. petition and the FIR No.315/2021 registered at Police Station-Rawatsar, District Hanumangarh may kindly be quashed and set aside; and the police be restrained from making any further investigation in the FIR, and it may be further directed not to take any coercive action against the petitioner."

Briefly stated facts of the case are that Respondent No.2 who is the mother of petitioner No.1 and mother-in-law of petitioner No.2, lodged an FIR No.315/2021 at Police Station Rawatsar, District Hunumangarh against them for the offences punishable under Sections 420, 406, 384 and 120-B of IPC alleging inter alia that her son- petitioner No.1 was posted as an Asst. Branch Manager in Central Bank of India, Branch Dabwali in the year 2015. He used to reside in the rented

premises of the co-accused Ramswaroop Gupta as a contenant with petitioner No.2. petitioner No.1 was pressurized and blackmailed by the petitioner No.2 to marry her. As per respondent No.2, petitioner No.1 could not withstand the pressure created upon him by petitioner No.2 and solemnized marriage with her. Petitioner No.2 was a divorcee. In the complaint, it has further been alleged that petitioner No.2 called respondent No.2 and told her that if she is given Rs.50,00,000/- as permanent alimony for divorcing her son, she would file a divorce petition.

On 27.09.2020, respondent No.2 had a meeting with petitioner No.2 and her family members at Yuvraj Hotel, Rawatsar, wherein, it was decided that petitioner No.2 would be paid Rs.20,50,000/- as permanent alimony and pursuant to the aforesaid agreement between the parties, respondent No.2 paid an amount of Rs.10,50,000/- to petitioner No.2 for filing divorce in cash instantly, whereas three cheques of Rs.4,00,000/-, Rs.4,00,000/- and Rs.2,00,000/- respectively were handed over to her subsequently. However, later on, an amount of Rs.10,00,000/-more was demanded for filing the divorce petition by respondent No.2 and consequently, three more cheques of Rs.4,00,000/-, Rs.4,00,000/- and Rs.2,00,000/- respectively were issued in her favour.

The petitioners thereafter, jointly filed a divorce petition before the Family Court, Bhatinda, under Section 13-B of Hindu Marriage Act, 1955, for obtaining divorce. In the subsequent course of events, the petitioners instead of taking a divorce, started living together and the divorce petition filed by them under Section 13-B of Hindu Marriage Act, 1955 was withdrawn.

In the complaint, it has thus been alleged that the petitioners have defrauded respondent No.2 of her money by cheating her in the name of taking divorce. Upon money being demanded back, the accused persons refused to return the said money.

Learned counsel for the petitioners submitted that petitioners have been harassed and mentally tortured by respondent No.2 as she wants them to live separately. Learned counsel submitted that the petitioners are ready and willing to refund the amount of money in question, in order to settle their disputes with respondent No.2 and have time and again requested her to sit with them to settle the disputes amicably, however, she is not willing to do so. Learned counsel vehemently submitted that as a matter of fact, the petitioners have already repaid a large portion of the amount allegedly borrowed by respondent No.2 from her relatives at the time when the talks of filing a divorce petition between the parties was going on.

Learned counsel submitted that a bare reading of the impugned FIR would reveal that no case for offences under Sections 420, 406, 384, 120-B of IPC is made out against the present petitioners. The registration of the FIR in the present case is nothing but a gross abuse of process of law and therefore, the same

deserves to be quashed and set aside by this Court.

Per contra, learned Public Prosecutor as well as learned counsel for respondent No.2 vehemently and fervently submitted that this is not a fit case where this Court should exercise the power vested in it by virtue of Section 482 of Cr. P.C. Learned counsel submitted that the FIR and the investigation made so far in the present case indicate that a prima facie case against the petitioners for the offences under Sections 420, 406, 384, 120-B of IPC is lucidly made out.

Heard.

It is a settled law that 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 the promise subsequently, such a culpable intention to have been formed right at the beginning, that is, when he had made the promise, cannot be presumed. The ingredients of Section 420 of IPC are as follows:

- (i) Deception of any person;
- (ii) Fraudulently or dishonestly inducing any person to deliver any property; or
- (iii) to consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

Indisputably, the petitioners are husband and wife and they are living together. Further, it is also not in dispute that they had jointly filed a divorce petition before the Family Court, Bathinda under Section 13-B of the Hindu Marriage Act, 1955. It is apparent from the face of the record that some amount was paid by respondent No.2 to petitioner No.2 for getting divorced from petitioner No.1 and the said amount agreed to be paid to the petitioner No.2 had been mostly paid though cheques issued by respondent No.2 or her relatives. From a perusal and after consideration of the pertinent facts and material available on record, this Court finds that there is nothing on record to establish the fact that the petitioners had an intention to cheat respondent No.2 right from the beginning. On the contrary, the petitioners have shown their willingness to refund the amount allegedly received by them from respondent No.2.

Having gone through the record of the case, this Court is of the opinion that after all, it is a disputed fact as to how much of the amount is liable to be paid, to respondent No.2 and how much of the alleged amount has already been repaid by the petitioners to respondent No.2 and other relatives, from whom the amount was allegedly borrowed by her at the time when they jointly preferred a divorce petition before the Family Court, Bathinda as permanent alimony for petitioner No.2.

In wake of the aforesaid discussion, in the opinion of this Court, since the dispute between the parties in the present case is essentially of civil nature, therefore, instead of launching the criminal proceedings against the petitioners, respondent

No.2 ought to have availed the civil remedies available to her under the law for recovery of disputed amount. The ingredients of Section 420, 406, 384 and 120-B are missing in the present case.

In the result, this Court finds that there is no criminal element in the impugned FIR. The impugned FIR No.315/2021 dated 09.07.2021, registered at Police Station Rawatsar, District Hanumangarh and all the pending proceedings arising there from are quashed and set aside qua the petitioners.