
(2021) 11 J&K CK 0034

In the Jammu And Kashmir High Court

Case No : Miscellaneous Criminal Cases (CRMC) No. 297 Of 2013 (O&M)

M/S Indian Academy Of Sciences And Another

APPELLANT

Vs

Prof. Indu Bhushan And Others

RESPONDENT

Date of Decision : 12-11-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482

Code Of Criminal Procedure, 1989 — Section 561A

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 120, 417, 420

Indian Penal Code, 1860 — Section 415, 420

Citation : (2021) 11 J&K CK 0034

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : Sachin Gupta, Anil Khajuria

Final Decision : Allowed

Judgement

Rajnesh Oswal, J

1. The present petition has been filed by the petitioners under Section 561-A Cr.P.C. (now 482 Cr.P.C) for quashing of criminal proceedings in complaint titled "Professor Indu Bhushan Sharma Vs Dr Devinder Singh and others" pending before the Court of learned Special Mobile Magistrate (Passenger Tax Shops and Establishment Act) (hereinafter to be referred as the trial court) filed under sections 417,420, 120-B.

2. It is stated that petitioner No. 1 is a society registered under the Societies Registration Act and is based in Bangalore. The Society was established by a renowned scientist Sir, C. V. Raman and its aim is to disseminate science to the mankind. The petitioner No. 2 is the editor, whose role is to find the suitable and competent reviewers to access the suitability of the paper received for publication as per the policy and guidelines stipulated by the Academy.

3. It is further stated that proforma respondent Nos. 2 and 3 submitted their

manuscripts titled Synthesis and Characterization of Ruddlesden-Poper(RP) type phase $\text{LaSr}_2\text{MnCrO}_7$ on 5th February 2010 and revised it on 22nd April 2010 as per reviewer(s) recommendations and the paper was accepted by the petitioner's board for publication in the Journal on 4th May 2010 and the same was published in journal of Chemical Sciences (vol. 122 No. 6 Nov 2010 PP 807-811). After two years of its publication, a complaint of plagiarism was received by the petitioners from respondent No. 1 alleging that the complainant i.e. respondent No. 1 is one of the co-authors of manuscript and while sending the manuscript for publication, name of respondent No. 1 has been deliberately omitted. The said complaint was considered by the petitioner and the matter was placed before the Editorial Board of Journal of Chemical Sciences at its meeting held on 08.09.2012. The Editorial Board members were of the view that since there was no mechanism to find out the claim of the complainant/respondent No: 1, so it was unanimously decided to refer to the concerned University i.e. University of Jammu for investigation. Thereafter University of Jammu submitted a detailed investigation report on the request of the petitioners, wherein it was stated that research work published in Journal of Chemical Sciences, has been done by respondent No. 3 under the supervision of respondent No. 2. It was also stated that respondent No. 1 was earlier the supervisor of respondent No. 3 and was removed on complaint basis and respondent No. 2 was made the supervisor. The allegations of the plagiarism were categorically refuted by the University.

4. Respondent No. 1 also sent a legal notice to the petitioners and the same was duly received by the petitioners and was duly replied by the petitioners on the basis of the information received from respondent Nos. 2 and 3 and University of Jammu. The respondent No. 1 thereafter filed a complaint before the learned trial court. The petitioners have impugned the complaint on the following grounds:

- a. That by reading the complaint as a whole and allegations made in the complaint, even if taken at their face value and accepted in their entirety, no prudent person can lead himself to the conclusion that offences under Sections 417, 420, 120-B of RPC are made out;
- b. That the allegations made in the complaint are so absurd and inherently improbable on the basis of which no prudent person can lead himself to the conclusion that there are sufficient grounds to proceed on the present complaint;
- c. That the ingredients of Section 420 RPC are not contained in the complaint.

5. Response stands filed by respondent No. 1 in which it is stated that the factual questions have been raised those cannot be adjudicated in the present petition and further that the petitioners have falsely stated that they relied upon the report of the Jammu university as Jammu University submitted their report on 21.01.2013 while the petitioners on 10.12.2012 refused to remove the paper from publication in reply to the legal notice. Further, that the University has acted in an unfair manner.

6. Mr. Sachin Gupta vehemently argued that the Society has not been arrayed as an accused in the complaint and further that no offence of cheating under Sections 417, 420 RPC is made out, as the petitioners have simply published the manuscript in journal, as such, the complaint is misconceived so far as petitioners are concerned.

7. Per contra Mr. Anil Khajuria, learned counsel appearing for respondent No. 1 submitted that necessary ingredients of offence of cheating are present in the present complaint, so, the proceedings cannot be quashed.

8. Heard and perused the record.

9. A perusal of the complaint reveals that the manuscript was based on P.h.d. thesis of Dr. Suresh Gupta and later on, the same was revised by the complainant, respondent No. 3 and one professor Veer Singh and thus the respondent No. 1 along with respondent No. 3 and said professor Veer Singh and Dr. Suresh Gupta were the authors of the said manuscript. It is stated that the petitioners in connivance with respondent Nos. 2 and 3 published the manuscript in their name only thereby excluding the name of respondent No. 1, when admittedly respondent No. 1 was the principal author and respondent No. 2 was not party in revising the manuscript. It is further stated in the complaint that as soon as the respondent No. 1 came to know that the said manuscript has been got published in the name of respondent No. 2 and 3, he immediately wrote to petitioners but to the surprise of respondent No. 1, the petitioners even after receiving the e-mail from respondent Nos. 2 and 3 by virtue of which they had admitted that respondent No. 1 was the principal author of the said manuscript, failed to remove the same from their publication.

10. Thus, the only allegation against the petitioners is that they published the manuscript without the name of respondent No. 1 and when the same was brought to their notice, the same was not removed.

11. So far as offence under section 420 RPC is concerned, the Apex Court in R. K. Vijayasathy v. Sudha Seetharam, reported in (2019) 16 SCC 739, the Apex Court has observed:

"15. Section 415 of the Penal Code reads thus:

"415. Cheating.-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. The ingredients to constitute an offence of cheating are as follows:

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

deceiving him:

16.1.1. The person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or

16.1.2. The person so induced should be intentionally induced to do or to omit to do anything which he would not do or omit if he were not so deceived; and

16.2. In cases covered by 16.1.2. above, the act or omission should be one which caused or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

17. A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating.

18. Section 420 of the Penal Code reads thus:

"420. Cheating and dishonestly inducing delivery of property.- 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 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."

20. Cheating is an essential ingredient for an act to constitute an offence under Section 420.

19.2. 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.

23. The condition necessary for an act to constitute an offence under Section 415 of the Penal Code is that there was dishonest inducement by the accused. The first respondent admitted that the disputed sum was transferred by the son of the appellants to her bank account on 17-2-2010. She alleges that she transferred the money belonging to the son of the appellants at his behest. No act on part of the appellants has been alleged that discloses an intention to induce the delivery of any property to the appellants by the first respondent. There is thus nothing on the face of the complaint to indicate that the appellants dishonestly induced the first respondent to deliver any property to them. Cheating is an essential ingredient to an offence under Section 420 of the Penal Code. The ingredient necessary to constitute the offence of cheating is not made out from the face of the complaint and consequently, no offence under Section 420 is made out."

12. Thus, there must be an initial deception on the part of accused so as to

induce 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 anything which he would not do or omit if he was not so deceived. So far as the petitioners are concerned, they have simply published the manuscript submitted by the respondent Nos. 2 and 3 and it is not even the case of respondent No:1 that the petitioners have fraudulently or dishonestly induced him to deliver manuscript or to retain that, as such, the very basic ingredients of cheating are absent in the instant case.

13. The only grievance of the respondent against the petitioners is that, the petitioners even after the receipt of his notice did not get the said article removed from their website and the journal of Chemical Science of Indian Academy of Science, as mentioned in para 10 of the complaint. It by no stretch of imagination constitutes offence of cheating as defined under Section 415 RPC. The respondent at the most could have resorted to the remedies under civil law but could not have taken recourse to criminal proceedings against the petitioners. The respondent No:1 may or may not have any cause against respondent Nos. 2 and 3 but so far as petitioners are concerned, no offence has been committed by them that necessitates their prosecution by respondent No. 1, as such the continuance of criminal proceedings against the petitioner shall be nothing but an abuse of process of law.

14. In view of this, the present petition is allowed and the criminal proceedings in complaint filed under sections 417,420, 120-B titled as Professor Indu Bhushan Sharma Vs Dr Devinder Singh and others pending before the Court of learned Special Mobile Magistrate (Passenger Tax Shops and establishment Act) stands quashed, qua the petitioners only.