**(2016) 01 AHC CK 0248**

**In the Allahabad High Court**

**Case No :** Criminal Revision No. 1088 of 2013

Padma Jain and Others APPELLANT

Vs

State of U.P. and Others RESPONDENT

**Date of Decision :** 13-01-2016

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 120-B, Section 30, Section 379, Section 420, Section 451, Section 467, Section 468, Section 471
Stamp Act, 1899 — Section 70

**Citation :** (2016) 93 ACrC 172 : (2016) 2 ADJ 308 : (2016) 160 AIC 863

**Hon'ble Judges :** Bharat Bhushan, J.

**Bench :** Single Bench

**Advocate :** Ravindra Nath Rai, Ashok Kumar Rai, Atul Kumar and Nipun Singh, for the Appellant; A.G.A., Onkar Singh, Pankaj Bharti, Pavan Kumar Mishra and Vinay Sharma, for the Respondent

**Final Decision :** Allowed

## Judgement

Bharat Bhushan, J.—1. By means of this criminal revision, the revisionists have prayed for setting aside the order dated 13.3.2013 passed by Chief Judicial Magistrate, Muzaffar Nagar in Criminal Case No. 1362/9 of 2013 (State v. Padma Jain and others) arising out of Case Crime No. 1149 of 2011, whereby the learned Magistrate took cognizance under Section 420 IPC, P.S. Kotwali, Muzaffar Nagar, District Muzaffar Nagar. It appears that Ms. Padma Jain purchased one warehouse (godown) by way of registered sale-deed dated 7.2.2011. It is alleged that vendor and vendee showed this constructed warehouse (godown) as a vacant plot in order to evade stamp duty and thereby caused revenue loss to the Government exchequer. One Subodh Kumar Jain, respondent No. 2/complain-ant lodged an FIR despite the fact that he was not the party to the said transaction in any manner. This FIR was registered on 1.11.2011 at P.S. Kotwali Muzaffar Nagar vide Case Crime No. 1149 of 2011, under Sections 420, 467, 468, 471, 379 IPC and 120-B IPC. The matter was investigated and the Investigating Officer initially submitted the final report in the matter on the premise that the dispute relates to the evasion of stamp duty for which proceedings were already pending before the competent authority but subsequently the investigation was transferred, legal opinion obtained from the senior prosecutor and charge-sheet under Section 420 IPC was filed against five accused including vendee Padma Jain, her husband Sunil Kumar Jain, her son Sarad Jain, alleged middle man V.K. Jain and his son Anmol Jain. Learned Magistrate took cognizance of the offence under Section 420 IPC vide order dated 13.3.2013. It is this order which is subject-matter of challenge before this Court.

2. Heard Mr. Atul Kumar, learned counsel for the revisionists, learned AGA for the State and Mr. Vinay Sharma, learned counsel for the opposite party No. 2 and have perused the entire material available on record.

3. It is contended by learned counsel for the revisionists that no offence under Section 420 IPC is made out as the ingredients of the same are totally absent. The dispute is related to alleged evasion of stamp duty which has already been adjudicated by the competent authorities in separate proceedings initiated on the separate complaint of opposite party No. 2 himself. As far as criminal case under Section 420 IPC is concerned, opposite party No. 2 has no locus standi to initiate this criminal proceedings. The collector has also not given sanction to initiate proceedings under the Indian Stamp Act 1899 (in short Stamp Act) as required under Section 70 of the Indian Stamp Act.

4. To the contrary, learned counsel for the opposite party No. 2 and learned AGA have submitted that the revisionists have deliberately withheld the information while executing the sale-deed. Evasion of necessary particulars was nothing but a ploy to evade the stamp duty. It is further argued that revenue loss caused to the State would bring this dispute within the ambit of Section 420 IPC and no sanction is required for the prosecution of accused persons in this case.

5. Considering the contents of the FIR and the statements of witnesses under Section 161 Cr.P.C., it is evident that Section 420 IPC may not apply in this case. This section talks of cheating with intention of inducing a 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.

6. "Valuable Security" is defined under Section 30 of the I.P.C. It is evident that to bring any instrument within the definition of Section 420 IPC ingredients of Section 451 IPC must be available i.e. unless ingredients of cheating are present no offence under Section 420 IPC can be said to be made out. The offence of cheating is established when accused thereby induces a person to deliver any property or to do or omit to do anything which he would otherwise no have done or omitted.

7. In the present case, it is stated that the disputed sale-deed was executed by Ravindra Kumar and Ashok Kumar in favour of Smt. Padma Jain, revisionist No.

 

1. The complainant was not in picture at all. As far as the sale-deed is concerned, he was neither vendor nor vendee nor middle man or attesting witness of the instrument. He is completely a stranger to the aforesaid disputed sale-deed. Section 420 IPC talks of cheating and inducement. The complainant was neither cheated nor induced to deliver anything. Infact he did not deliver any thing. He cannot be called the victim at all. This case has not been initiated either by the vendor or the vendee of the transaction. This case has started on the complaint filed by complete stranger.

8. Hon''ble Apex Court in the case of Mohammed Ibrahim and others v. State of Bihar and another, , (2009) 8 SCC 751, in paragraph Nos. 18 and 19 has held as under:

18. The essential ingredients of the offence of "cheating" are as follows: (i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission; (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

19. To constitute an offence under Section 420 IPC, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived,

(i) to deliver any property to any person,

(ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

9. Bare perusal of the available evidence would indicate that the complainant/ respondent No. 2 was not deceived in any manner. He was not even induced to deliver any property to the revisionists by any act or omission. Further it is evident that no damage or harm was caused to him in body, mind, reputation or property. He was not even party of the transaction related to any valuable security. It is not even the case of the complainant/respondent No. 2 that revisionists deceived him in any manner or he was induced to deliver any property or consented to retention thereof by any person or to intentionally induced to do or omit to do anything which he would not do or omit if he was not so deceived. In fact respondent No. 2 is complete stranger to the agreement of sale-deed. As far as the respondent Nos. 2 to 5 are concerned, they are also totally alien to the aforesaid transaction. Two of them are related to vendee and two are said to be middle man in the deal but their roles have not been delineated at all. No criminality had been attributed to them. Investigating Officer in fact was totally irresponsible in filing the charge-sheet against these four persons at least, despite the fact that their roles were not delineated in the

 

prosecution story. If at all any guilt seems to be attributable on the part of the revisionist No. 1 is that of not showing the true market value of the subject property or displaying the vacant plot instead of disclosing it as constructed warehouse (godown) but then this would not make out any offence under the Indian Penal Code in view of the specific provision under the Stamp Act with regard to the alleged intention of the evasion of the stamp duty and the prosecution provided for the same and therefore the general provision of the Indian Penal Code may not apply.

10. The prosecution under the Stamp Act cannot be initiated in absence of proper sanction from the Collector. Section 70 of the Stamp Act provides that no prosecution in respect of any offence punishable under that Act shall be instituted without prior sanction of the Collector or such officer as authorized in this behalf. In the present case, no such sanction has been given by the Collector.

11. Apart from that prosecution under Stamp Act can only be initiated by the revenue authorities. Stamp evasion was allegedly done with intention to cause loss to the Government and the revenue department. No loss was caused to the respondent No. 2/complainant, therefore, prosecution under Stamp Act could have been initiated only by revenue authorities with prior sanction of competent authorities. It is pertinent to point out that separate proceedings were initiated for the loss of revenue to the State exchequer. The matter was adjudicated by the competent authorities. Remaining stamp duty was ordered to be paid and further a penalty of Rs. 40,990/- was also imposed. Infact Senior Prosecutor precisely opined that no prosecution under the Stamp Act was possible. Bare perusal of the entire record would reveal that this case has been initiated in order to harass and wreck vengeance upon the revisionists. I find complete absence of bona fide on the part of the opposite party No. 2 in the FIR. It is not possible to understand what offence has been committed by the revisionists especially revisionist Nos. 2 to 4. Investigating Officer concerned has totally refused to understand the intricacies of law. It is also difficult to understand how the trial Court took cognizance of non existence offence. First the final report was submitted. There was no occasion to seek any legal opinion in this case. Senior prosecutor gave legal opinion. He understood intricacies and yet was able to give tailor made opinion in order to initiate proceedings. Complete stranger was able to bring a criminal case against five persons. Police machinery despite knowledge fell into his trap and filed charge-sheet into non existent offence. Learned Magistrate should have been vigilant at the time of taking cognizance in the instant case.

12. Apex Court in the case of Chandra Pal Singh v. Maharaj Singh, , AIR 1982 SC 1238, has held that a frustrated litigant should not be permitted to give vent to his frustration by cheaply invoking the jurisdiction of the Criminal Court.

13. In Criminal Appeal No. 67 of 2013 (Reminder Singh v. Sukhbir Singh and others) decided on 11.1.2013, the Hon''ble Apex Court has held as under:

 

"It may be so necessary to curb the menace of criminal prosecution as an instrument of operation of needless harassment. A person cannot be permitted to unleash vendetta to harass any person needlessly. Ex debito justitiae is inbuilt in the inherent power of the Court and the whole idea is to do real, complete and substantial justice for which the Courts exist. Thus, it becomes the paramount duty of the Court to protect an apparently innocent person, not to be subjected to prosecution on the basis of wholly untenable complaint."

In view of the discussion made herein above, the criminal revision is allowed. The proceedings of Criminal Case No. 1362/9 of 2013 (State v. Padma Jain and others) arising out of Case Crime No. 1149 of 2011, under Section 420 IPC, P.S. Kotwali, Muzaffar Nagar, District Muzaffar Nagar are hereby quashed.

 