

(2024) 09 RAJ CK 1130

In the Rajasthan High Court, Jaipur Bench

Case No : Criminal Misc(Pet.) No. 8723 Of 2022

Jaswant Singh

APPELLANT

Vs

State Of Rajasthan

RESPONDENT

Date of Decision : 17-09-2024

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan Goods & Service Tax (RGST)/Central Goods & Service Tax (CGST) Rules,
2017 — Rule 142, 142(1A), 142(2A)

Citation : (2024) 09 RAJ CK 1130

Hon'ble Judges : Pankaj Bhandari, J; Praveer Bhatnagar, J

Bench : Single Bench

Advocate : Vagish Kumar Singh, Sakshi Agarwal, Sandeep Taneja, Kinjal Surana, Pawan Pareek

Final Decision : Disposed of

Judgement

Arun Monga, J

1. Quashing of an FIR no.371/2022, dated 10.11.2022, registered at P.S. Sri Vijaynagar, District Sriganganagar, for the offences under Sections 406, 420 and 120-B of IPC, is sought herein.

2. Briefly, the relevant facts are that the mother of petitioner No. 1 owned 1.3920 hectares khatedari land in Chak 2 STB and expressed her interest in selling the same. Out of the said land, land ad measuring 0.633 hectares was transferred in the name of petitioner No.1 by his mother Sarjeet Kaur through gift-deed. Consequently, an agreement to sell was executed between petitioner No. 1, Sarjeet Kaur (mother of petitioner No. 1), and respondent No. 2, the complainant, concerning the land measuring 1.3920 hectares, for a total consideration of Rs. 68 lakhs, out of which Rs. 7,50,000/- was paid in advance at the time of executing an agreement dated 02.05.2022. The sale deed was to be registered by 05.06.2022, i.e. the target date.

2.1. Allegedly that when respondent No. 2 contacted petitioner No. 1 and his mother, Sarjeet Kaur, to register the sale deed, he discovered that petitioner No. 1 had executed a gift deed regarding a portion of the disputed land (ad measuring 0.2530 hectares) in favor of his brother, petitioner No. 2 through a gift-deed dated 12.07.2022. The respondent No. 2 (the complainant), approached the learned Additional Chief Judicial Magistrate, Sri Vijaynagar who forwarded the complaint of respondent No.2 to the police station under Section 156(3) of the Cr.P.C. for investigation, resulting in the registration of the FIR in question.

3. In the aforesaid backdrop, I have heard the rival contentions on behalf of learned counsel for the petitioners as well as learned Public Prosecutor and learned counsel for the complainant.

4. Learned Public Prosecutor, at the very outset, states that no interference is warranted by this Court. He points out that the investigation is still underway and the charge-sheet will be filed in due course. He also argues that if it is ultimately found that no offences are made out, an appropriate report will be filed.

5. I am unable to persuade myself with the arguments of the learned Public Prosecutor and the learned counsel for the complainant. When ex facie the contents of FIR do not make out any case of criminal culpability, the petitioners ought not to be subjected to the harassment of enduring criminal proceedings.

6. Conceded position is that the dispute arises out of an agreement concerning the agricultural land for which, a total consideration of Rs. 68 lakhs was agreed upon between the complainant and petitioner No. 1 and his mother. Pursuant thereto, an advance of Rs. 7,50,000/- was given by the complainant, and thereafter, as per the agreement, he was to arrange for the balance, on or before the target date, i.e. 05.06.2022, to proceed further for the execution of the sale deed/ conveyance, etc.

7. As the events unfolded, it appears that the complainant did not have the financial capacity for the balance money. Resultantly, despite the petitioners having issued him a legal notice dated 07.06.2022 asking him to come forth and perform his part of the agreement, he did not take any steps. Not only that, he did not even seek any further time and/or care to respond to the legal notice. Petitioner No. 1, having discharged his duty of not only asking the respondent No. 2-complainant to perform his part of the agreement, but also having clearly expressed his willingness to perform his part of the agreement, cannot thus be faulted. Clearly, the respondent No. 2-complainant, having himself forfeited his right to proceed in the matter, is the erring party. He cannot take advantage of his own fault by collaterally instituting criminal proceedings, which, on the face of it, is a complete abuse of the provisions of Sections 406, 420 read with Section 120-B of the Indian Penal Code.

8. In this context, reference may be had to a judgment rendered in the case of Rana Ram Vs. State of Rajasthan S.B. Criminal Misc. Pet. No.4893/2024,

decided on 06.08.2024, relevant of which is reproduced hereinbelow:-

"22.1. Both Sections 405 and 420 of the IPC operate in distinctly different domains i.e. entrustment versus inducement. Section 405 deals with entrustment, where the victim places trust in the accused by entrusting property, and any breach of this trust by the accused directly hurts the victim. In contrast, Section 420 pertains to inducement, where the accused actively approaches the victim, often through misrepresentation or deception, leading the victim to mistakenly believe in his honesty and part with their property under false pretenses/inducement. Therefore, entrustment centers on a breach of existing trust, while inducement involves deceit from the outset.

22.2. For ready reference, Section 420 IPC is also reproduced hereinbelow:-

"S. 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."

Aforesaid Section 420 IPC has been retained as it is, in verbatim, as section 318 (4) in the Bhartiya Nyaya Sanhita, 2023 and reads as under:-

"318. Cheating. –

(4) 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."

22.3. The provision, *ibid*, thus envisages that the act of cheating where a person deceives someone ought to be such, whereby the deceived person is induced to:

Deliver any property to another person.

Make, alter, or destroy the whole or any part of a valuable security.

Modify or destroy anything signed, sealed, and capable of being converted into a valuable security.

The provision thus highlights the serious consequences of using deceit to manipulate others into parting with property or altering valuable documents.

23. In the aforesaid backdrop, it is obvious that the report lodged with the police does not disclose the commission of the offences either under section 406 or 420 IPC or any other cognizable offence.

24. Moreover, before registering the FIR, the conditions/parameters laid down either in the case of Lalita Kumari (supra) were not complied with. Firstly, the allegations in report lodged with the police, taken at their face value, did not disclose the commission of an offence of criminal breach of trust defined in section 405 of IPC punishable under section 406 IPC and section 420 IPC or any other cognizable offence. Secondly, the alleged offences arose out of purely commercial transactions of sale and purchase of goods. Yet, before registering an FIR, any preliminary inquiry was not at all conducted, to ascertain whether or not a cognizable offence was disclosed. Had the needful been done, obviously the result would have been different."

9. Applying the same reasoning as enunciated in Rana Ram, *ibid*, in the present case also, no ingredients of Sections 405/406, 420 read with Section 120-B of IPC are made out. The FIR in question, thus, deserves to be quashed.

10. The petition stands allowed accordingly. The FIR no.371/2022, dated 10.11.2022, registered at P.S. Sri Vijaynagar, District Sriganaganagar is quashed with consequences to follow.

11. Pending application(s), if any, shall also stand disposed of.