

**(2011) 08 RAJ CK 0082**

**In the Rajasthan High Court**

**Case No :** Criminal Miscellaneous Petition No. 394 of 2004

Shiv Charan and Ors

APPELLANT

Vs

The State of Rajasthan and Another

RESPONDENT

**Date of Decision :** 29-08-2011

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 457, 463, 464  
Penal Code, 1860 (IPC) — Section 120B, 406, 415, 420, 464

**Citation :** (2012) CriLJ 211 : (2012) 3 RLW 2641

**Hon'ble Judges :** Sandeep Mehta, J

**Bench :** Single Bench

## Judgement

Sandeep Mehta, J.—The aforesaid misc. petition has been filed by the accused-petitioner, Shiv Charan and six others challenging the order dated 28-2-2004, passed by the learned Additional Sessions Judge, Kotputali, District Jaipur, in Criminal Revision No. 39/2002, whereby the learned Sessions Judge has rejected the revision petition filed by the petitioners and has upheld the order dated 18-6-2002, passed by the learned Additional Chief Judicial Magistrate, Kotputali, in Criminal Complaints No. 274/2002, taking cognizance against the petitioners for the offences under Sections 420, 467, 468, 471 and 120-B, IPC.

2. At the outset, it may be stated here that at the time of arguing the petition, the counsel for the petitioners has submitted that the petitioner Nos. 1 and 2, namely Shiv Charan and Ramesh Chand respectively, have expired and as such, the petition as regards them has become infructuous. Hence, the name of the petitioner Nos. 1 and 2 are deleted from the array of the petitioners.

3. Briefly the facts necessary for the disposal of the petition are that the respondent No. 2 Ghanshyam, filed a complaint against the petitioners and certain others in the Court of Judicial Magistrate, Kotputali, District Jaipur, on 2-12-1996 for the offences mentioned above. In the complaint, the allegations made by the complainant are that the accused, Mohari Lal, was the uncle of the complainant, the accused-petitioner Nos. 1 to 3 were the sons of Mohari Lal, the

accused-petitioner Nos. 4 and 6 were the maternal nephews of Mohari Lal, the accused-petitioner No. 5 was the daughter-in-law of Mohari Lal and the accused-petitioner No. 7 was arrayed as the conspirator with other accused-petitioners.

4. As per the case of the complainant, the petitioners are having some property disputes with the complainant, his brothers and old mother. It was mentioned that Shri Girdhari Lal, grandfather of the complainant purchased the land of Khasra No. 348 measuring 18 biswa on 28-8-1964 and this land is situated on Dabla Road, Kotputali, which was lying vacant. After the death of late Shri Girdhari Lal, the property became the joint Hindu family property of the accused Mohari Lal, the complainant, brothers and sisters of the complainant and his mother. It was mentioned that the accused persons with intention to cheat the complainant, his brothers, sisters and mother and with intention to take possession of the land and for ousting them from the possession of the land, mentioning the land to be exclusively that of accused Mohari Lal as his personal property constituted a fictitious religious trust on 29-12-1990 and with the help of the Sub-Registrar, Kotputali got the same registered in their favour. It was also mentioned that the accused persons have constituted a bogus trust and now they were missing the same for depriving the complainant from his share in the inherited property. As per the case of the complainant, the accused persons had no right in the property. It is also the case of the complainant that on 23-9-1996 he went to lodge the report with the police then his relatives intervened saying that the dispute will be settled amicably but the dispute could not be settled so he filed the complainant belatedly.

5. On the basis of the said complaint, an inquiry was instituted and after recording the statements of three persons under Sections 200 and 202, Cr. P.C. the learned Magistrate sent the complaint for inquiry to the police u/s 202, Cr. PC. The inquiry report disclosed that prima facie no case was made out against the accused. The result of the inquiry was that the so-called document which was prepared by the accused was for the purposes of using the property of the deceased Girdhari Lal as a trust property for religious and charitable purposes. It was found that the accused also had a share in the property and that the purposes for which the so-called document said to be forged was prepared, was purely charitable and therefore, the accused had not committed any offence as alleged by the prosecution. It was further found that there was no forgery of the document whatsoever because the accused Mohari Lal prepared the document under his own signatures. At best, the complainant was having a contest about the right sought to be exercised by the accused by way of the so-called forged document. Thus, the Police found that no prima facie case was made out against the accused. During the course of the inquiry, it was also found that the property in issue was as a matter of fact being used for charitable and religious purposes by the public at large as set out in the trust-deed and the accused had never converted the property to their own use thereby committing an offence under the provisions of Sections 420 or 406, IPC. It was also found that the complainant himself mentioned in the complainant that the property was in joint possession

and as such, when the co-sharers of a property seek to exercise their right on the property, then ex facie the essential requirement for the commission of an offence i.e. mens rea was totally found to be missing. As such, the negative report was submitted. The learned Magistrate, however, did not agree with the negative inquiry report and proceeded to take cognizance against the accused, Mohari Lal and seven others for the aforesaid offences. Being aggrieved by the order dated 18-6-2002 taking cognizance, the petitioners preferred a revision before the learned revisional Court who also rejected the same by order dated 28-2-2004. Being aggrieved by the rejection of their revision, the petitioners have approached this Court by way of the present misc. petition for quashing of the proceedings against them.

6. Mr. A. K. Gupta, the learned counsel for the petitioners, has submitted that in this matter, the highest case of the prosecution was that the accused, Mohari Lal prepared a trust-deed showing the inherited joint property to be his own and that since the accused had a joint possession on the property in question, therefore, he was very much entitled to prepare the document in issue. It has further been submitted that the acts of conspiracy are down in secrecy whereas Mohari Lal prepared the trust-deed as regards the property which was already being used for charitable purpose and had it registered. As such, the intention of Mohari Lal was not to cheat, but to put the property to use for the purposes for which the ancestor had desired. As such, there was no intention on part of Mohari Lal to commit an offence when he prepared the so-called fraudulent trust-deed. It has also been submitted that the document was prepared by Mohari Lal in his own name as such there was no question of the document being false within the meaning of Section 464, IPC. Therefore, prima facie the offence of forgery and conspiracy would not be made out even from the admitted allegations of the prosecution. It has also been submitted that even if the allegations of the prosecution are to be accepted to be true at its highest, then also the document in issue was prepared by Mohari Lal and the other accused had no part to play in the preparation of the document. Thus, they could not be said to be a party to the alleged fraudulent document because the objective behind the preparation of the document was to use the property for charity. As such, it has been submitted that the orders impugned deserved to be quashed and the proceedings sought to be taken against the petitioners also were baseless and could not be permitted to continue. It has also been submitted that the incident in this case was said to have occurred in the year 1990, a civil litigation seeking cancellation of the document in issue was already instituted by the complainant in the year 1996 and the FIR has also been filed in the year 1996 i.e. after six years of the preparation of the document and now 21 years have passed since the alleged incident took place. Therefore, looking to the inordinate delay occasioned in the prosecution also, the accused should not be permitted to be prosecuted for the offences alleged.

7. Mr. Biri Singh, Sr. Advocate, assisted by Mr. Rajesh Choudhary, the learned counsel for the complainant-respondent No. 2, has submitted that it is a clear cut

case of cheating and forgery by the accused-persons. It has been submitted that the accused knew that the property was joint property and despite that, showing it to be personal property a trust-deed has been prepared by concealing the share of the complainant in the property by inheritance. It has also been submitted that the objective behind the preparation of the document was to usurp the share of the complainant in the property and that looking to the very fact that Mohari Lal deliberately left out the name of the complainant from co-owners of the property, the document definitely falls within the definition of a forged document as defined u/s 464, IPC. It has also been submitted that the intention to cheat was writ large on the face of the record because the whole of the property has been sought to be transferred by virtue of the trust-deed. Ultimately, it has also been submitted that the accused-persons could not be given the benefit of the delay for the reasons that the delay has been occasioned on account of the dilatory tactics of the accused themselves because they filed the present misc. petition in the year 2004 and till date the matter is pending and thus, the delay, if any, could only be attributed to the accused and not to the complainant.

8. I have heard the learned counsel for the parties and have given my thoughtful consideration to the material available on record and have also gone through the impugned orders.

9. For the purpose of analysing the disputed issue, the definitions of forgery and cheating as set out in the IPC would be relevant to be considered. Sections 415, 467 and 468 read as under :

Section 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 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".

Section 467. Forgery of valuable security, will, etc.

Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, moveable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any moveable property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 468. Forgery for purpose of cheating :

Whoever commits forgery, intending that the document or Electronic Record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

10. For the purposes of a document to be a forged document, firstly, it should be covered under the definition of a false document as described in Section 464, Cr. P.C. The mere preparation of a document under ones own signature and writings by making false averments therein does not fall within the definition of forgery. The Hon''ble Apex Court had the occasion to consider the term forgery in its recent decision rendered in the case of Md. Ibrahim and Others Vs. State of Bihar and Another, The Hon''ble Apex Court has observed as under :

10. Section 457 (insofar as it is relevant to this case) provides that whoever forges a document which purports to be a valuable security, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. Section 471, relevant to our purpose, provides that whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.

11. Section 470 defines a forged document as a false document made by forgery. The term "forgery" used in these two sections is defined in Section 463. Whoever makes any false documents with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into express or implied contract, or with intent to commit fraud or that the fraud may be committed, commits forgery.

12. Section 464 defining "making a false document" is extracted below :

464. Making a false document.-- A person is said to make a false document or false electronic record --

First.-- Who dishonestly or fraudulently --

- (a) makes, signs, seals or executes a document or part of a document;
- (b) makes or transmits any electronic record or part of any electronic record;
- (c) affixes any digital signature on any electronic record;
- (d) makes any mark denoting the execution of a document or the authenticity of the digital signature, with the intention of causing it to be believed that such document or a part of document, electronic record or digital signature was made, signed sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly,-- Who, without lawful authority, dishonestly or fraudulently, by

cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly.-- Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

Explanation 1 -- A man's signature of his own name may amount to forgery.

Explanation 2.-- The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

[Note.-- The words "digital signature" wherever they occur were substituted by the words "electronic signature" by Amendment Act 10 of 2009.]

(Emphasis supplied)

13. The condition precedent for an offence under Sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.

14. An analysis of Section 464 of the Penal Code shows that it divides false documents into three categories :

1. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

2. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

3. The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

In short, a person is said to have made a "false document", if (i) he made or

executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practising deception, or from a person not in control of his senses.

15. The sale deeds executed by the first appellant, clearly and obviously do not fall under the second and third categories of "false documents". It therefore remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of the complainant's land (and that Accused 2 to 5 as the purchaser, witness, scribe and stamp vendor, colluded with the first accused in execution and registration of the said sale deeds) would bring the case under the first category.

16. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of "false documents", it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined u/s 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted.

11. Thus, it is apparent that for the purpose of bringing a document within the definition of a forged document, it has first to be shown to be a false document covered u/s 464 Cr. P.C. Tested on the touchstone of the definition and the judgment referred to above, this Court finds that the document in issue has been prepared by Mohari Lal under his own signature. Thus, even if the contents of the document contained incorrect averments then also, the document cannot be said to be a forged document. Under these circumstances, this Court has no hesitation in arriving to a conclusion that prima facie, the undisputed allegations of the prosecution do not disclose the commission of the offences under Sections 467, 468 and 471, IPC. Now coming to the question of the offence of cheating

again, it has to be kept in the mind that what was the intention of the accused in preparation of the document. Mens rea or intention is an essential ingredient in coming to a conclusion when the offence of cheating or the act of cheating is being considered. In this case, as has been mentioned above and as is the admitted case of the complainant that the document which was created was a trust-deed by which the property was intended to be put to use for charitable purposes. From a bare reading of the document, it cannot be assumed that it was intended that the property should be transferred in favour of the accused or the same should be used for personal purposes. As such, the intention to create the document was not to defraud anybody, but the document, from a bare perusal thereof, was prepared for the purpose of putting the ancestral property to use for charitable purposes as desired by the ancestor who was the owner of the property. The inquiry report of the Police has also revealed that the property was already being used for religious and charitable purposes. That apart, even for the sake of arguments, if it is found that the document was intended to cheat the complainant then also, another aspect of the case is that the document admittedly was prepared by Mohari Lal as has been observed above. Mohari Lal expired long back. Though the names of the petitioners are mentioned as the trustees in the document, but there is no signature of the petitioners on the trust-deed. There is no such recitation in the trust-deed by virtue whereof, the trustees would be entitled to use the property for their own personal benefits. As such, this Court is of the view that if at all, any intention to cheat can be attributed, then the same could be to the preparator of the document i.e. Mohari Lal. A bare perusal of the document does not show that any of the accused-petitioners had consented to be the trustees as set out in the trust-deed and unless there was an acceptance of the accused, the accused apart from Mohari Lal could not be said to be participants in the crime.

12. The prosecution in this case has been going on for the last 21 years. A civil litigation is also said to be going on between the parties. The incident in question took place in the year 1990. The complainant waited for a period of almost six years before filing the complaint. The inquiry in the complaint took another six years and ultimately the accused were summoned after 12 years of the commission of the offence. Three of the accused including the so-called principal accused Mohari Lal have already expired. As such, this Court is also of the opinion that the prosecution in this case also suffers from laches. Though, the period of last 7 years while this misc. petition was pending before this Court cannot be attributed to the complainant, but the earlier period of 12 years definitely was not on account of the accused.

13. The Hon'ble Apex Court in its decisions rendered in the cases of Pankaj Kumar Vs. State of Maharashtra and Others, and Vakil Prasad Singh Vs. State of Bihar, has held that the unjustified delay in the prosecution amounts to the violation of fundamental right of the accused to an expeditious trial and could be a ground to quash the prosecution. As has been mentioned above, the prosecution in this case is in relation to an offence which is said to have been

committed in the year 1990, the complaint was filed in the year 1996 and the cognizance against the accused was taken in the year 2002. As such, this long inordinate delay of 12 year definitely vitiates the prosecution as being violative of fundamental right of the accused to speedy trial as has been observed by the Hon"ble Apex Court in the cases of Pankaj Kumar and Vakil Prasad Singh referred to supra.

14. Upshot of the aforesaid discussion, the misc. petition succeeds. The order taking cognizance against the accused-petitioners is held to be absolutely illegal and an abuse of the process of the Court. The admitted case of the prosecution as set out in the complaint and the documents annexed thereto do not disclose the commission of an offence for which the cognizance has been taken against the accused. That apart from, the prosecution of the case also suffers from the inordinate delay and is a violative of the fundamental right of the accused to an expeditious trial.

15. As such, the misc, petition is allowed and the order impugned dated 18-6-2002 taking cognizance against the petitioners as well as all the subsequent proceedings in pursuance thereto are, hereby, quashed. The stay petition also stands disposed of.