

**RESERVED**

**A.F.R.**

**Case :-** MISC. BENCH No. -7894 of 2020

**Petitioner :-** Avinash Jain (In F.I.R. Avinash Chand Jain)

**Respondent :-** State Of U.P.Through.Prin.Secy.Home & Ors.

**Counsel for Petitioner :-** Shri Naved Mumtaz Ali

**Counsel for Respondent :-** G.A.

**Hon'ble Ritu Raj Awasthi,J.**

**Hon'ble Mrs. Saroj Yadav,J.**

**(Delivered by Saroj Yadav,J)**

1. This writ petition has been filed by Shri Avinash Jain challenging the First Information Report dated 11.3.2020 (hereinafter abbreviated to as '**F.I.R.**') bearing Case Crime No.0098 of 2020, under Sections 406, 420, 504 and 506 I.P.C., Police Station Chowk, District Lucknow, lodged by respondent no.4 Shri Sanjeev Pandey.

2. In short, this writ petition reveals that opposite party no.4 lodged F.I.R. stating that respondent no.4 gave a patrimonial blue Gem to the petitioner at "New Gem Testing Laboratory" for testing. Rs.900/- testing fee was charged and a certificate had been issued certifying that the Gem was Synthetic.

3. It has also been written in the F.I.R. that on the very same day in the evening at 6.00 p.m., respondent no.4 went to the 'shop' of the petitioner to know the authenticity of the alleged Gem where the petitioner abused and threatened to kill respondent no.4.

4. It has also been alleged that when respondent no.4 tried to find out regarding the qualification of the petitioner, it came out that the petitioner has a three months' proficiency and a title of Graduate Gemologist from an American Trust i.e. G.I.A. The

Informant had also stated that he doubts that so many persons throughout India have been working as Graduate Gemologist causing damage to the valuable assets of India.

5. The petitioner assailed the F.I.R. on the following main grounds :-

i). No case under Sections 406, 420, 504 and 506 of Indian Penal Code (for short '**I.P.C.**') is made out against the petitioner, out of the facts mentioned in the F.I.R.

ii). The petitioner had returned the alleged Gem to respondent no.4 after testing, hence there was no misappropriation.

iii). During the testing process, nothing was done by the petitioner which amounted to offence caused under Section 420 I.P.C.

(iv). No alleged incident of threatening to kill or abusing to respondent no.4 by the petitioner occurred. Thus, allegations of criminal intimidation have been levelled due to *mala fides*.

(v). The Gemological Institute of America is a non profit Institute dedicated to Research and Education in the field of Gemology.

(vi). The Graduate Gemologists Diploma offers a Comprehensive Education in Gemology. The allegations have been levelled to extort the money from the petitioner.

6. Learned A.G.A. appeared on behalf of respondent nos.1, 2 and 3.

7. Notice was issued to respondent no.4 Shri Sanjeev Pandey (Complainant).

8. Respondent no.4 sought time to file counter affidavit, which was granted but he did not file any counter affidavit.

9. Learned A.G.A. filed short counter affidavit dated 14.10.2020 wherein it has been stated that from investigation, no credible evidence regarding commission of offences under Sections 504 and 506 I.P.C. was found, therefore these sections were deleted from the array of offence as invoked against the accused/petitioner and the investigation is going on regarding the other offences.

10. Thereafter, a rejoinder affidavit dated 4.11.2020 was filed on behalf of the petitioner by his cousin brother Shri Aviral Jain denying the averments made in the short counter affidavit filed on behalf of respondent nos.1,2 and 3 regarding fair and impartial investigation and alleged that the petitioner is being harassed by the investigating officer.

11. It has also been mentioned in the rejoinder affidavit that E-mail receipts from the concerned Institute regarding Diploma by the petitioner have also been marked to the Police Station Chowk, District Lucknow but respondent nos.1, 2 and 3 have purposely concealed the said communication in the short counter affidavit.

12. Heard counsel for the petitioner Shri Naved Mumtaz Ali and learned A.G.A. for respondent nos.1 to 3.

13. Counsel for the petitioner relied upon following case laws :-

***i). State of Haryana and others Vs. Bhajan Lal and others : 1992 Supreme Court Cases (Cri.) 426***

***ii). Prof. R.K.Vijaysarathy & another Vs. Sudha Seetharam & another***

**Judgement dated 15.2.2019 : Criminal Appeal No.238 of 2019 arising out of Special Leave Petition (Crl.) No.1434 of 2018.**

***iii). Anand Kumar Mahatta Vs. State (NCT of Delhi) and another :***

***(2019) 11 Supreme Court Cases 706.***

14. The counsel for the petitioner argued that no offence under Section 406 or 420 I.P.C. is made out from the averments made in the F.I.R. and the offences under Sections 504/506 I.P.C. have already been dropped by the investigating officer as there occurred no such incident.

15. Learned A.G.A. submitted that Sections 504 and 506 I.P.C. have been deleted as in the investigation, it was found that no such incident has occurred and investigation is going on regarding other offences.

16. Petitioner's counsel referred the guidelines (i), (iii), and (v) mentioned in paragraph 102, as issued by the Hon'ble Apex Court in the case of **State of Haryana Vs. Bhajan Lal** (supra) which are quoted as under :-

*"(1).Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*

*(2)..xxxxxxxxxxxx*

*(3). Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

*(4).....xxxxxxxxxxxx*

*(5). Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused."*

17. Now, we have to examine that whether the facts mentioned in the F.I.R. 'taken at their face value and accepted in their entirety', *prima facie* constitute any offence?

Offence punishable under Section 406 I.P.C. is criminal breach of trust which has been defined under Section 405 I.P.C.

Section 405 I.P.C. runs as under :-

**"405. Criminal breach of trust.**—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

18. In the present matter, F.I.R. discloses that a Gem was given to the petitioner for testing and that was returned by the petitioner to respondent no.4 after testing alongwith certificate. There is nothing about misappropriation of the Gem or any other property of respondent no.4 by the petitioner.

19. The Hon'ble Apex Court in **Prof. R.K.Vijaysarathy and another (supra)** has laid down as under :

*"A careful reading of Section 405 shows that the ingredients of a criminal breach of trust are as follows :-*

*i). A person should have been entrusted with property, or dishonestly use or dispose of that property or wilfully suffer any other person to do so ; and*

*iii). That such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust."*

20. We analysed the facts mentioned in the F.I.R. The necessary ingredient of offence under Section 406 I.P.C. i.e. misappropriation or conversion for own use of the property entrusted is not there. It has been mentioned in the F.I.R. itself that the petitioner returned the Gem after testing alongwith test certificate, thus the offence under Section 406 I.P.C. is not made out.

21. Now, comes offence under Section 420 I.P.C. Section 420 I.P.C. runs as under :-

**"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."*

22. To constitute the offence under Section 420 I.P.C., 'cheating' is an essential ingredient and 'cheating' has been defined under Section 415 I.P.C. which runs as under :-

**"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".*

23. Hon'ble Apex Court in **Prof. R.K.Vijaysarathy and another (supra)** has laid down as under :

*" The ingredients to constitute an offence of cheating are as follows :-*

- i). there should be fraudulent or dishonest inducement of a person by deceiving him ;*
- ii).(a). 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*  
*(b). 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*
- (iii). in cases covered by (ii) (b) 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.*

*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."*

24. There is nothing in the F.I.R. to disclose that the petitioner induced respondent no.4 to deliver any property. As there is no inducement so it cannot be inferred that petitioner cheated

respondent no.4 in any manner. Hence the facts disclosed in the F.I.R. do not constitute this offence too.

25. As regards rest of the offences ; in the short counter affidavit filed on behalf of respondent nos.1 to 3, it has been stated that from investigation, no credible evidence regarding offences under Section 504 and 506 I.P.C. was found therefore sections 504 and 506 I.P.C. have been dropped. Furthermore, respondent no.4 (complainant) who is an Advocate as has been revealed by the counsel of the petitioner during arguments, after seeking time to file counter affidavit did not file any counter affidavit to refute the allegations made in the petition against him or to justify his averments made in the F.I.R.

26. In the case of **Anand Kumar Mahatta Vs. State (supra)**, the Hon'ble Apex Court has held as under :-

*"30. It is necessary here to remember the words of this Court in State of Karnataka Vs. L.Muniswamy which reads as follows : (SCC p.703, para 7)*

*"7..... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed."*

27. In the above circumstances, we are of the considered view that the F.I.R. does not disclose *prima facie* commission of offence under Sections 406 and 420 I.P.C. The allegations of the F.I.R. have been controverted by the petitioner and it has been alleged that the complaint was lodged with the motive to extort money and respondent no.4 did not file counter affidavit to rebut the averments of the petitioner though ample time was granted to him for the purpose. The allegations regarding offences under Sections

-8-

504, 506 I.P.C. have already been found false by the investigating officer, hence we find it a fit case to quash the F.I.R.

28. In view of the above, the writ petition is **allowed**. Accordingly, First Information Report dated 11.3.2020 bearing Case Crime No.0098 of 2020, under Sections 406, 420, 504, 506 I.P.C., Police Station Chowk, District Lucknow is hereby quashed.

**Order Date :- 17.12.2020.**

Shukla

**(Saroj Yadav,J)**

**( Ritu Raj Awasthi,J)**