



2026:AHC-LKO:23614

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

APPLICATION U/s 482 No. - 4460 of 2022

Rajat Saxena and another

.....Applicant(s)

Versus

State of U.P. Thru. Addl. Chief Secy. Prin. Secy. Lko. and another

.....Opposite Party(s)

Counsel for Applicant(s) : Vivek Pandey, Akshat Sinha,
Chandra Shekhar Sinha, Gaurav
Verma, Mohit Sharma, Pooja Mishra
Counsel for Opposite Party(s) : G.A., Pramendra Kumar Singh

Along with :

1. Application U/s 482 NO. 3270 of 2022:

Anshul Srivastava Senior Manager Hdfc Ltd.

Versus

State of U.P. Thru. Addl. Chief Secy. Home/ Prin. Secy. Home
Civil Sectt. Lko. and another

Court No. - 14

A.F.R.

HON'BLE SUBHASH VIDYARTHI, J.

1. Heard Shri Chandra Shekhar Sinha, the learned counsel for the applicants in Application u/S 482 No.4460 of 2022, Shri Nadeem Murtaza, the learned counsel for the applicant in Application U/s 482 No.3270 of 2022, Shri G.D. Bhatt, the learned AGA-I for the State-opposite party No.1 in both the applications and Shri Abhishek Khare, the learned counsel for the opposite party No.2 in both the applications.

2. Both the present applications under Section 482 Cr.P.C. have been filed challenging the validity of an order dated 08.04.2022 passed by the learned Additional Chief Judicial Magistrate-V, Court No.29, Lucknow in Misc. Case No.3649 of 2021, summoning the applicants to face trial for the offence under Section 420 I.P.C.

3. The opposite party no. 2 – Rakeshwar Dayal Saxena, had filed an application under Section 156(3) Cr.P.C. against- (i) Rajat Saxena (applicant No.1 in Application u/S 482 No.4460 of 2022), (ii) Anil

Saxena (applicant No.2 in Application u/S 482 No.4460 of 2022) and (iii) Anshul Srivastava, the then Manager (Senior) HDFC Ltd. (the applicant in Application u/S 482 No.3270 of 2022) stating that Rajat Saxena is son of Rakeshwar Dayal Saxena and Anil Saxena is father-in-law of Rajat Saxena. There was a house purchased in the name of Rajat Saxena and her mother Raj Laxmi Saxena. The owners of the house Rajat Saxena and Raj Laxmi Saxena had taken a housing loan of Rs.17 lakhs from HDFC Ltd., Ashok Marg, Lucknow and thereafter they had taken a personal loan of Rs.12 lakhs. The house in question was mortgaged as security for repayment of the aforesaid loans. Smt. Raj Laxmi Saxena died on 04.11.2013. Thereafter, the complainant- Rakeshwar Dayal Saxena married another lady who is living with him as his wife. Rajat Saxena works abroad. From the averments made in the application, it appears that the relation between Rajat Saxena and Rakeshwar Dayal Saxena have turned sour.

4. The opposite party no. 2 claims that since June 2014, he has continuously paid the installments towards repayment of the loan taken by his wife and son. Thereafter, under a conspiracy between all the accused persons, the Bank Manager Anshul Srivastava declined to receive the installments toward repayment of the loans and he obtained a writing from the complainant that the complainant would not pay the installments towards repayment of the loan taken by his wife and son. Thereafter, the Bank declared the loans as non-performing assets and published a notice for auction of the house. The complainant filed S.A. No.319 of 2018 before the Debts Recovery Tribunal, Lucknow and he expressed willingness to deposit the entire dues of the Bank amounting to Rs.45,95,000/-, provided the Bank executes a sale deed in his favour under a private treaty.

5. It is further stated in the application under Section 156 (3) Cr.P.C. that in compliance of an order dated 18.12.2018 passed by the Debts Recovery Tribunal, Lucknow the Bank Manager Anshul Srivastava received Rs.45,95,000/- from the complainant and gave a No Dues Certificate on 29.01.2019 but under a conspiracy, he handed over the title deed of the house to Rajat Saxena. The complainant has stated that he has opened the

locks of the house on 03.12.2019 and has started residing in it. He has stated that the accused persons have cheated him and are trying to usurp the house.

6. On 08.04.2022, the trial Court passed the impugned order summoning the applicants to face the trial.

7. The opposite party No.2 has filed a counter affidavit opposing the applications under Section 482 Cr.P.C. and the applicants have filed a rejoinder affidavit.

8. On 18.12.2018, the DRT, Lucknow had passed the following order in S.A. No.391 of 2018: -

“Case called out.

Ld. Counsel for both the parties are present.

Ld. Counsel for the applicant submits that in pursuance of order dated 20.9.2018 passed by this Tribunal, the applicant has deposited a sum of Rs 10.00 lacs. He is also willing to deposit the remaining dues of the respondent-F.I.

Ld. Counsel for respondent -F.I. submits that dues against the loan account are around Rs. 36.00 lacs. In case the applicant is willing to deposit the amount, he may deposit the same.

Ld. Counsel for applicant submits that he will deposit the amount provided the title deed of secured asset is returned to him.

Heard learned counsels for both the parties.

Applicant is directed to approach the respondent- F.I. with the above proposal and the amount quoted by the learned counsel for the respondent- F.I. The proposal to be submitted by the applicant will be considered by the respondent-F.I. u/r 5(d) of the Security Interest (Enforcement) Rules, 2002.

Fixed 18.1.2018 for further order.”

9. Thereafter, on 21.12.2018, the complainant gave a letter to the bank stating that he was willing to liquidate the loan accounts and he requested that the sale deed of the house No.5/71, Jankipuram Extension, Lucknow be released in his favour.

10. On 24.12.2012, the Bank Manager wrote a letter to the complainant stating that as directed in the order passed by the DRT, the bank will accept the payment from the complainant and will return the original title deed to him subject to closure of the loan account.

11. On 29.01.2019, the Bank gave a No Dues Certificate to the complainant and asked him to file the requisite application before the DRT for further orders to enable the bank to execute necessary documents of transfer in favour of the complainant. On 17.06.2019, the DRT passed the following order: -

“The file has been put up for passing order on the application dt. 1.2.2019 moved by the applicant. The applicant has prayed in this application that respondent bank be directed to transfer the property in favour of applicant through private treaty as per Rule 8(8) of the Security Interest (Enforcement) Rules, 2002.

The applicant has stated that he has paid the entire outstanding dues of the respondent FI. The respondent Financial Institution after accepting the entire outstanding dues from the respondent bank had issued a letter to the applicant dt. 29.1.2019. The respondent Financial Institution has directed the applicant to move an application before the Tribunal to hand over the possession of the property to him and to transfer the property in his favour.

In reply to the application dt. 01.2.2019 the respondent no.2 has filed objection. According to the respondent no.2 the property in question has not been sold in auction. The Loan account has been closed and nothing is due in the said loan account. The respondent no.2 has brought out that Smt. Raj Laxmi Saxena deceased was co-owner of the said property through registered sale deed dt. 16.10.2017. She died on 04.11.2013 leaving behind her applicant K.D Saxena (Husband) respondent no.2(son) and two daughters namely Smt. Roopali Srivastava and Smt. Roopali Srivastava as her legal heirs and successors. All the legal heirs have got equal share in the property left by the deceased. According to the respondent no. 2 the Securitization Application is no.2 maintainable. Preliminary objections have been filed which are yet to be decided. The S.A. as well as application dt. 01.2.2019 of the applicant is malafide, illegal, misconceived of and beyond the provisions of SARFEASI Act, 2002.

Heard the Ld. Counsel for the applicant and respondent ho.2 and perused the record.

It is observed from Securitization Application that in paragraph 6D of the S.A. the same prayer has been made by the applicant. Hence, the issue involved in application dt. 08.2.2019 can be considered while disposing of the Securitization Application.

Fixed 30.7.2019 for filing objection in reply to the S.A. and final arguments.

Application dt. 01.2.2019 will be disposed of along with the S.A.”

12. The S.A. was disposed off finally by means of an order dated 28.10.2019, wherein it is recorded that: -

“The cause of action for presentation of Securitization Application of applicant was the measure taken by Respondent NO. 1 Financial Institution u/s 13(4) of SARFAESI Act, 2002. The Respondent No. q1 Financial Institution is not proceeding under the provisions of SARFAESI Act hence there is no cause of action now to SARFAESI Act hence there is no cause of action now to proceed with the matter. The order issuing notice relating to share of applicant and Respondent NO. 2 and other family members is pending before the Civil Court. This Tribunal is not competent to deal with the said issue of partition or right of properties. Since there is no cause of action, the Securitization Application deserve to be disposed off.”

13. On 22.12.2020, the opposite party no. 2 has filed the application under Section 156 (3) Cr.P.C. The learned Additional Chief Judicial Magistrate Fifth, Court No. 29, Lucknow passed an order dated 16.01.2021 registering the application under Section 156 (3) Cr.P.C. as a complaint and on 08.04.2022, the impugned order was passed summoning the applicant to face the trial.

14. Challenging validity of the summoning order, the learned counsel for the applicants have submitted that Rajat Saxena and his mother Raj Laxmi Saxena were the owners of the house in question, they had borrowed the money from the Bank and they had mortgaged the house. The right of redemption of mortgage vests in the mortgagor. After death of Raj Laxmi Saxena, Rajat Saxena has remained the sole mortgagor. The applicants in Application no. 4460 of 2022 have denied the contention of the complainant that he had deposited the money and they have submitted that Rajat Saxena used to transfer money to his father Rakeshwar Dayal Saxena from being deposited in the bank and it was from the aforesaid money that the Rakeshwar Dayal Saxena used to deposit the installments but this fact is irrelevant at this stage. What is relevant is that mere deposit of installments toward repayment of loan amount would not alter the legal status of the mortgagor as well as the registered owner of the property.

15. Shri Nadeem Murtuza has submitted that the bank Manager- applicant in Application u/S 482 No.3270 of 2022 had not raised any demand from the

complainant. It was the complainant himself who approached the bank for repayment of the dues of the bank. Being an officer of bank, the officer is duty bound to take all such actions as would be in the interest of the bank for recovery of the loan. By accepting money from the complainant in discharge of his official duties, the Bank Manager has not committed any offence.

16. The learned Counsel for the applicants have submitted that the facts of the case noted above do not even prima facie make out commission of any offence and filing of the complainant is an abuse of the process of law to put undue pressure upon the applicants in the ongoing civil dispute between the complainant and his son Rajat Saxena. They have placed reliance upon the judgment in the cases of **Mitesh Kumar J. Sha v. State of Karnataka**, (2022) 14 SCC 572, **Dinesh Gupta v. State of Uttar Pradesh** 2024 SCC Online SC 34, **Mala Choudhary v. State of Telangana**, 2025 SCC OnLine SC 1474 and **Rikhab Birani v. State of U.P.**, 2025 SCC OnLine SC 823.

17. Sri. Abhishek Khare, the learned counsel for the complainant has submitted that non-execution of transfer deed in favour of the complainant amounts to cheating.

18. In **Mitesh Kumar J. Sha v. State of Karnataka**, (2022) 14 SCC 572, the Hon'ble Supreme Court referred to some precedents in the following paragraphs: -

*38. Having considered the relevant arguments of the parties and decisions of this Court we are of the considered view that existence of dishonest or fraudulent intention has not been made out against the appellants. Though the instant dispute certainly involves determination of issues which are of civil nature, pursuant to which Respondent 2 has even instituted multiple civil suits, one can by no means stretch the dispute to an extent, so as to impart it a criminal colour. As has been rightly emphasised upon by this Court, by way of an observation rendered in **Indian Oil Corpn. v. NEPC India Ltd.** [(2006) 6 SCC 736], as under:*

“14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law.”

39. It was also observed:

“13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. ... There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.”

40. On an earlier occasion, in **G. Sagar Suri v. State of U.P.** [(2000) 2 SCC 636], this Court has also observed:

“8. Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.”

* * *

43. Recently, this Court in **Randheer Singh v. State of U.P.** [(2021) 14 SCC 626], has again reiterated the long standing principle that criminal proceedings must not be used as instruments of harassment. The Court observed as under:

“33. ... There can be no doubt that jurisdiction under Section 482CrPC should be used sparingly for the purpose of preventing abuse of the process of any court or otherwise to secure the ends of justice. Whether a complaint discloses criminal offence or not depends on the nature of the allegation and whether the essential ingredients of a criminal offence are present or not has to be judged by the High Court. There can be no doubt that a complaint disclosing civil transactions may also have a criminal texture. The High Court has, however, to see whether the dispute of a civil nature has been given colour of criminal offence. In such a situation, the High Court should not hesitate to quash the criminal proceedings as held by this Court in *Paramjeet Batra* [*Paramjeet Batra v. State of Uttarakhand*, (2013) 11 SCC 673 : (2012) 4 SCC (Cri) 76] extracted above.”

44. Moreover, this Court has at innumerable instances expressed its disapproval for imparting criminal colour to a civil dispute, made merely to take advantage of a relatively quick relief granted in a criminal case in contrast to a civil dispute. Such an exercise is nothing but an abuse of the process of law which must be discouraged in its entirety.”

19. In **Dinesh Gupta v. State of Uttar Pradesh**: (2024) 11 SCC 758, the issue involved was stated thus: -

*“2. The core issue of the dispute, which involves financial transactions and agreements, clearly places it in the realm of civil and commercial law. Yet, the respondent chose to pursue criminal charges in a quest to abuse the criminal justice system with a motive to seek personal vengeance rather than seeking true justice. **This unnecessary turning of a civil matter into a criminal case not only overburdens the criminal justice system but also violates the principles of fairness and right conduct in legal matters. The apparent misuse of criminal proceedings in this case not only damages trust in our legal system but also sets a harmful precedent if not addressed.**”*

(Emphasis added)

20. The Hon’ble Supreme Court found that the FIR in question, if proceeded further, would result in absolute abuse of process of court. It was a clear case of malicious prosecution. Hence, the same was quashed. Before parting with the case, the Hon’ble Supreme Court observed that a criminal complaint was filed and FIR was registered against the appellants despite the commercial nature of dispute. Such ill intended acts of abuse of power and of legal machinery seriously affect the public trust in judicial functioning. The Hon’ble Supreme Court imposed costs of Rs 25 lakhs on the respondent.

21. In **Mala Choudhary v. State of Telangana**, 2025 SCC OnLine SC 1474, was a simple dispute involving non execution of a registered sale deed in terms of a so called oral agreement between the complainant and the appellants which was given a criminal color by the complainant. The complainant misused the process of police investigation so as to entangle the accused appellants in a false and frivolous prosecution for the offences punishable under Sections 406 and 420 of the Penal Code, 1860. The Hon’ble Supreme Court noted the drastic variance in terms of the consideration of the plot in question in the versions of the complainant in the FIR and in the plaint filed in the civil suit filed by him much after lodging the FIR. The Hon’ble Supreme Court quashed the FIR and imposed Rs.10,00,000/- costs on the complainant.

22. **Rikhab Birani v. State of U.P.**, 2025 SCC OnLine SC 823 was yet another case where there was a dispute between the parties regarding non

payment of sale consideration of a property in pursuance of an oral agreement. The complainant had filed applications under Section 156(3) Cr.P.C. twice, which was dismissed both the times holding that the dispute was of a civil nature and no criminal offence was made out against the appellants. The complainant then directly approached the Police Station and got an FIR registered against the appellants for the offences punishable under Sections 420, 406, 354, 504 and 506 of the Penal Code, 1860, a charge-sheet was filed and the appellants were summoned to face trial. A petition under Section 482 of the Cr.P.C. filed by the appellants for quashing of the criminal proceedings against them was dismissed by the High Court. The Hon'ble Supreme Court held that:

“15. In Lalit Chaturvedi v. State of Uttar Pradesh 2024 SCC OnLine SC 171, this Court quoted an earlier decision in Mohammed Ibrahim v. State of Bihar (2009) 8 SCC 751, wherein, referring to Section 420 of the IPC, it was observed that the offence under the said Section requires the following ingredients to be satisfied:

“18. Let us now examine whether the ingredients of an offence of cheating are made out. 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.”

16. Reference was also made to the decision in V.Y. Jose v. State of Gujarat (2009) 3 SCC 78 and it was observed:

*“7. Similar elucidation by this Court in “V.Y. Jose v. State of Gujarat”, explicitly states that a contractual dispute or breach of contract per se should not lead to initiation of a criminal proceeding. **The ingredient of ‘cheating’, as defined under Section 415 of the IPC, is existence of a fraudulent or dishonest intention of making initial promise or representation thereof, from the very beginning of the formation of contract. Further, in the absence of the averments made in the complaint petition wherefrom the ingredients of the offence can be found out, the High Court should not hesitate to exercise its***

jurisdiction under Section 482 of the Cr.P.C. Section 482 of the Cr.P.C. saves the inherent power of the High Court, as it serves a salutary purpose viz. a person should not undergo harassment of litigation for a number of years, when no criminal offence is made out. It is one thing to say that a case has been made out for trial and criminal proceedings should not be quashed, but another thing to say that a person must undergo a criminal trial despite the fact that no offence has been made out in the complaint. This Court in V.Y. Jose (supra) placed reliance on several earlier decisions in “Hira Lal Hari Lal Bhagwati v. CBI”, “Indian Oil Corporation v. NEPC India Ltd.”, “Vir Prakash Sharma v. Anil Kumar Agarwal” and “All Cargo Movers (I) (P) Ltd. v. Dhanesh Badarmal Jain”.

* * *

18. *In Kunti v. State of Uttar Pradesh (2023) 6 SCC 109, this Court referred to Sarabjit Kaur v. State of Punjab (2023) 5 SCC 360 wherein it was observed that a breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep a promise will not be enough to initiate criminal proceedings. Thus, the dishonest intention on the part of the party who is alleged to have committed the offence of cheating should be established at the time of entering into the transaction with the complainant, otherwise the offence of cheating is not established or made out.*

19. *It is the duty and obligation of the court to exercise a great deal of caution in issuing process, particularly when the matter is essentially of civil nature [G. Sagar Suri v. State of U.P., (2000) 2 SCC 636]. The prevalent impression that civil remedies, being time-consuming, do not adequately protect the interests of creditors or lenders should be discouraged and rejected as criminal procedure cannot be used to apply pressure [Vijay Kumar Ghai v. State of West Bengal, (2022) 7 SCC 124]. Failure to do so results in the breakdown of the rule of law and amounts to misuse and abuse of the legal process.*

20. *In yet another case, again arising from criminal proceedings initiated in the State of Uttar Pradesh [Deepak Gaba v. State of Uttar Pradesh, (2023) 3 SCC 423] this Court was constrained to note recurring cases being encountered wherein parties repeatedly attempted to invoke the jurisdiction of criminal courts by filing vexatious complaints, camouflaging allegations that are ex facie outrageous or are pure civil claims. These attempts must not be entertained and should be dismissed at the threshold. Reference was made to a judgment of this Court in Thermax Limited v. K.M. Johny (2011) 13 SCC 412, which held that courts should be watchful of the difference between civil and criminal wrongs, though there can be situations where the allegation may constitute both civil and criminal wrongs. Further, there has to be a*

conscious application of mind on these aspects by the Magistrate, as a summoning order has grave consequences of setting criminal proceedings in motion. Though the Magistrate is not required to record detailed reasons, there should be adequate evidence on record to set criminal proceedings into motion. The Magistrate should carefully scrutinize the evidence on record and may even put questions to the complainant/investigating officer etc. to elicit answers to find out the truth about the allegations. The summoning order has to be passed when the complaint or chargesheet discloses an offence and when there is material that supports and constitutes essential ingredients of the offence. The summoning order should not be passed lightly or as a matter of course.

21. *Lastly, we would refer to another detailed judgment of this Court in Sharif Ahmed v. State of Uttar Pradesh 2024 SCC OnLine SC 726, which draws out the ingredients required to establish an offence under Sections 406, 415, 420, 503 and 506 of the IPC in the following terms:*

*“37. The chargesheet states that the offence under Section 420 is not made out. **The offence of cheating under Section 415 of the IPC requires dishonest inducement, delivering of a property as a result of the inducement, and damage or harm to the person so induced. The offence of cheating is established when the dishonest intention exists at the time when the contract or agreement is entered, for the essential ingredient of the offence of cheating consists of fraudulent or dishonest inducement of a person by deceiving him to deliver any property, to do or omit to do anything which he would not do or omit if he had not been deceived. As per the investigating officer, no fraudulent and dishonest inducement is made out or established at the time when the agreement was entered.**”*

(Emphasis added)

23. When we examine the facts of the present case in light of the law laid down by the Hon'ble Supreme Court in the above mentioned cases, it appears that the house in question had been purchased in the name of Rajat Saxena and her mother Raj Laxmi Saxena and the complainant was not its co-owner. The owners of the house Rajat Saxena and Raj Laxmi Saxena had mortgaged the house with the Bank. Smt. Raj Laxmi Saxena died on 04.11.2013. The complainant claims that since June 2014, he was paying the installments towards repayment of the loan taken by his wife and son, but it would not make him the owner of the house. A default was committed in repayment of the loans and the Bank had published a notice for auction of the house. The complainant filed S.A. No.319 of 2018 before the DRT and

expressed willingness to deposit the dues of the Bank, provided the Bank executes a sale deed in his favour under a “private treaty”.

24. A treaty is a written agreement between sovereign states or other subjects of international law that is governed by international law. There can be no treaty between a Bank and an individual willing to repay the loan taken by his son and wife. The complainant has not produced any written agreement executed between himself and the bank. The cheating alleged in the complaint is that the Bank Manager Anshul Srivastava received the dues from the complainant and gave a No Dues Certificate but he handed over the title deed of the house to Rajat Saxena under a conspiracy. The complainant has stated that he has opened the locks of the house on 03.12.2019 and has started residing in it. He has stated that the accused persons have cheated him and are trying to usurp the house.

25. The complainant had filed S.A. No. 391 of 2018 in DRT. It is recorded in the order dated 18.12.2018 passed by DRT that the complainant had voluntarily made an offer to deposit the Bank's dues provided Lucknow, provided the title deed of secured asset was returned to him. Thereafter, he gave a letter dated 21.12.2018 the bank stating that he was willing to liquidate the loan accounts and he requested that the sale deed of the house No.5/71, Jankipuram Extension, Lucknow be released in his favour. The Bank Manager wrote a letter dated 24.12.2012 to the complainant stating that as directed in the order passed by the DRT, the bank will accept the payment from the complainant and will return the original title deed to him subject to closure of the loan account. On 29.01.2019, the Bank gave a No Dues Certificate to the complainant and asked him to file the requisite application before the DRT for further orders to enable the bank to execute necessary documents of transfer in favour of the complainant.

26. It is important to note that the entire communication till this stage was without involvement of the mortgagor Rajat Saxena, but upon coming to know about the aforesaid facts, the mortgagor filed objections before DRT. The DRT disposed off the S.A. finally by means of an order dated 28.10.2019, which takes note of the contention of the mortgagor Rajat Saxena that the house was purchased in the name of Rajat Saxena and his

mother Smt. Raj Laxmi Saxena deceased through registered sale deed dt. 16.10.2017. Smt. Raj Laxmi Saxena died on 04.11.2013 leaving behind her husband (the complainant Rekeshwar Dayal Saxena), a son Rajat Saxena and two daughters namely Smt. Roopali Srivastava and Smt. Roopsi Srivastava as her legal heirs and successors. All the legal heirs have got equal share in the property left by the deceased. Therefore, Rajat Saxena had become owner of 62.5% share in the house whereas the complainant and his two daughters had 12.5% share each. The complainant had concealed the fact the he had already filed Regular Suit No. 735 of 2016 in the Court of Civil Judge (Senior Division), Lucknow for partition of the house. The mortgagor contended that he used to transfer money in the account of his father every month and his father used to deposit the installments towards repayment of loan from that money and he filed copies of account statements in support of this contention. The property cannot be transferred to one of the co-owners through a private treaty.

27. DRT disposed off the S.A. by means of an order dated 28.10.2019, wherein it is recorded that: -

“The cause of action for presentation of Securitization Application of applicant was the measure taken by Respondent NO. 1 Financial Institution u/s 13(4) of SARFAESI Act, 2002. The Respondent No. 1 Financial Institution is not proceeding under the provisions of SARFAESI Act hence there is no cause of action now to SARFAESI Act hence there is no cause of action now to proceed with the matter. The order issuing notice relating to share of applicant and Respondent NO. 2 and other family members is pending before the Civil Court. This Tribunal is not competent to deal with the said issue of partition or right of properties. Since there is no cause of action, the Securitization Application deserve to be disposed off.”

28. The aforesaid facts reveal that firstly the complainant claims to have made an offer to the Bank to repay the dues, but the Bank Manager has not made any demand to the complainant. Secondly, although the complainant had put a condition that the title deed of the house be handed over to him, the Bank Manager had replied that the bank will accept the payment from the complainant and will return the original title deed to him subject to closure of the loan, as directed in the order passed by the DRT. In the final order dated 28.10.2019, DRT stated that it has no jurisdiction to decide the

claims to ownership of the property, and thereafter the Bank did not hand over the title deed of the house to the complainant.

29. The aforesaid facts do not even prima facie make out a case of cheating by the Bank Manager, as he had not demanded any money from the complainant, he did not commit any illegality in accepting repayment of the Bank's dues from the complainant and he had not made any promise to transfer ownership of the property to the complainant. Although he had initially promised to hand over title deed of the house to the complainant, handing over title deeds of an immovable property does not amount to transferring ownership of the property and even if the Bank had handed over the title deed of the house, the true owners of the house would not have become divested of their ownership rights.

30. The complainant has not disclosed the true market value of the house and prima facie it appears that the complainant himself had devised a mala fide design to grab the entire house and divest his son and daughters of their share in it by making paying some money to the Bank. These facts do not at all make out a case of cheating committed by the complainant's son. There is no allegation of commission of any act by the applicant no. 2 Anil Saxena and there was absolutely no ground to summon him to face the trial.

31. The ingredient of 'cheating', as defined under Section 415 of the IPC, is existence of a fraudulent or dishonest intention of making initial promise or representation thereof, from the very beginning of the formation of contract. Rajat Saxena and Anil Saxena had not made any promise to the complainant, much less a promise made with a dishonest intention. The Bank Manager had not made any inducement to the complainant, rather the complainant had himself approached the Bank manager for repayment of the amount and the Bank manager did not commit any wrong by accepting the dues of the Bank from the complainant, who is the father of the borrower – mortgagor.

32. It appears that the trial Court has passed the impugned order dated 08.04.2022 summoning the applicants, in a mechanical manner and without application of mind to the aforesaid facts which are evident on the face of the record, which vitiates the impugned summoning order.

33. In view of the foregoing discussion, both the present applications filed under Section 482 Cr.P.C. are **allowed**. The impugned summoning order dated 08.04.2022 passed by the learned Additional Chief Judicial Magistrate-V, Court No.29, Lucknow in the Misc. Case No.3649 of 2021 is **quashed** and the complaint filed by the complainant is hereby **dismissed**.

(Subhash Vidyarthi,J.)

April 03, 2026

-Amit K-