

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Reserved on: **04.10.2024**
Pronounced on: 28.10.2024

Case:- **CRM(M) No. 198/2020 CrIM 692/2020**

Muhammad Shafi Wani
Aged about 50 years
S/O Abdul Aziz Wani
R/O Khimber Tehsil North DistrictPetitioner(s)
Srinagar

Through: Mr. Syed Sajad Geelani, Adv.

Vs

Muhammad Sultan Bhat Respondent(s)
S/O Abdul Karim Bhat
R/O Rangil Tehsil Ganderbal Kashmir.

Through: None.

**Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI,
JUDGE**

JUDGMENT

1. The petitioner in the instant petition has invoked the inherent jurisdiction of this Court enshrined in Section 482 Cr.P.C for quashing complaint titled as “**Muhammad Sultan Bhat vs Muhammad Shafi Bhat**” (for short impugned complaint), pending before the Court of Chief Judicial Magistrate, Ganderbal (for short the Magistrate), including the proceedings initiated thereon along with orders dated 25.07.2018 and 06.03.2019 (for short ‘the impugned orders’).
2. Facts on the strength of which the instant petition has been filed by the petitioner would reveal that the respondent herein filed the impugned complaint against he petitioner herein, the contents of which for the sake of brevity are extracted and reproduced hereunder:-

1. *The accused borrowed a sum of money totaling seventy-lacs nine thousand and five hundred from the complainant to be liquidated in favour of complainant within a period of three years. This loan amount was given to the accused on 10th of March 2015.*
2. *At the expiry of time agreed for liquidating the loan, the complainant demanded the repayment of the loan amount to him at Rangil district Ganderbal two day ago.*
3. *The accused became violent and tried to beat the complainant and hurled abuses. he also threatened the complainant with dire consequences and criminally intimidated him causing breach of peace.*
4. *The complainant was saved by the intervention of few persons otherwise the accused would have caused some bodily injury to the complainant.*
5. *The subsequent conduct supra of the accused clearly shows that he cheated the complainant in respect of the said money making false promise which he never intended to full fill. The dishonest intention of the accused was not known to the complainant at the time of advancing the loan amount but same became evident as the accused tried to beat the complainant. The accused has dishonestly caused wrongful loss to the complainant and Wrongful gain to the him.*
6. *The accused has committed the offences under section 506, 420, 504 RPC and the complainant has sufficient evidence to prove the same.*

3. The said complaint upon being entertained by the Magistrate and after recording the statement of the complainant/respondent herein and one of his witnesses proceeded to summon the accused petitioner herein, whereafter the accused petitioner herein appeared and joined the proceedings, however, on 06.03.2019, the Magistrate noticed that since cognizance has not been taken upon the complaint against the accused petitioner herein, as such, the Magistrate directed the counsel for the complainant-respondent herein to argue on the question of maintainability of the complaint and finally in terms of order dated 1st August 2019 the trial Court took cognizance for commission of offence 420, 506 RPC

- against the accused petitioner herein and re-summoned the accused petitioner herein.
4. The accused petitioner herein has maintained the instant petition *inter alia* on the grounds that the impugned complaint does not disclose any offence alleged to have been committed by the accused petitioner herein and the complaint is based on false and frivolous facts, and that, the Magistrate erred in the matter while dealing with the complaint, as in the first instance, the Magistrate failed to take cognizance of the offence alleged to have been committed by the accused petitioner herein and instead summoned the accused petitioner on 25th July 2018 and subsequently on 1st August 2019 grossly erred while taking the said cognizance.
 5. Without going into the question of legality or otherwise of proceedings initiated by the Magistrate in the impugned complaint in the first instance it would be appropriate to advert to the impugned complaint in order to ascertain as to whether the offences alleged to have been committed by the accused petitioner herein are made out or not.
 6. Perusal of the impugned complaint reveal that the complainant-respondent herein alleged therein that the accused petitioner borrowed a sum of Rs. 70,09,500/- from him on 10.03.2015 and agreed to repay the same within a period of three years, and, upon his failure to repay the said amount, while making a demand thereof, by him, the accused petitioner at Rangil Ganderbal before the date of filing of the complaint became violent and tried to beat him hurled abuses and threatened him, with dire consequences and criminally intimidated him causing breach of peace and, as such, in the process committed the offences under Sections 420,504 & 506 RPC.

7. Insofar as offence under Section 420 RPC is concerned, same reads 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 terms which may extend to seven years, and shall also be liable to fine.”

A bare perusal of the provision (supra) would demonstrate that the ingredients of an offence of cheating are (I) there should be fraudulent or dishonest inducement of a person by deceiving him (II)(a) the person so deceived should be induced to deliver any property to any person or to consent that any person shall retain any property or (b) the person so deceived should be intentionally induced to do or 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) the act of omission should be one, which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

Thus, for a person to be convicted under Section 420 RPC, it has to be established not only that he has cheated someone, but also that by doing so, he has dishonestly induced the person, who was cheated to deliver any property. For an offence of cheating, it must be proved that the complainant parted with his property, acting on a representation, which was false to the knowledge of the accused and that the accused had a dishonest intention **from the outset**.

8. Having regard to the aforesaid provision of law and the case set up by the complainant-respondent herein qua the commission of offences under

Section 420 by the accused petitioner herein, its evident and manifest that the said offence is not made out at all therein the impugned complaint against the accused petitioner herein.

Here a reference to the Judgments of the Apex Court passed in case titled as “**Hridaya Ranjan Prasad Verma & Ors vs. State of Bihar and Anr**”, reported in **2000 (4) SC 168**”, and “**Vesa Holdings Private Limited and Another vs. State of Kerala & Ors**”, reported in **2015 (8) SCC 293**” would be advantageous being relevant and germane herein, wherein at paras-15 & 12 respectively, following has been noticed and laid down.

15. .. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

12. From the decisions cited by the appellant, the settled proposition of law is that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In other words for the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out."

9. Insofar the offence under Section 504 RPC is concerned, the same provides for intentional insult with intent to provoke breach of peace and contemplates an intentional insult to any person leading to a provocation

or at least intending or knowing it to be likely that such provocation will cause him to break the public peace or to commit any other offence. Thus in order to attract the provisions of Section 504, it is incumbent firstly that the accused insults the complainant and consequently the insult must be of such a nature that it should be a provocation to a complainant and thirdly that the accused intended or knew that the provocation was likely to cause complainant to either break public peace or to commit any other offence. Further in law, in a complaint under Section 504 of the Penal Code, the complainant must mention the actual words which were used by the accused while insulting the complainant.

Having regard to the aforesaid position of law and the allegations leveled in the impugned complaint by the complainant-respondent herein qua the commission of offences under Section 504 supra by the accused petitioner herein, it is writ large that the offence under Section 504 supra as well is not made out.

10. Insofar as the offence under Section 506 of the Penal Code is concerned, same pertains to punishment for criminal intimidation which criminal intimidation is defined under Section 503 of the Penal Code having the following essential ingredient viz:-

1. Threatened a person with any injury.

(I) to his person reputation or property or

(II) to the person, or reputation of anyone in whom that person is interested.

2. The threat must be with intent.

(I) To cause alarm to that person or

(II) To cause that person to do any act which he is not legally bound to do as the means of avoiding the execution of such threat or

(III) To cause that person to omit to do any act which that person is legally entitled to do as the means of avoiding the execution of such threat.

Thus what emanates from the aforesaid essentials is that for being an offence within the meaning of Section 503 of the Penal Code and punishable under Section 506 of the Penal Code, the threat should be real and not just a mere word. A bare reading of the impugned complaint would suggest that the offence of Section 503 punishable under Section 506 of the Penal Code too is not made out, in that, the essential ingredients of the offence in question are completely missing therein the impugned complaint.

11. Law is settled and is no more *res integra* that in exercise of the wholesome power vested in the High Courts under Section 482 Cr.P.C, the High Court is entitled to quash a proceeding, if it comes to the conclusion that allowing the proceedings to continue would be an abuse of process of the Court or that the ends of justice require that the proceedings ought to be quashed, and that, in a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceedings in the interest of justice, as ends of justice have been held to be higher than the ends of mere law, though justice has got to be administered according to the laws made by the legislature.

A reference in regard to above to the Judgment of the Apex Court passed in the case titled as, "*Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and ors.*", reported in **2021 SCC Online SC 315**", would be relevant herein

12. Viewed thus, from what has been observed, considered and analyzed hereinabove, the petition succeeds, as a consequence whereof, the impugned complaint included the proceedings initiated thereon as well as the impugned orders dated 25.07.2018 and 06.03.2019 are quashed.

**(JAVED IQBAL WANI)
JUDGE**

SRINAGAR

28.10.2024

Hilal Ahmad

Whether the Judgment is speaking: Yes/No
Whether the Judgment is reportable: Yes/No

