

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

CRMC No. 379/2016
IA No. 01/2016

Pronounced on : 1st June, 2020

Mohd. Irfan & anr. Petitioner(s)

Through:- Mr. Rahul Pant, Advocate

V/s

State of J&KRespondent(s)

Through:- Mr. Amit Gupta, AAG

Coram : HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

ORDER

01. Petitioners in this petition under Section 561-A Cr.P.C. seek quashing of criminal proceedings pending in the Court of Learned Special Judge (Additional Sessions Judge), Jammu in case titled *State vs. Mohd. Irfan & ors.* in which charges under Sections 420/295-A/34 RPC have been framed by the Court vide order dated 06.02.2016.

02. The grounds of challenge are that, on a complaint made by Neeraj Kumar Jamwal alleging that he has been cheated by the accused Sofi-Alla-Din Ajmer Wale Baba in the month of June, 2015, FIR No. 43/2015 dated 01.09.2015 was registered in Police Station Bus Stand, Jammu. After investigation, the accused were charged under Section 295-A RPC also and the Trial Court without application of mind charged the accused for the same although no charge is made out against either of the accused.

03. The charge under Section 420 RPC is also not made out as neither of the accused induced the complainant. It is on his own that he contacted accused No. 1 for solution of his family problems. Neither the newspaper nor the owner of the newspaper or JK Channel has been examined in support of the allegations. Any such news ever appeared in the newspaper or was carried

by JK Channel on behalf of the accused persons. Accused No. 2 was not privy to what transpired between the complainant and accused No. 1. Why the complainant approached the Baba and what family problem was to be solved is not stated in the complaint.

04. The charge under Section 295-A RPC had been ordered at the instance of SSP Jammu, for which, there is no iota of evidence. No charge under Section 295-A RPC could be framed unless the complaint is filed in accordance with Section 196 Cr.P.C. and the Court had no jurisdiction to take cognizance of the offence unless Section under 196 Cr.P.C. is complied.

05. This petition involves very short question of law. Whether the Trial Court has the jurisdiction to take cognizance of the offence in view of the bar of Section 196 of Jammu & Kashmir's Criminal Procedure Code. Section 196 reads as under :-

“196. Prosecution for offences against the State

No Court shall take cognizance of any offence punishable under Chapter VI or IX-A of the Ranbir Penal Code (except section 127, [and section 171-F, so far as it relates to the offence of personation], or punishable under section 108-A, or section 153-A, or section 294-A, [or section 295-A] or section 505 of the Ranbir Penal Code, unless upon complaint made by order of, or under authority from the [Government or District Magistrate or such other officer as may be empowered by the Government in this behalf.]”

So the twin requirements of Section are; there must be a complaint by order of or under the authority from the Government and the complaint may be made by the District Magistrate or the officer empowered by the Government.

06. Neither of these requirements are satisfied in the case. This apart, how the charge under Section 295-A RPC has been added is also quite strange.

07. It is a false case planted by the complainant/Police, as the basis of the FIR does not disclose the commission of offence. It may be the breach of promise in the case of the complainant, which is not an offence. Who disclosed the names and addresses of the witnesses to the Investigating Officer, is not disclosed by the Investigating Officer. It appears that Investigating Officer knows more than the complainant, and has collected the witnesses to support a false case, for which, no basis has been laid down. It is not a case of cheating because neither the JK Channel has named nor the newspapers in which the advertisements were published have been stated and in the absence of which, it cannot be said that there was false and dishonest representation by the accused as all the witnesses have voluntarily approached the accused and paid the amount demanded without any promise held out by the accused.

08. It is SHO Police Station Bus Stand Jammu, who writes to the Superintendent of Police (City North), Jammu that offence under Section 295-A RPC is also made out, as such, permission of District Magistrate, Jammu may be obtained, who vide letter dated 07.09.2015 requests the Additional District Magistrate to accord sanction for the prosecution of the accused under Section 295-A RPC and the Additional District Magistrate, Jammu accorded sanction under Section 196-A Cr.P.C. on 09.09.2015. Both the officers have not considered the ingredients of Section 196-A Cr.P.C., which reads as under:-

“196-A. Prosecution for certain classes of criminal conspiracy.

No Court shall take cognizance of the offence of criminal conspiracy punishable under section 120-B of the Ranbir Penal Code,—

- (1) in a case where the object of the conspiracy is to commit either an illegal act other than an offence, or a legal act by illegal means, or an offence, to which the provisions of section 196 apply, unless upon

complaint made by order of, or under authority from [the Government] or some officer empowered by [Government] in this behalf, or

(2) in a case where the object of the conspiracy is to commit any non-cognizable offence, or a cognizable offence not punishable with death, life imprisonment or rigorous imprisonment for a term of two years or upwards, unless the [Government], or District Magistrate empowered in this behalf by [the Government] has, by order in writing, consented to the initiation of the proceeding :

Provided that where the criminal conspiracy is one to which the provisions of sub-section (4) of section 195 apply, no such consent shall be necessary.”

09. Because it is not a sanction but a complaint which has to be filed on the satisfaction of the Government.

10. Even otherwise after the perusal of the evidence and record, Section 295-A RPC is not satisfied because there was neither any malicious act intended to outrage any religious feelings nor any visible representation. The nature of the evidence has to be : (i) that there was an assembly, (ii) that such an assembly at the time of offence engage in performing religious ceremony, & (iii) that the accused caused disturbance to such an assembly when so engaged in the performance of lawful act.

11. The statement made to a person who seeks solution for his problem does not fall under Section 295-A RPC and addition of the charge under Section 295-A RPC is abuse of the process of Court as it has to be filed as per the requirements of Section 196 Cr.P.C. Moreover, there are umpteen number of cases decided by this Court and yet the Police instead of following the procedure only files the cases, which cannot stand in view of the law laid down by this Court in **Munir Hussain & ors. vs. State & ors., 2015 (2) JKJ 743 [HC]** holding that :

“12. Plain reading of the aforesaid provision makes it abundantly clear that no prosecution can be initiated under this Section except on a complaint made by the District Magistrate. The expression "upon a complaint" used in the aforesaid provision is explicit and significant.

13. In the present case, the District Magistrate, Jammu has accorded post-facto sanction, on the basis of letter of Senior Superintendent of Police, Jammu dated 17.08.2010 that too eight years after the incident. Police report is not a substitute for a complaint under Section 196 Cr. P. C. Cognizance taken by the learned Additional Sessions Judge in respect of offence indicated in Section 196 Cr. P. C, in the absence of a complaint by the District Magistrate/Government, would amount to defect of jurisdiction of the Court, which cannot be cured under law. In other words, the prosecution is primarily concerned to see that the prosecution in case of offence under Section 121-A and 123 RPC, covered by prohibition under Section 196 Cr.P.C., shall not commence without complying with the conditions contained there.”

12. Thus, the charge framed under Section 295-A RPC is without jurisdiction. The question which ought to have been addressed by the SHO Police Station Bus Stand, Jammu, is whether the FIR discloses the commission of offence of cheating. The complaint written in English is an Annexure-A to the petitioner which is reproduced as under:-

“To

*The Station House Officer,
Police Station Bus Stand, Jammu.*

Subject:

An application for lodging a FIR.

Sir,

About four months ago i read one advertisement in news - papers as well as in J K Channel Thai one Sofi Allah-Din Ajmer Wale Baba has opened his office at Trikuta Complex Bus Stand Jammu and he heals all the problems like love Marriage, Husband-Wife dispute, Family dispute, seeking Jobs etc. I also approached at Boba in The month of June for redrasal of some family problems. He charged Rs. 200/- as entry fee and there offer he took Rs. 21000/ from me for healing and curing the problems, within 21 days but despites the lapes of three months my family problems have not been solved. I approached him number of times to return the money but the said Baba alongwith one of his companion namely Mohd Shameem kept on lying that they will return the amount but till today they have not done so. They have also cheated one Manto Sharma of Rs. 9000/- who is accompanying with me. The said baba alongwith Shamim have cheated us by luring us for curing of family and personal problems and took the money by deceitful means and thus they have committed offence of cheating and are also cheating general public in this way by befooling the innocent people.

Yours faithfully,

*Neeraj Kumar Jamwal
S/o RashPal Singh Jamwal
R/o H. No. 129, Talab Tillo Jammu.”*

13. The contents of the complaint do not disclose the commission of any offence much less cheating. It could be at best a breach of agreement had the complainant approached them, for returning the alleged amount which they refused to pay. So on the fact of it, the complaint at best is for breach of agreement and thus, a civil wrong. No doubt, the complainant has used the words and alleged that "He alongwith Shamim has cheated us, this includes Mamta Sharma by luring, or in curing of family, and personal problems and took the money by deceitful means, therefore, they have committed the offence of cheating and are also cheating the general public in this way by befooling innocent people". Before registering the case under Section 420 RPC, the officer ought to have examined the ingredients of Section 420 RPC.

14. It is settled principle of law that essential ingredients of cheating are : (i) cheating, (ii) dishonest inducement & (iii) *mens rea* as laid down in '**(2005) 9 SCC 15, Devender Kumar Singla vs. Baldev Krishan Singla.**

15. This Court in case of **Surinder Singh & ors Vs. Trilok Singh & sons & ors, '2007 (1) JKJ 147'** quashed the proceedings therein holding that the cognizance taken by the Court was abuse of the process of law, while relying on the law laid down in **Vijaya Rao vs. State of Rajasthan & anr.** Paras 9 & 10 of its judgment held as under:-

"9. It is averred in the complaint that money was not handed over to the accused No. 2 and 3 but was deposited by way of drafts in the account of the company, how accused No. 2, 3 had cheated him and what was their role and intention is not given in the complaint.

10. The Apex Court, has, in a case titled as Vijaya Rao v. State of Rajasthan and Anr. reported in (2005) 7 Supreme Court Cases 69 held that if the ingredients of offence in question are lacking in the complaint, the cognizance taken and process issued are abuse of process of Court. It is profitable to reproduce Para No. 5 of the said judgment herein:

5. Except using the expressions "fraudulent misappropriation" and "mala fide intention", the allegations in the complaint do not at all disclose as to how the appellant can be found guilty of the

offence under Section 420 IPC. The ingredients constituting Section 420 are conspicuously lacking in the complaint. All the Courts have failed to address themselves to the crucial question whether as far as the appellant is concerned any offence under Section 420 or for that matter any offence under Section 409 has been committed. Even going by the allegations in the complaint allowing the criminal proceedings to go on against the appellant would result in abuse of the process of the Court. Hence, the proceedings in Complaint Case No. 10 of 2000 on the file of the Chief Judicial Magistrate, Sikar are quashed as against the appellant. The appeal is allowed accordingly.”

16. Similarly in this case, the complainant has used expression “deceitful means and cheating the general public” but the allegation is that the representation was made on JK Channel and newspaper which is not supported by any evidence. The complainant has not named any witness. Moreover, what was the family problem has not been disclosed. The only allegation is that “about four months ago, I read one advertisement in the newspaper as well as JK Channel that one Sofi-Alla-Din Ajmer Wale Baba has opened his office at Trident Complex, Jammu and he heals the problems like love marriage, husband-wife dispute, family dispute, seeking job etc. I also approached him for redressal of some family problem and he charged Rs. 200/- as entry fee whereafter Rs. 21,000/- from me for healing and curing the problem within 21 days but despite lapse of three months, my problem has not been solved.

17. What was his family problem is not disclosed in his statement recorded under Section 164 Cr.P.C. where he says that he further suddenly developed health problem. His father has also suddenly developed health problem as his mental condition was not good. There is nothing on record to show that his father ever met the said Baba. He is not even a witness. What was his physical condition, a qualified doctor could have been approached. There is

no evidence that he was ever examined by any qualified doctor for his health problem. He may be alright, may be that he has no such problem.

18. It is strange that he took receipt of Rs.200/- but did not insist for receipt while making the payment of Rs.35,300/- and without receipt, this payment was made as price of three black male goats at the rate of Rs.2700/- each but his father continued to be sick though he is not a witness.

19. Another witness is Vikas Sharma S/o Dwarka Nath Sharma. According to him, he has not disclosed his problem because A-1 said that he know the problem and will be settled. He paid Rs.6600/- to A-1, out of which, he withdrew Rs.5600/- from ATM. He has not disclosed the name of his Bank and number of his bank account but the Investigating Officer did not verify even the bank account or name of the Bank.

20. The other witness also came to know about the accused from T. V. on which some publication was displayed. She has paid Rs.9500/- for treatment of her son who never accompanied her. The accused wanted price of four male goats for which, Rs.3600/- was paid. He gave some powder and tablets to her as medicines. Why she opted for such medicines without any prescription is not explained?

21. Raj Kumar of Kathua, who came to him with the problem of his son. Accused, according to him, demanded Rs.28,000/- as price of four male goats but he paid Rs.24,000/- for sacrifice.

22. Pw-Keemti Lal of R. S. Pura also came to the accused as he was not keeping well and the doctors failed to treat him. A-1 charged Rs.7800/- in addition to Rs.200/- as entry fee from him. Subsequently, A-1 has charged Rs.27,000/- as price of three male goats, total comes to Rs.35,000/- but there was no improvement despite promises.

23. Vikas Singh is another witness. He said that he came to Baba for solution of some family problem. After meeting A-1, he demanded Rs.57,600/- and told him that his problem would be solved. He paid Rs.40,960/- to the accused. After sometime, he came back and came to know that Baba was arrested by the Police, he wants the return of the money.

24. Another witness Ved Bhushan of Satwari, who met him on 11.08.2014. A-1 demanded Rs.7700/- from him and animals to be sacrificed for solving his problem. He names the owl, goat, she goat, monkey, rabbit, buffalo and then said cow to sacrifice for solving the problem. Ultimately Rs.15000/- were paid to him on 20.08.2014 for sacrifice the animals.

25. Same story is disclosed by Pw-Yash Pal and Sudarshan Singh, who were examined by the Police on 12.09.2015 & 14.09.2015. Ved Bhushan claims to have paid Rs.15,000/-. To sum up, all the witnesses paid the accused what he demanded. However, there is not an iota of evidence that the accused made fraudulent misrepresentation.

26. It is the JK T.V. Channel which made a representation with verification of all the newspapers, which carried the publication about the Baba but no evidence of the date or name of the paper or date, who carried the news have been given. So none of the ingredients of Section 420 RPC are made out from the statement of the witnesses. They went to him voluntarily. In **Surinder Singh Vs. Trilok Singh, '2007 (1) JKJ 47 (supra)**, the Court relying on the law laid down in Para-12 has held as under :-

“12. This Court in a case titled as Satish Khosla and Ors v. Puran Chand held that before taking cognizance and issuing process, it must be shown that a false representation was made and complainant was made to believe and was induced to part with the property with dishonest intention from the very outset, then it could be said that there are grounds to presume that the accused are involved in the commission of offence punishable under Section 420 RPC. Simply retention of money by the accused may be a civil

wrong. It is profitable to reproduce relevant portion of Para 4 of the said judgment herein:

4. The ingredients of offence under Section 420 RPC are not only that accused has cheated someone but also that by doing so he has dishonestly induced the person who was cheated to deliver the property. This shows to constitute an offence under this Section, it must be shown 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 very outset. The fraudulent and dishonest intention of causing wrongful gain to one person and wrongful loss to another person and had intention to defraud the complainant at the time of making the promise. From the mere failure of the accused to keep up the promise, cannot be presumed as an act leading to cheating. Besides, this is not sufficient to show that false representation had been made but it is necessary to show that the representation was false to the knowledge of the accused and was made to deceive the complainant....”

27. In view of the above, the Additional District Judge, Jammu has erred in taking the cognizance and the charge framed under Section 420/295-A/34 RPC is without jurisdiction an abuse of process of law. Accordingly, this petition is allowed and charges framed against them vide order dated 06.02.2016 are quashed. Petitioners shall be released from custody in case they are not required in any other offence.

(Sindhu Sharma)
Judge

JAMMU
1 .06.2020
Ram Murti

Whether the order is speaking : *Yes*
Whether the order is reportable : *Yes*