

Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.3020 OF 2024
(@ Special Leave to Petition (Crl.) No.13675 OF 2023)

RADHEYSHYAM & ORS. ...APPELLANT(S)
VERSUS
STATE OF RAJASTHAN & ANR.. RESPONDENT(S)

O R D E R

1. Leave granted.
2. By the impugned judgment and order dated 27.09.2023 the High Court of Judicature for Rajasthan at Jodhpur has declined to quash the proceedings arising out of First Information Report¹ No.215 of 2022 under sections 420 and 406 of the Indian Penal Code, 1860² registered at Police Station Rajgarh, district Churu, Rajasthan and, accordingly,

¹ FIR

² IPC

dismissed the petition under Section 482 of the Code of Criminal Procedure, 1973³ filed by the appellants.

3. Respondent no.2 and the appellants entered into an Agreement to Sell dated 29.06.2020 with respect to sale of Swami Towers, Shitla Bazar, Rajgarh for a total sale consideration of Rs.5,11,00,000/- (Rupees five crore eleven lakhs only) and an advance payment of Rs.11 lakhs i.e. Rs.5 lakhs in cash and Rs.6 lakhs by way of a cheque was made at the time of Agreement to Sell. Further respondent no.2 agreed to make the payment of Rs.1 crore by 30th September, 2020 and the balance amount of Rs.4 crores in the next fifteen months beginning 30th September, 2020, as per his convenience. The entire payment was to be made within 18 months from the date of execution of the Agreement to Sell.

4. It appears that the sale was not executed. Respondent no.2 filed an FIR on 24.05.2022, details of which have already been stated in the opening paragraph. A perusal of the complaint simply states

³ CrPC

that the Agreement to Sell had been executed between the parties on 29.06.2020. The appellants were the owners of the properties to be transferred and respondent no.2 had agreed to purchase the same for the price agreed for which advance of Rs.11 lakhs was paid at the time of the Agreement to Sell. Later on, respondent no.2 has paid a further amount of Rs.89 lakhs at different points of time. Thus, making a total payment of Rs.1 crore. Respondent no.2 thereafter approached the appellants to execute the registry of the property in question but the appellants refused to execute the registry and, therefore, it is further stated that their refusal is evident of the fact that the appellants have cheated respondent no.2 with dishonest intentions and have duped him of Rs.1 crore in collusion with his brother in furtherance of their criminal conspiracy. It is further stated in the complaint that respondent no.2 has been regularly contacting the appellants and requesting them to execute the registry of the property in question after taking the balance sale consideration but the appellants are now openly, with intention to cheat and dupe him, are saying that

‘do whatever you want, we will not execute the registry in your name’.

5. Soon thereafter respondent no.2 has instituted a Civil Suit for relief of specific performance of the contract against the appellants in June, 2023 which is registered as Civil Suit No.10/23 in the Court of First Additional District Judge, Rajgarh, District Churu titled ‘Mohd.Naseem Vs. Radhey Shyam and Ors.’ The said suit is still pending. The said suit is also filed on the basis of the same Agreement to Sell with similar facts as stated in the complaint.

6. As already indicated above, a perusal of the complaint which has been registered as the FIR does not spell out any element or ingredient of cheating or breach of trust. Mere non-performance of an Agreement to Sell by itself does not amount to cheating and breach of trust. Respondent no.2 has adequate remedy of filing a Civil Suit for relief of specific performance of a contract which he has already availed and the suit is still pending. The FIR only appears to be an arm-twisting mechanism to pressurise the appellants to execute the Sale Deed or

to extract money. Every civil wrong cannot be converted into a criminal wrong. As we find in the present case, respondent no.2 is trying to abuse the criminal machinery for ulterior motives. It is not his case that the appellants duped him to pay the advance amount and entered into an Agreement to Sell. The High Court fell in error in recording a finding that the ingredients of offences under sections 420 and 406 of IPC are present in the instant case.

7. Section 420, IPC provides that:

“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.”

For an offence under Section 420, IPC, the following ingredients must be present:

- i. Cheating as defined under Section 415, IPC, that is, there should be a fraudulent or dishonest inducement of a person;
- ii. An intention to deceive; and
- iii. The person cheated must be dishonestly induced to
 - a. Deliver property to any person; or
 - b. Make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.

8. Thus, cheating forms an essential ingredient to constitute an offence under Section 420, IPC. Further, to constitute cheating as defined under Section 415, IPC, it is necessary that a fraudulent or dishonest inducement is done and the deceived person is made to deliver any property owing to the fraud. Section 415, IPC, defines 'cheating', as:

"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”.”

9. From the bare perusal of the FIR, it is evident that there was no act of cheating, that is, the complainant was nowhere fraudulently induced or dishonestly deceived by the appellants. A commercial transaction took place between the parties during which the parties consensually agreed for the sale of the property of the appellants and respondent no. 2 paid the part consideration. The default in payment of their loan dues on part of the appellants is not reflective of their deceitful intention towards the complainant. Mere non-registration of the sale or its refusal cannot amount to cheating. The delivery of the advance payment towards consideration was made in furtherance of an Agreement to Sell and it is not the case of the respondent that he was in anyway deceived or duped to make such payments to the appellants. It is a civil dispute and gives rise to the complainant's right to resort to the remedies provided under civil law by filing a suit for specific performance.

10. Additionally, the appellants have also been accused of committing the offence of criminal breach of trust under Section 406, IPC. This offence is defined under Section 405, IPC as follows:

“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 off 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”.”

11. For an offence punishable under Section 406, IPC, the following ingredients must exist:

- i. The accused was entrusted with property, or entrusted with dominion over property;
- ii. The accused had dishonestly misappropriated or converted to their own use that property, or dishonestly used or disposed of that property or wilfully suffer any other person to do so; and
- iii. 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.

12. In the present case, the appellants were not entrusted with any property by respondent no.2 – complainant. The only delivery made was of part payment towards an Agreement to Sell between the parties. The amount paid towards consideration cannot be said to have been entrusted with the appellants by respondent no. 2. Additionally, merely because the appellants are refusing to register the sale, it does not amount to misappropriation of the advance payment. Since there was no entrustment of property, the offence of misappropriation of such property and thereby criminal breach of trust cannot be said to be made out.

13. Therefore, the ingredients of none of the offences alleged in the FIR are made out against the appellants and thus, no offence can be said to have been committed by them. The act of the appellant at best constitutes a civil wrong and does not call for any criminal action against them. A civil wrong cannot be given a criminal colour merely to coerce the

appellants into registering the sale. The judicial process cannot be used as a tool to enforce specific performance of an agreement. Respondent no. 2 has ample remedies under the civil law and he has already resorted to the same by filing a civil suit for specific performance which is pending adjudication before the relevant forum. Thus, such a criminal proceeding cannot be allowed to continue.

14. Accordingly, the appeal is allowed. The impugned judgment and order is set aside. The impugned FIR is quashed.

15. We make it clear that any observation made in this order will not come in the way of the Civil Court in deciding the suit which shall be decided on its own merits on the basis of evidence led during the trial.

.....J
(VIKRAM NATH)

.....J
(PRASANNA BHALAKRISHNA VARALE)

NEW DELHI
JULY 22, 2024