



2025:DHC:1135



\$~17

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Date of decision: 20th January, 2025

+

CRL.M.C. 4657/2017

SATPAL JAIN (THRU LRS)

1. SMT. SUSHILA JAIN
W/O. LATE SHRI SATPAL JAIN
2. AJAY JAIN
S/O. LATE SHRI SATPAL JAIN
3. MS. MEENU JAIN
D/O. LATE SHRI SATPAL JAIN
4. MS. NEETU JAIN
D/O. LATE SHRI SATPAL JAIN

All residents of
H.No.4, 2nd Floor,
Bahubali Enclave ,
Delhi - 110092

.....Petitioners

Through: Mr. Krishan Kumar and Mr. Shivam
Bedi, Advocates.

versus

1. THE STATE
THROUGH STANDING COUNSEL (CRL.)
437, LAWYERS' CHAMBER BLOCK I,
DELHI HIGH COURTRespondent No.1.
2. SMT. NEELAM VERMA
W/O. SHRI SUSHIL SHARMA



2025:DHC:1135



R/O 3/68, GEETA COLONY,
DELHI-110031

....Respondent No.2.

Through: Mr. Hitesh Vali, APP for the State.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. Petition under Section 482 of the *Code of Criminal Procedure, 1973* ('Cr.P.C.' hereinafter) has been filed for quashing of the Order of learned ASJ dated 08.08.2017 who has set aside the Order of 16.03.2016 of Ld. ACMM directing framing of Charge and has held that there are no offences made out under Section 420/406 of the *Indian Penal Code, 1860* ('IPC' hereinafter) and thereby quashed the Complaint under Section 200 Cr.P.C. of the Petitioner.

2. Briefly stated, Sh.Satpal Jain, complainant had filed a complaint under Section 200 Cr.P.C. for the offences under Section 420/460A/406 IPC on the ground that he has entered into an Agreement to Sell dated 23.07.10 for purchasing built up Third floor portion with roof rights of property No. 115, area measuring 320 sq. yds. approx. for a sale consideration of Rs. 1,40,00,000/-. An earnest money of Rs.25,00,000/- was paid in cash and Rs.10,00,000/- was paid by two cheques, each of Rs.5 lacs.

3. The Complainant asserted that Respondent-Neelam Sharma at the time of signing of the Agreement to Sell assured that the property was free from all encumbrances and assured to handover all the



2025:DHC:1135



previous ownership document to the Complainant. The Complainant had informed the Respondent No. 2/Neelam Verma that the property would be required to be inspected by bank officials since he has applied for a loan to which she had no objection. However, when Bank officials/surveyor visited the property, Respondent No. 2 did not permit the Inspection of the property, despite several requests, thereby created a hurdle for the complainant to obtain the loan.

4. The Complainant further alleged that Respondent No. 2 had no sanction for the third floor which has been constructed illegally without the permission of MCD and was liable to be demolished by MCD any time. The complainant thus, requested the Respondent No. 2 to show the Sanction Plan of the Third floor in question but she delayed the matter on one pretext or the other. She intentionally and deliberately with a *mala fide* intention, caused wrongful loss to the undersigned.

5. The Complainant on coming to know that the Accused-Respondent No. 2 has not applied for sanction of third floor and sanction plan has not been granted by MCD, realized that he has been cheated of his earnest money i.e. 25 lakh by the Complainant.

6. Aggrieved by the acts of Respondent No. 2, Petitioner issued a Legal Notice dated 13.10.2010 asking the Respondent No. 2 to comply with her part of the Agreement. However, she failed to do so and gave a vague Reply dated 21.10.2010. In the rejoinder Notice dated 26.11.2010, the Petitioner exposed the fraud committed by the



2025:DHC:1135



Respondent No. 2 in regard to the property in question in so much as it was constructed illegally without the sanction from MCD.

7. He thus, made a Complaint to the Police Station Anand Vihar on 11.06.2013, but no action was taken.

8. He thereafter, filed the Complaint under Section 200 Cr.P.C. for taking cognizance of the offences against the Respondent No. 2, to be tried in accordance with law.

9. The Complainant in support of his assertion relied upon the response from MCD, Shahdara, which he got in response to his RTI Application 28.01.2011 wherein it has been informed by MCD that as per record the site plan for the property has not been granted by the Building Department, Shahdara, South.

10. The learned ACMM *vide* Order dated 16.03.2016 directed framing of Charges under Section 406/420 IPC, against Respondent No. 2 on the basis of statement of complainant, witnesses and documents placed on record by the complainant.

11. Against this Order on Charge dated 16.03.2016, Revision Petition (Crl.) No.7/2017 was preferred before the Court of learned ASJ who considered the averments made in the Complaint and the record and concluded that essentially there is a Civil dispute in respect of Agreement to Sell, and *was not a case of Breach of Trust and Cheating*; consequently set aside the Order dated 16.03.2016 directing framing of Charge and quashed the Complaint and discharged the Respondent.



2025:DHC:1135



12. Aggrieved by the said Order of learned ASJ, the present petition has been filed.

13. The *grounds taken to challenge the impugned Order* are that the learned ACMM has passed a well reasoned Order and that the learned ASJ made a gross error in observing that the Order on Charge had been made by learned ACMM, in a mechanical manner. In fact, the entire evidence available on record including the statement of the witnesses had been perused by learned ACMM before directing framing of Charge. Further, it is trite law that at the stage of framing of Charge, the Court is only required to evaluate the material and documents on record with a view to find whether the facts on their face value disclose the existence of the ingredients of the offence; at this stage the Court is not expected to go deep and ascertain the probative value of the material on record. The Petitioner has placed reliance on *Omkar Nath Mishra and Ors. v. State (NCT of Delhi) and Anr.* (2008) 2 SCC 561.

14. It is further submitted that learned ACMM inadvertently mentioned 'Chargesheet' instead of 'Complaint', but the Order clearly gives an observation that *prima facie* offence under 406/420 IPC is made out. Such an inadvertent reference to "Complaint" as 'Chargesheet' does not absolve the Respondent No.2 from the charges directed to be framed against her.

15. It is further contended that learned ASJ has failed to appreciate that Respondent No.2 committed *Breach of Trust* as well as *cheated* the



2025:DHC:1135



Petitioner since at the time of execution of Agreement to Sell, an assurance has been given that all the permissions and approvals were in place, when in fact there was no sanction plan for the suit property i.e. the third floor with roof rights. He has been cheated of his Rs.25 lacs which he was induced to give by way of earnest money.

16. Reliance has been placed on M/s Indian Oil Corporation Vs. NEPC India Ltd. Ors., CrI. Appeal No.834/2002 wherein the Apex Court observed that the distinction between *Breach of Contract* and offence of *Cheating* is a fine one. It depends on the intention of the accused at time of inducement which may be judged by his subsequent conduct, but that is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for Cheating unless *fraudulent and dishonest intention* is shown right at the beginning of transaction.

17. It is asserted that from the averments made in the Complaint and the statement of the witnesses, it is clearly evident that *prima facie* offences under 406/420 IPC are clearly made out. It is therefore, submitted that the impugned Order of learned ASJ be set aside and Charges be directed to be framed against the Respondent that of 420/406 IPC.

18. ***Learned counsel for the Respondent No.2-Neelam Sharma*** by way of Reply has asserted that dispute between the parties is essentially of breach of contract and *prima facie* no case under 406/420 IPC is made out. It is denied that any false assurances have been given to the complainant at the time of execution of the Agreement to Sell dated



2025:DHC:1135



23.07.2010; baseless and frivolous allegations have been levelled by the complainant which have no substance of truth.

19. The Complainant had visited the property prior to the execution of Agreement to Sell and had himself checked all the original files and documents along with the amenities available in the suit property before entering into Agreement to Sell. There was neither any misrepresentation or cheating by the Respondent No.2 in any manner. It was clearly informed to the Complainant that no parking place is available along with suit property.

20. It is further claimed that the Complainant had never informed that he intended to take Loan from the Bank to pay the balance amount or that the Bank Official shall be visiting the suit property for the purpose of inspection to sanction the loan. In fact, the Complainant CW-1 in his cross-examination has stated that he cannot say who were the officers of the Bank, who visited the property in question, which falsifies his allegations in this regard.

21. The Application under RTI and the response by MCD are all matters of record. The vague allegations have been made that Respondent No.2 never showed any readiness or willingness to perform her part of the contract when the truth is it is the Complainant who is not willing to perform his part of the Agreement to Sell. It is he who has not paid the balance consideration amount to the Respondent No. 2 which was to be paid by 17.10.2010 making him liable for forfeiture of his earnest money. All other averments made in the petition are denied.



2025:DHC:1135



22. It is further submitted that the Petitioner has no right to lodge a Police Complaint or to move an Application under Section 156 Cr.P.C. as it is neither sustainable nor maintainable. The Complaint has been rightly dismissed as the dispute raised is purely civil in nature. It is therefore, submitted that there is no merit in the present Revision Petition which is liable to be dismissed.

23. **Submissions heard and record perused.**

24. Admittedly, the Petitioner agreed to purchase the suit property from the Respondent No. 2 under an Agreement to Sell dated 23.07.2010 on payment of sale consideration of Rs.1.4 crores out of which Rs.25 lacs were paid at earnest money. It is the claim of the Complainant that he eventually came to know that the suit property which is the third floor with roof right, was constructed without an approved sanction plan from MCD. Consequently, he claimed that Respondent No. 2 committed *breach of trust* and he has been *cheated*.

25. *First and foremost*, the parties had entered into the Agreement to Sell and it was for the complainant who had verified the material particulars including whether it had been constructed after getting due sanction from the MCD. It is not a fact which could have been hidden by the Respondent No. 2. In fact, it was the responsibility of the Complainant who intended to buy the property, to carry out due diligence of not only the Title/ownership of the suit property but also about the construction having been carried in accordance with the Municipal Laws.



2025:DHC:1135



26. As per his own submission, when he eventually came to know that there was no Sanction Plan for the suit property, the Agreement to Sell was abandoned. His right was a civil right to claim return of his earnest money from Respondent No. 2. In light of the entire narration of facts, it cannot be said that there was any misrepresentation made by the Respondent No. 2.

27. In the case of Dilip Kaur & Ors. vs. Jagnar Singh & Anr. CrI. Appeal No. 1135/2009, it has been aptly pointed out by the Apex Court that the act of inducement on the part of the appellant has to be with an intent to cheat the Complainant from the very inception; simplicitor breach of civil contract like recall of Agreement to Sell for seeking refund of the money paid under the Agreement to Sell, is purely a civil dispute for which criminal proceeding cannot be initiated by claiming a case of cheating.

28. In the present case, it is evident that the Agreement to Sell entered into between the parties which could not materialise or fructify for the reasons stated by the Complainant. Consequently, it is pure civil dispute disclosing no element of inducement or cheating.

29. Thus, the learned ASJ has rightly concluded that *prima facie* no offence under Sections 420/406 IPC is made out and consequently the complaint has been quashed. In the light of the discussion above, it is held that the impugned Order does not suffer from any infirmity.

30. The present Petition is hereby, dismissed.



2025:DHC:1135



**(NEENA BANSAL KRISHNA)
JUDGE**

JANUARY 20, 2025

rk/vld