

(2018) 02 RAJ CK 0020

RAJASTHAN HIGH COURT (JODHPUR BENCH)

Case No: 2710 of 2015

Daulat Ram

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

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**Date of Decision:** Feb. 1, 2018**Acts Referred:**

- Indian Penal Code, 1860, Section 420, Section 420, Section 415, Section 419 - Cheating and dishonestly inducing delivery of property - Cheating and di

**Hon'ble Judges:** Sandeep Mehta**Bench:** Single BenchAdvocate: Rakesh Matoria, R.K. Bohra, Pankaj Gupta, Kaushal Gautam.

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**Judgement**

1. The instant revision and the misc. petition are directed against the order dated 18.12.2014 passed by the Judicial Magistrate No.2, Sri

Ganganagar in Criminal Case No.322/2009 whereby charges were framed against the accused Brij Mohan for the offences under Sections 419

and 420 and the order dated 19.08.2015 passed by the learned Special Judge, SC/ST (Prevention of Atrocity) Cases, Sri Ganganagar in Criminal

Revision No.26/2015 whereby charge under Section 420 IPC was quashed.

2. Whilst the accused Brij Mohan has approached this Court by way of Criminal Misc. Petition No.2710/2015 for challenging the remaining

charge under Section 419 IPC; the complainant Daulat Ram has approached this Court by way of revision No.13/2016 seeking to challenge the

order passed by the revisional court and praying that the order passed by the learned Magistrate may be restored.

3. Facts in brief:-

4. The complainant Daulat Ram, resident of Chak Manphoolsinghwala, Tehsil and District Sri Ganganagar, lodged a complaint in the court of learned Judicial Magistrate No.2, Sri Ganganagar on 17.05.2008 alleging inter alia that a few days earlier, the Patwari concerned came to his house and inquired about Brij Mohan son of Daulat Ram. The complainant replied that neither did any person by the said name live at his house, nor was he known to the complainant. The Patwari further inquired as to whether any of his family members owned agriculture land measuring 13 bighas 18 biswas in the Muraba No.54 of Chak 12 LL. The complainant replied that he was not having any son by the name Brij Mohan nor had he purchased the property in Muraba No.54. The complainant became suspicious by the queries and started an inquiry. He came to know that a person named Brij Mohan, resident of Begawali, Tehsil and District Fazilka (Punjab) whose father's name is Daulat Ram son of Begaram, had purchased property in State of Rajasthan by concealing his true identity and domicile. The complainant alleged that there was a legal bar on purchase of agricultural land by any person not being a domicile of Rajasthan. Brij Mohan and his father Daulat Ram conspired and purchased agriculture land in Rajasthan by playing fraud about their domicile and got the same registered in their names in the year 1981. For purchasing the property, these persons procured forged and fraudulent bonafide resident certificates, ration cards, etc. and indulged in impersonation. The said complaint was forwarded to the police station Chunavadh for investigation where an FIR No.66/2008 was registered. During investigation, the investigating officer, tried to trace out the record pertaining to the procurement of the bonafide resident certificate by the accused Brij Mohan but came to know that it had been weeded out. The investigating officer claims to have collected evidence to the effect that the accused Brij Mohan son of Daulat Ram, who was a permanent resident of Begawali (Punjab), fraudulently procured ration card and bonafide resident certificate of Rajasthan and on the basis of these documents, he purchased agricultural land in the Chak 12 LL and was thus liable to be prosecuted for the offences under Sections 419 and 420 IPC. With these conclusions, a charge-sheet came to be filed against Brij Mohan (petitioner in Criminal

Misc. Petition No.2710/2015) for the offences under Sections 419 and 420 IPC. The trial Judge proceeded to frame charges against the accused

for these offences by order dated 18.12.2014 which was challenged in revision by the accused Brij Mohan. The revisional court, partially

accepted the revision and upheld the order framing charge against Brij Mohan to the extent of offence under Section 419 holding that the accused

impersonated himself to be Brij Mohan son of Daulat Ram and grandson of Nanuram and thereby, got the bonafide certificate issued in a

fraudulent manner. However, since no evidence was led to the effect that Brij Mohan cheated and fraudulently deprived anyone of valuable

security or property, the charge under Section 420 IPC was quashed and set aside.

5. I have appreciated the arguments advanced by the learned counsel for the parties and have gone through the material available on record.

6. The complainant set up a case in his complaint that for procuring the domicile certificate, accused Brij Mhan fraudulently portrayed himself to be

son of Daulat Ram and name of Daulat Ram's father was portrayed as Nanuram whereas Brij Mohan's grand father is Begaram. However, the

I.O. could not collect any evidence whatsoever for the purpose of proving this allegation because the record pertaining to the procurement of the

domicile certificate by Brij Mohan had been weeded out. Even if it is assumed for a moment that Brij Mohan procured the domicile certificate by

impersonating himself to be the grandson of Nanuram then too, this Court feels that the charge under Section 419 IPC cannot be sustained. For

the purpose of framing of such charge, the basic ingredients of cheating have to be established. Offence of cheating is defined under Section 415

IPC which reads as below:

415. Cheating.-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"". Explanation.-A dishonest concealment

of facts is a deception within the meaning of this section. Illustrations

(a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit

goods for which he does not mean to pay. A cheats.

(b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain

celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(c) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the

sample, and thereby, dishonestly induces Z to buy and pay for the article. A cheats.

(d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will

be dishonored, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(e) A, by pledging as diamonds article which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z

to lend money. A cheats.

(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z

to lend him money. A not intending to repay it. A cheats.

(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to

deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of

obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat,

but is liable only to a civil action for breach of contract.

(h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and

thereby dishonestly induces Z to pay money. A cheats.

(i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages

the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money

from Z. A cheats.

7. From a bare perusal of the language of the Section, evidently transfer of money, property or any other kind of valuable security by deceitful

means used by the accused is a sine-qua-non for Section 415 IPC to apply. Admittedly, in the case at hand, the accused Brij Mohan did not,

deceive either the complainant Daulat Ram or anyone else by his acts. There is not even an iota of evidence that the accused deceived the State of

Rajasthan by using the deceitful means and procured the agricultural land in Rajasthan by using such means. Till date, the State of Rajasthan

appears not to have taken any action for cancellation of the sale( deed executed in favour of the accused Brij Mohan. The land was privately

owned. No statement of the land owner was recorded during investigation that Brij Mohan offered any fraudulent inducement for purchasing his

land. No such legal provision could be pointed by the learned counsel representing the complainant Daulat Ram or the learned Public Prosecutor

that there exists any legal bar against purchase of private agricultural land by nondomicile in the State of Rajasthan. Even if, any such restriction

does exist, manifestly by purchasing a privately owned land, the accused cannot be held to have cheated anyone. At best, it would be a case of

irregular procurement of land which could be annulled by the revenue authorities

8. In view of these admitted facts, this Court is of the firm opinion that there exists no material whatsoever on the record of the case so as to justify

the trial of the accused Brij Mohan either for the offence under Section 419 IPC or for the offence under Section 420 IPC. The elements of

impersonation, fraud and cheating are totally missing from the prosecution case. Consequently, the trial court committed grave error of law while

framing charge against the accused in the terms indicated above. The revisional court also committed error in sustaining the charge under Section

419 IPC framed by the trial court against the accused Brij Mohan while deciding his revision.

9. As an upshot of the above circumstances, Criminal Misc. Petition No.2710/2015 filed on behalf of Brij Mohan deserves to be and is hereby

allowed. The impugned order 18.12.2014 passed by the Judicial Magistrate No.2, Sri Ganganagar in Criminal Case No.322/2009 whereby

charges were framed against the accused Brij Mohan for the offences under Sections 419 and 420 IPC and the order dated 19.08.2015 passed

by the learned Special Judge, SC/ST (Prevention of Atrocity) Cases, Sri Ganganagar in Criminal Revision No.26/2015 whereby, the order

framing charge was affirmed to the extent of the offence under Section 419 IPC are hereby quashed and set aside. All proceedings of the Criminal

Case No.322/2009 pending against Brij Mohan in the Court of Judicial Magistrate No.2, Sri Ganganagar are hereby quashed as amounting to

gross abuses of process of law.

10. In view of the fact that the entire proceedings of the criminal case have been quashed the, Revision No.13/2016 filed by complainant Daulat

Ram has been rendered infructuous and is dismissed as such.

11. Record be returned to the trial court.

12. A copy of this order be placed in each file.