

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

Reserved on: 01.08.2024
Pronounced on: 14.08.2024

CRM(M) No.227/2023
c/w
CRM(M) No.157/2023

MOHAMMAD MANSOOR LONE
HAROON RASHID LONE & ANR.

... PETITIONER(S)

*Through: - Mr. Jahangir Iqbal Ganie, Sr. Advocate
With Mr. Owais Dar, Advocate &
Ms. Mehnaz Rather, Advocate.*

Vs.

UT OF J&K & ORS.

...RESPONDENT(S)

*Through: - Mr. Zahid Q. Noor-for R1.
Mr. Asif Ahmad Bhat, Adv. for R2 & R3*

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) By this common judgment, the afore titled two petitions filed under Section 482 of the Code of Criminal Procedure, challenging FIR No.28 of 2003 for offences under Section 420, 506 of IPC registered with Police Station, Kakapora Pulwama, are proposed to be disposed of.

2) The facts giving rise to the filing of the present petitions are that an application under Section 156(3) of Cr. P. C came to be filed by the private respondents against the petitioners

and one Zahoor Ahmad Bhat before the Court of Chief Judicial Magistrate, Pulwama. In the said application, it was alleged that a deal was struck between the parties with respect to landed estate measuring 12 kanals and 02 marlas situated at Lasjan on the right side of the Bypass. It was further alleged in the application that the private respondents have transferred a sum of ₹1.03 crores to the petitioners and they have also issued cheques worth ₹60,00,000/ which have not been encashed by them but are in possession of the petitioners through one of their close aide Shri Nisar Ahmed Mir. It was alleged that petitioner Haroon Rashid Lone even approached the Patwari concerned for issuance of revenue extracts with regard to the land in question so that the same could be handed over to the private respondents. In the application, it was alleged that greed has prevailed upon the petitioners and now they are retracting from their commitment, thereby cheating the private respondents. It was also alleged that the petitioners are threatening the private respondents and that they are being blackmailed. It was further alleged that the petitioners are demanding a further sum of ₹60,00,000. In the application, it was also alleged that the petitioners are cheaters and that they are threatening the private

respondents with an aim to get enhanced price of the land in question, though they have already entered into transaction with the private respondents.

3) After considering the aforesaid allegations made in the application, the learned Chief Judicial Magistrate, Pulwama, passed order dated 04.04.2023, directing SSP Pulwama to conduct an investigation in the matter under Section 156(3) of Cr.P.C in the light of the contents contained in the application and to report the matter within three days. Accordingly, the impugned FIR came to be registered by the police against the petitioners.

4) The petitioners have challenged the impugned FIR by stating that the land in question is owned and possessed by petitioner Mohammad Mansoor Lone who is working as doctor at King Fahad Armed Forces Hospital, Saudi Arabia. It has been contended that the contents of the impugned FIR clearly show that the dispute between the parties is purely of civil nature with no criminality attached to it. It has been further submitted that the private respondents have already filed a civil suit on the same set of allegations before the Court of Principal District Judge, Pulwama, which is indicative of the fact that the dispute between parties is

essentially of civil nature but the same has been given a criminal colour by the private respondents. It has been further contended that neither any date nor the particulars of the alleged threats are mentioned in the impugned FIR, therefore, the same is liable to be quashed.

5) On facts, the petitioners have submitted that the owner of the land in question, petitioner Mohammad Mansoor Lone, has not executed any agreement to sell with the private respondents nor has he authorised Shri Zahoor Ahmad to execute any agreement on his behalf in respect of the land in question.

6) The private respondents have not filed any reply to the petition. However, they have filed an application for placing our record Bank receipts depicting transfer of amount in the account of petitioner Mohammad Mansoor Lone. Along with the application, the private respondents have placed one record the photocopies of pay-in-slips and screen shots of online bank transactions.

7) Response to the aforesaid application has been filed by petitioner Mohammad Mansoor Lone, in which he has stated that an amount of Rs.4.00 lacs was transferred into his account on 13.07.2021 by one Fayaz Wani and not by the

private respondents. Similarly, an amount of Rs.2.00 lacs was transferred on 13.07.2021 to the account of petitioner Mohammad Mansoor Lone by one Mr. Mushtaq Bhat and not by the private respondents. It has been submitted that the amount shown to have been deposited on 28.07.2021 has been returned unpaid through clearing on account of insufficiency of funds whereas the amounts shown to have been deposited in the account of petitioner Mohammad Mansoor Lone on 10.11.2022 and 16.11.2022 by one Mr. Amir Wani and Muzaffar Wani, have been returned to the said persons on 19.12.2022 after the petitioner found that these amounts have been credited into his account unauthorizedly. So far as the amount shown to have been deposited through online transactions, is concerned, it has been submitted that the same has been received through Mr. Amir Wani and the said amount also stands returned. The rest of the amounts shown to have been deposited by the private respondents are, as per their own showing, transferred into the account of some other person and not into the account of the petitioners.

8) The official respondents in their response have narrated the allegations made in the impugned FIR and it has been submitted that during the course of investigation,

it was found that the petitioners have struck a deal with the private respondents with respect to land measuring 12 kanal 02 marlas situated at Lasjan on right side of National Highway and that petitioner Mohammad Mansoor Lone through Muzaffar Ahmed Wani has entered into transaction with the private respondents who have already issued cheques worth Rs.60.00 lacs and have transferred Rs.1.03 crores to the petitioners. It has been submitted that these cheques are in possession of petitioner Haroon Rashid Lone through Mr. Zahoor Ahmad. It has been submitted that the petitioners after receiving the aforesaid amount and the cheques are not handing over possession of the land to the private respondents. According to the official respondents, the petitioners also extended threats to the private respondents and they have cheated them on the direction of petitioner Dr. Mohammad Mansoor Lone, who is presently residing in Saudi Arabia. Thus, offences under Section 420 and 506 of IPC are attracted against the petitioners.

9) I have heard learned counsel for the parties and perused record of the case including the Case Diary.

10) A perusal of the record including the impugned FIR reveals that the land which is subject matter of transaction

between the parties belongs to petitioner Mohammad Mansoor Lone. According to the allegations made in the impugned FIR, the petitioners have received a substantial amount of sale consideration but they have turned greedy and now they are resiling from the agreement which they have executed with the private respondents. The question that arises for determination is whether the allegations levelled by the private respondents against the petitioners in the impugned FIR would constitute an offence of cheating as defined in Section 415 of Indian Penal Code. For answering this question, the provisions contained in Section 415 of IPC are required to be noticed, which read as under:

“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”.

11) From the afore-quoted provision, it is clear that in order to constitute the offence of cheating, there has to be a fraudulent inducement from the accused to any person, who must, as a consequence of such inducement, deliver any property or do or omit to do anything so as to cause damage or harm to such person.

12) The Supreme Court has, in the case of **V.Y. Jose v. State of Gujarat and Anr.**, [(2009) 3 SCC 78], while defining the offence of cheating, observed as under:

"An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:

i) deception of a person either by making a false or misleading representation or by other action or omission;

(ii) fraudulently or dishonestly inducing any person to deliver any property; or

(iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

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 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."

13) Again, in **Hridaya Ranjan Prasad Verma and Ors. v. State of Bihar and Anr.** [(2000) 4 SCC 168], the Supreme Court observed as under:

"14. On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The

second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.

15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time to inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore, it is the intention which is the gist of the offence. 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."

14) From the aforesaid analysis of law on the subject, it is manifestly clear that the offence of cheating is made out if there was fraudulent or dishonest intention at the very inception of a transaction i.e. at the time when promise or representation was made. Thus, for establishing an offence of cheating, the complainant is required to show that the accused had fraudulent intention at the time of making promise or representation.

15) Adverting to the facts of the present case, according to the private respondents the petitioners had entered into a sale transaction with them in respect of the land in question. They had transferred an amount of ₹1.03 crores to the petitioners and had also given cheques worth Rs.60.00 lacs to them. In para (5) of the application made by the private respondents under Section 156(3) of the Cr. P. C, it has been averred that after the transaction was entered into between the parties, greed prevailed upon the petitioners and they are now retracting from their oral understanding thereby they have cheated the private respondents. It is not alleged by the private respondents anywhere in the application that the petitioners had dishonest or fraudulent intention at the time of entering into transaction with them. According to their own case, it was later on that greed prevailed upon the petitioners which prompted them to resile from their commitment. Thus, most vital ingredient of the offence of cheating is missing in the present case.

16) Apart from the above, if we have a look at the sale agreement in respect of the land, which is subject matter of the present case, a copy whereof is available in the Case Diary, it is revealed that the said agreement has been executed by one Zahoor Ahmed Bhat in favour of private

respondent Mohammad Abbas Dar. Said Zahoor Ahmad, as per the contents of the agreement, has claimed himself to be the cousin brother of petitioner Mohammad Mansoor Lone, who is owner of the land in question. It does not refer to any attorney or authority on behalf of the owner of the land. The agreement does not reflect as to what is the total sale consideration and it provides that an amount of ₹23.50 lacs and another amount of ₹50,000/ and cheques for an amount of ₹23,00,000/ have been received by the executant of the said agreement, i.e., Zahoor Ahmed Bhat. The agreement does not talk of transfer of any amount in the account of any of the petitioners.

17) In fact, petitioner Mohammad Mansoor Lone has, in his response to the application of private respondents, explained each and every transaction mentioned by the private respondents in their application bearing CrIM No.756/2024, and he has also placed on record the documents to support the said explanation, which, prima facie, shows that no amount has been transferred by the private respondents directly to the account of the owner of the land in question.

18) Even if it is assumed that the private respondents may have transferred some amount in the account of the

petitioners, still then it would not constitute an offense of 'cheating' if the petitioners have resiled from the agreement to sell the land in question, which, in fact, they have never executed with the private respondents. The private respondents cannot hold the petitioners accountable in respect of a sale agreement which the petitioners have never executed, as is clear from the copy of the sale agreement. The agreement to sell has, admittedly, been executed by Sh. Zahoor Ahmad. Therefore, even if it is assumed that the private respondents were induced to pay money, the said inducement has emanated from Sh. Zahoor Ahmad and not from the petitioners. Thus, it cannot be stated that the petitioners have committed the offence of cheating.

19) The dispute between the petitioners and the private respondents, if any, is purely of civil nature, regarding which the private respondents have already filed a civil suit against the petitioners before the Civil Court, which is an admitted fact.

20) The record relating to the civil suit pending between the parties was also summoned by this Court. An interesting fact has come to the fore from a perusal of the said agreement. There is an agreement dated 1st December 2021, on the

record of the trial court, which is shown to have been executed by private respondent Mohammad Abbas Dar in favour of one Mubashir Ahmad Bhat. In the said agreement, it is recorded that private respondent Mohammad Abbas Dar has executed an agreement to purchase the land in question with Zahoor Ahmad, cousin brother of petitioner Mohammad Mansoor Lone. Vide the said agreement, respondent Mohammad Abbas Dar has further agreed to sell the land, which is subject matter of the present case, in favour of Mubashir Ahmed Bhat for an amount of ₹42,00,000/ per kanal. This, prima facie, shows that the private respondents have without acquiring any title to the property in question, executed a further agreement to sell in respect of the land belonging to petitioner Mohammad Mansoor Lone. So, it appears to be a case where some third persons including the private respondents are trying to strike a deal in respect of the property belonging to petitioner Mohammad Mansoor Lone, without anyone executing any agreement or sale document with him.

21) In the face of these facts, by no stretch of imagination the present case can be termed as one of cheating and fraud on the part of the petitioners upon the private respondents. In fact, the boot is on the other foot.

22) The learned counsel for the private respondents has vehemently argued that merely because the private respondents have filed a civil suit against the petitioners does not mean that the criminal proceedings should be quashed. It has been contended that once it is shown that a criminal offence is made out against the petitioners, the investigating agency should be allowed to investigate all aspects of the case and that the prosecution cannot be quashed at its inception. In this regard, the learned counsel has relied upon the judgments of the Supreme Court in the cases of **Priti Saraf & anr. vs. State of NCT of Delhi & anr, (2021) 16 SCC 142, M/S SAS Infratech Pvt. Ltd. Vs. State of Telangana & anr.** (Criminal Appeal No.2574/2024 decided on 14.05.2024) and **Sakiri Vasu vs. State of UP & Ors.** (2008) 2 SCC 409.

23) There can be no quarrel with the legal position that same set of facts can give rise to both a criminal action and an action of civil nature but before taking recourse to a criminal action, it has to be shown that the allegations made in the FIR/complaint coupled with the material collected by the investigating agency during investigation of the case discloses commission of a criminal offence. In the instant case, none of the petitioners is shown to have made any

promise or commitment to the private respondents with regard to the alleged sale transaction. If at all any promise or commitment relating to sale transaction has been made, it is Mr. Zahoor Ahmad, who has claimed himself to be the cousin brother of petitioner Mohammad Mansoor Lone, the owner of the land. There being no material to show any direct transaction between the petitioners and the private respondents, it cannot be stated that the petitioners made any representation, fraudulent or otherwise, to the private respondents. Even otherwise, as already noted, the allegations made in the impugned FIR, even if taken to be true, do not show that intention of the petitioners was fraudulent from the very inception. According to own case of the private respondents, the petitioners developed greed afterwards as they wanted to strike the deal at a higher price.

24) So far as the alleged threats stated to have been extended by the petitioners upon the private respondents, are concerned, no particulars of any such incident have been given in the impugned FIR nor the investigating agency has been able to collect any material to support such assertions. Therefore, in the instant case no criminal offence is even, prima facie, disclosed against the petitioners. The dispute, if any, between the petitioners and the private respondents is

purely of a civil nature which the private respondents are intending to convert into a criminal prosecution.

25) The Supreme Court in the case of **M/S Indian Oil Corporation vs. M/S NEPC India Ltd. & Ors** (2006) 6 SCC 736, has observed that any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.

26) A similar view has been taken by the Supreme Court in the case of **Inder Mohan Goswami and another vs. State of Uttaranchal and Ors.**, (2007) 12 SCC 1, by holding that the Courts must ensure that the criminal prosecution is not used as an instrument of harassment or for seeking private vendetta.

27) The Supreme Court in a recent case of **Vishnu Kumar Shukla & anr. vs. State of Uttar Pradesh & anr.**, 2023 SCC Online SC 1582, has held that protection against vexatious and unwanted prosecution and from being unnecessarily dragged into a criminal prosecution is the duty of the High Courts while exercising their powers under Section 482 of the Cr. P. C.

28) In view of the aforesaid legal position and having regard to the fact that the allegations made in the impugned FIR and the material collected by the investigating agency do not disclose commission of any criminal offence by the petitioners, this Court would be failing in its duty if it does not come to the rescue of the petitioners and quash the impugned proceedings by exercising its power vested under Section 482 of the Cr. P. C. Allowing the criminal proceedings to go on in the case of present nature would encourage the people to settle matters of civil nature by taking resort to criminal proceedings which is impermissible in law.

29) Accordingly, both the petitions are allowed and the impugned FIR and the proceedings emanating therefrom are quashed.

30) The Case Diary be returned to learned counsel for the official respondents.

(SANJAY DHAR)
JUDGE

Srinagar,
14.08.2024
“Bhat Altaf-Secy”

<i>Whether the order is speaking:</i>	Yes/No
<i>Whether the order is reportable:</i>	Yes/No