Vipin Sahni vs Central Bureau Of Investigation (Cbi) on 8 April, 2024

Author: Sanjay Kumar

Bench: Sanjay Kumar, Aniruddha Bose

2024 INSC 284 Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No._____ of 2024
(@ Special Leave Petition (Crl.) No. 2772 of 2023)

Vipin Sahni and another … Appellants

Versus

Central Bureau of Investigation … Respondent

JUDGMENT

SANJAY KUMAR, J

1. Leave granted.

2. Exercising power under Section 239 Cr.P.C, the learned Special Judicial Magistrate, CBI Court, Ghaziabad, discharged the appellants herein of a charge under Sections 420 and 120B IPC, vide order dated 16:36:55 IST Reason:

> 31.08.2019 in Case No. 456 of 2012 arising out of RC-219 2011 (E) 0016 registered on the file of Police Station CBI, EO-1, New Delhi. Aggrieved thereby, the Central Bureau of Investigation (for short, 'CBI') approached the High Court of Judicature at Allahabad, under Section 482 Cr.P.C, by way of Application U/S 482 No. 11426 of 2021. By order dated 20.01.2023 passed therein, the High Court set aside the discharge order and directed the learned Magistrate to proceed with the case against

the appellants.

Assailing the said order, they are before this Court.

3. The appellants had established Sunshine Educational and Development Society, NOIDA, Uttar Pradesh, and registered it under the Societies Registration Act in the year 2004. The aims and objectives of this Society, inter alia, included propagation of technical education. Appellant No. 1 was the Chairman of the said Society while his wife, viz., appellant No. 2, was its Secretary. In September, 2006, the Society acquired 4.90 acres of land in Greater NOIDA, Uttar Pradesh, on a 90-year lease from Greater Noida Industrial Development Authority, Gautambudh Nagar, Uttar Pradesh, for setting up educational institutions. The Society filed application dated 22.01.2007 seeking approval of the All India Council for Technical Education (AICTE) to establish 'Business School of Delhi', offering a Post-Graduate Diploma Course in Business Management (PGDM), in an extent of one acre out of the leased land. In the application, the Society disclosed that a loan of ₹ 5.75 Crore had been availed by it from Corporation Bank and that the outstanding loan stood at above ₹ 3 Crore. It also disclosed, in response to clause 6(v), that a loan/mortgage had been raised against the land, by ticking the 'Yes' box. However, in the tabular form in the first page, against the query – 'Mortgaged with Bank - Yes/No', the answer was stated as 'No'. There was, thus, an apparent contradiction in the application itself. In any event, approval was accorded by the AICTE on 17.08.2007 to start the 'Business School of Delhi'.

4. Thereafter, the Society submitted another application to the AICTE on 27.10.2007 seeking to establish 'Business School for Women', offering PGDM course. A day later, on 28.10.2007, the Society filed yet another application seeking approval from the AICTE to start a third institute, named 'International Business School of Delhi'. The first and third applications were moved on behalf of the Society by appellant No. 1, being its Chairman, while the second application was filed by appellant No. 2, as its Secretary. In the two later applications, the Society failed to mention that the leased land was mortgaged but it disclosed the fact that it had already been granted approval in the year 2007 to operate another institute from the same premises. By proceedings dated 29.05.2008, the AICTE granted approval for starting the 'Business School for Women' in an extent of 0.8 acres out of the said land. On 19.06.2008, the AICTE accorded approval to commence the 'International Business School of Delhi' in the leased land.

5. While so, it appears that an anonymous complaint was made to the Chief Vigilance Commissioner alleging that officials of the AICTE had shown undue favour to the Society. On the strength thereof, the Chief Vigilance Commissioner referred the matter to the CBI for investigation. In the first instance, the Regional Officer of the CBI at Kanpur addressed letter dated 24.07.2011 to the Station-in-charge, Police Station Greater NOIDA, to register a case for investigation but the District Police of Gautambudh Nagar, Uttar Pradesh, opined that the complaint did not justify registering of a FIR and/or proceeding with investigation as no cognizable offence was made out.

6. However, on 30.11.2011, Case Crime No. 219 2011 (E) 0016 was registered on the file of PS CBI, EO-1, New Delhi, under Sections 420 and 120B IPC along with Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. This FIR was registered against the appellants

and unnamed officials of the AICTE, alleging that the appellants had obtained approval by deceitful means from the AICTE, in violation of Section 4.2(iii) of the AICTE Approval Process 2006. As per this provision, the land approved for starting an educational institution ought not to be encumbered. After completion of the investigation, Charge Sheet No. 11 of 2012 was filed by the CBI for offences under Sections 420 and 120B IPC, naming only the appellants as the accused. No official of the AICTE was charged with criminality in granting approval to the Society's institutions.

7. Aggrieved by their arraignment, the appellants approached the High Court at Allahabad under Section 482 Cr.P.C, vide Application U/S 482 No. 37398 of 2012, seeking quashing of the criminal proceedings against them. By order dated 14.02.2013, the High Court accepted their plea and quashed the said proceedings. However, upon the CBI approaching this Court in Criminal Appeal No. 239 of 2015, by order dated 05.02.2018 passed therein, this Court set aside the order dated 14.02.2013 but made it clear that the Trial Court would be at liberty to go into the merits of the issue raised at the stage of framing of charges. Thereafter, on 02.07.2018, the Trial Court granted bail to the appellants.

8. On 25.09.2018, the appellants moved an application for discharge before the learned Special Judicial Magistrate, CBI Court, Ghaziabad, but the learned Magistrate rejected their plea by order dated 15.02.2019 and directed the matter to be listed for framing of charges. The appellants, thereupon, preferred Criminal Revision No. 101 of 2019 before the learned Additional Sessions Judge, Ghaziabad, under Section 397 Cr.P.C. The revision was allowed by the learned Additional Sessions Judge, vide order dated 29.05.2019, whereby the order passed by the learned Magistrate was set aside and the matter was remanded for hearing afresh, in the light of the observations made in the revisional order. In consequence, the learned Magistrate reheard the case and passed order dated 31.08.2019, discharging the appellants from the alleged offence under Sections 420 and 120B IPC. Nearly one and a half years after the passing of this discharge order, i.e., on 21.02.2021, the CBI filed a petition under Section 482 Cr.P.C assailing it before the High Court at Allahabad. The petition was taken on file as Application U/S 482 No. 11426 of 2021 and the High Court allowed the same by way of the impugned order, leading to the present appeal.

9. Before we proceed to examine the case on merits, we may first take note of relevant legal provisions. Section 415 IPC defines 'Cheating' and it reads thus: -

> '415. Cheating.-
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> 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".
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> Explanation.- A dishonest concealment of facts is a deception within the meaning of this section.' Section 420 IPC, the provision we are concerned with presently, reads

as under: -

'420. Cheating and dishonestly inducing delivery of property.-

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.' Sections 120A IPC and 120B IPC read thus: -

'120A. Definition of criminal conspiracy.-

When two or more persons agree to do, or cause to be done, (1) an illegal act, or (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.' '120B. Punishment of criminal conspiracy.-

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, [imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence. (2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.]'

10. The sine qua non to make out an offence under Section 420 IPC, insofar as the present case is concerned, is an act on the part of the appellants to 'cheat and thereby dishonestly induce the person so deceived, viz., the AICTE, to deliver any property'. Therefore, the appellants, while applying for and on behalf of the Society, should have either suppressed material information or projected incorrect information so as to induce the AICTE, by such dishonest means, to grant approval for its educational institutions. Further, as no official of the AICTE has been implicated in the offence, as per the charge sheet, the alleged 'criminal conspiracy' under Section 120B IPC would also be attributable to the appellants only.

11. Viewed in this light, we may note that the first application dated 22.01.2007 submitted by appellant No. 1 for starting 'Business School of Delhi' clearly mentioned the fact that a part of the leased land admeasuring about 5 acres was to be used for setting up this institution and that a term loan of 5.75 crore had been raised from the Corporation Bank. The repayable outstanding loan was

also shown as above 3 crore. Clause 6 of the application dealt with 'Land' and it was stated thereunder that the government's leased land of about 5 acres was intended to be used for establishing the college. Clause 6(v) of the application and the Society's response thereto are extracted hereunder.

'(v) Any loans/mortgage raised against the titles of the land
Yes No'

12. Further, as already noted, the AICTE deemed it fit to grant approval on 17.08.2007 to start this institution. This was despite the AICTE's 'Approval Process 2006' providing that the land should have been registered in the name of the applicant's society/trust on or before the date of submission of the proposal, free from any encumbrances. However, no official of the AICTE has been implicated in any wrongdoing.

13. Coming to the Society's second application for the 'Business School for Women', the same extent of 5 acres was shown against clause 6 but there was non-disclosure of the mortgage of the land to secure the outstanding bank loan. Under clause 6(v), the society failed to state that a loan/mortgage had been raised against the title of the land and tick-marked 'No' instead of 'Yes'. Similarly, the application for starting the 'International Business School of Delhi' also mentioned the same extent of 5 acres of land but again, clause 6(v) contained incorrect information as against the question whether any loan/mortgage had been raised against the title of the land. The word 'No' was tick-marked instead of 'Yes'.

14. These are the actions which formed the foundation for the CBI's case against the appellants. As already stated hereinbefore, it was not the AICTE that claimed that it was deceived and dishonestly induced to grant approval owing to suppression of material information by the appellants acting on behalf of the Society. It was a third party who chose to remain anonymous that initiated the investigation. Further, by not implicating any official of the AICTE in the charge sheet and by dropping the provisions of the Prevention of Corruption Act, 1988, the CBI found that the AICTE's officials were not complicit at all and they were given a clean chit.

15. At this stage we may note that, though the appellants were initially successful in getting the proceedings quashed by the High Court, this Court reversed the said order but left it open to the Trial Court to examine the issue raised, on merits, at the time of framing of charges. It is pursuant to the liberty granted by this Court that the learned Special Judicial Magistrate, CBI Court, chose to exercise power under Section 239 Cr.P.C and discharged the appellants. The validity of that exercise was called in question before the High Court, which ultimately held against the appellants.

16. Significantly, the High Court was not inclined to accept the preliminary objection raised by the appellants to the effect that the CBI ought to have filed a revision under Section 397 Cr.P.C against the discharge order and could not maintain a petition under Section 482 Cr.P.C. In this regard, the High Court observed that it could always treat a petition filed under Section 482 Cr.P.C as a revision

under Section 397 Cr.P.C and, therefore, the appellants' objection had no substance. On merits, the High Court opined that the appellants had deliberately withheld relevant information knowing fully well that if the land was encumbered in any manner, approval for setting up the educational institutions there would be declined. Holding so, the High Court set aside the discharge order.

17. We are, however, of the considered opinion that the finding of the High Court as to deliberate withholding of information by the appellants cannot be accepted on the given facts. It is a matter of record that the first application dated 22.01.2007 filed by appellant No. 1 on behalf of the Society disclosed that a bank loan was still outstanding and that the subject land of nearly 5 acres had been mortgaged to secure the loan. This was followed by scrutiny and verification by the officials of the AICTE, including a spot inspection, following which, approval for starting the 'Business School of Delhi' was accorded on 17.08.2007. No wrongdoing has been attributed to the officials of the AICTE in that regard. It was only the later application dated 27.10.2007 for the 'Business School for Women' and the application dated 28.10.2007 for the 'International Business School of Delhi' that did not state correct information with regard to the outstanding bank loan and the mortgage of the land in connection therewith. However, all three applications mentioned the extent of nearly 5 acres and the AICTE could not be said to be in ignorance of the fact that the said land was under

> an encumbrance at the time the applications were made. Notably, both the later applications mentioned the fact that an institution was already granted approval in 2007 to operate from the same premises. This was obviously in reference to the 'Business School of Delhi' and the application for the same did disclose the subsistence of the loan and the encumbrance on the land.

18. That apart, it was not even the case of the AICTE that it was under

> any illusions, whereby it was dishonestly induced to grant approval for establishment of the colleges in question. The only party who can speak of being 'dishonestly induced to do or not do something' is that party itself and when the AICTE made no such complaint, it was not for others to insinuate that the AICTE was dishonestly induced to do something.

19. In Ram Jas v. State of U.P.1, the ingredients required to constitute an offence of cheating were succinctly summed up thus: -

> '(i) there should be fraudulent or dishonest inducement of a person by deceiving him;
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> (ii) (a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or
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> (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) in cases covered by (ii) (b), the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.' (1970) 2 SCC 740

20. In V.P.Shrivastava vs. Indian Explosives Limited and others 2, this Court observed that in order to constitute an offence of cheating, it must be shown that the accused had a fraudulent or dishonest intention at the time of making the representation or promise and such a culpable intention should be there at the time of entering into the agreement. On facts, it was found that the party alleged to have been cheated was fully conscious of the situation at the time it decided to enter into the contract and there was no dishonest inducement.

21. In the case on hand, there was disclosure of the fact that the subject land was mortgaged to secure the bank loan but despite the same, the AICTE granted approval for the 'Business School of Delhi' and it never complained that it was under any misinformation in that regard. Thus, the essential requisite to make out an offence of cheating is lacking. Mere carelessness on the part of the appellants in filling up the second and third applications and a part of the first application also cannot be taken to be motivated by deliberate deception, on the admitted factual position, so as to invite criminal charges.

22. Further, there is no evidence of the appellants consciously agreeing or conspiring to deliberately furnish false information to the AICTE so as to garner its approval for their colleges. As already noted, appellant (2010) 10 SCC 361 No.1 filed the first application, divulging the relevant details of the bank loan and the mortgage over the leased land, but he failed to do so in the third application filed by him. Appellant No.2 filed the second application with the same non-disclosure but there is no evidence whatsoever of the appellants resorting to deception in that regard willfully and in connivance with each other. Therefore, the charge under Section 120B IPC also does not withstand judicial scrutiny.

23. As regards the objection raised by the appellants as to the maintainability of the CBI's petition filed before the High Court under Section 482 Cr.P.C., we may note that, as per Article 131 in the Schedule to the Limitation Act, 1963, the limitation period for filing a criminal revision under Section 397 Cr.P.C, be it before the High Court or the Sessions Court, is 90 days. However, there is no limitation prescribed for invocation of the inherent powers of the High Court under Section 482 Cr.P.C. and it can be at any time. It is a matter of record that when the learned Special Magistrate, CBI Court, dismissed the appellants' discharge petition in the first instance, they had filed a revision before the Sessions Court under Section 397 Cr.P.C. and the matter was remanded for hearing afresh. However, the CBI did not choose to adopt this course when the appellants' discharge petition was allowed by the learned Special Magistrate in the second round. Long after the expiry of the limitation period of 90 days, the CBI filed a petition before the High Court at Allahabad under Section 482 Cr.P.C. This was obviously to get over the hurdle of the limitation for filing of a revision under Section 397 Cr.P.C. In this regard, useful reference may be made to the decision of this Court in Mohit alias Sonu and another vs. State of U.P. and another3, wherein it was observed thus:

'28. So far as the inherent power of the High Court as contained in Section 482 CrPC is concerned, the law in this regard is set at rest by this Court in a catena of decisions. However, we would like to reiterate that when an order, not interlocutory in nature, can be assailed in the High Court in revisional jurisdiction, then there should be a bar in invoking the inherent jurisdiction of the High Court. In other words, inherent power of the Court can be exercised when there is no remedy provided in the Code of Criminal Procedure for redressal of the grievance. It is well settled that the inherent power of the Court can ordinarily be exercised when there is no express provision in the Code under which order impugned can be challenged.

29. Courts possess inherent power in other statute also like the Code of Civil Procedure (CPC), Section 151 whereof deals with such power. Section 151 CPC reads:

"151. Saving of inherent powers of court.—Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court."

30. This Court in Padam Sen v. State of U.P. [AIR 1961 SC 218 : (1961) 1 Cri LJ 322] regarding inherent power of the Court under Section 151 CPC observed:

(AIR p. 219, para 8) "8. ... The inherent powers of the court are in addition to the powers specifically conferred on the court by the Code. They are complementary to those powers and therefore it must be held that the Court is free to exercise them for the purposes mentioned in Section 151 of the Code when the exercise of those (2013) 7 SCC 789 powers is not in any way in conflict with what has been expressly provided in the Code or against the intentions of the legislature. It is also well recognised that the inherent power is not to be exercised in a manner which will be contrary to or different from the procedure expressly provided in the Code."

31. In a Constitution Bench decision rendered in Manohar Lal Chopra v. Seth Hiralal [AIR 1962 SC 527] , this Court held that: (AIR p. 537, para 43) "43. ... The inherent jurisdiction of the court to make orders ex debito justitiae is undoubtedly affirmed by Section 151 of the Code, but [inherent] jurisdiction cannot be exercised so as to nullify the provisions of the Code of Civil Procedure.

Where the Code of Civil Procedure deals expressly with a particular matter, the provision should normally be regarded as exhaustive."

32. The intention of the legislature enacting the Code of Criminal Procedure and the Code of Civil Procedure vis-à-vis the law laid down by this Court it can safely be concluded that when there is a specific remedy provided by way of appeal or revision the inherent power under Section 482 CrPC or Section 151 CPC cannot and should not be resorted to.'

24. In the light of the above edict, it was not open to the CBI to blithely ignore the statutory remedy available to it under Section 397 Cr.P.C and thereafter resort to filing of an application under Section 482 Cr.P.C.

25. We may also note that in the event a revision is lawfully instituted before the High Court but the same is thereafter found to be not maintainable on some other ground, it would be open to the High Court to treat the same as a petition filed under Section 482 Cr.P.C in order to do justice in that case. However, the reverse analogy may not apply in all cases and it would not be open to the High Court to blindly convert or treat a petition filed under Section 482 Cr.P.C as one filed under Section 397 Cr.P.C., without reference to other issues, including limitation. When the specific remedy of revision was available to the CBI, it could not have ignored the same and filed a petition under Section 482 Cr.P.C. We, therefore, find in favour of the appellants even on this count.

26. On the above analysis we are of the opinion that the learned Magistrate was fully justified in exercising power under Section 239 Cr.P.C. and discharging the appellants from criminal proceedings in relation to Case No. 456 of 2012. The High Court adopted a rather technical approach and practically concluded that the appellants were guilty of deliberately withholding relevant information so as to secure the approvals by deceitful means. This finding of the High Court is not supported by the admitted facts, which indicate disclosure of the mortgage at the outset when the first application was made and, therefore, there is no possibility of inferring that the appellants conspired in terms of Section 120A IPC to commit an illegal act of suppression so as to secure the approvals. Further, the AICTE itself never claimed that it was dishonestly induced to grant such approvals and that essential link is altogether missing, whereby any such criminal charge of cheating can be sustained against the appellants. The impugned order dated 20.01.2023 passed by the Allahabad High Court in Application U/S 482 Cr.P.C No. 11426 of 2021 is, therefore, set aside and the order of discharge passed by the learned Special Judicial Magistrate, CBI Court, Ghaziabad, in Case No. 456 of 2012 is restored. In consequence, the appellants shall stand discharged of the alleged offence under Sections 420 and 120B IPC in Case Crime No. 219 of 2011 (E) 0016.

The criminal appeal is allowed accordingly.

Pending applications shall stand closed.

.....,J (ANIRUDDHA BOSE) .....,J (SANJAY KUMAR) April 8 2024;

New Delhi.