

FIR No. 203/10  
U/s 420/468/448/34 IPC  
PS: Govindpuri  
State v. Sarita Parwanda & Anr

25.10.2016

**Order on charge**

1. Brief case of the prosecution as per the chargesheet is as follows:  
That the accused persons had sold the second floor of property no. 139, Pocket -8, Kalkaji Extension, New Delhi to the complainant vide agreement to sell, receipt and possession letter dated 01.04.1994 and basement and ground floor vide agreement to sell, receipt and possession letter dated 01.07.1994 and despite having sold the same to the complainant had pledged the entire property with M/s Jammu & Kashmir Bank. They have subsequently sold the first floor of the said property to one Mr. Rajesh Bindra on 26.08.2007 despite the fact that the entire property had already been mortgaged by them with Jammu & Kashmir Bank. Thereafter, Mr. Rajesh Bindra in collusion with the accused persons once again mortgaged the first floor with M/s HDFC Bank despite the fact that whole of the property had already been mortgaged with Jammu & Kashmir Bank. Subsequently, the second floor of the above said property was once again sold by the accused persons to their daughter Mrs. Sonia Grover vide sale deed dated 16.02.2009 with an intent to take a loan from M/s ICICI Bank by mortgaging the second floor once again. Thereafter, the accused have once again entered into an agreement to sell dated 25.10.2009 in respect of the entire property with Mr. Ashish Uppal, Mr. Manoj Kumar and Mr.

Surinder Kumar and handed over the physical possession of the second floor to them after breaking open the lock of the same which was otherwise in possession of the complainant. Thus, as per the prosecution, the accused have committed offence u/s 420/468/448/34 IPC.

2. After compliance with the provisions of section 207 Cr. PC, arguments on charge were heard on behalf of the parties. It was submitted by Ld. APP for State that there is sufficient material on record to frame charges against the accused persons u/s 420/448 IPC in as much as the accused have cheated the complainant as well as the banks and subsequent purchasers by entering into series of agreements in respect of the same property with several persons and they have trespassed into the second floor which was in the possession of complainant as per the possession letter dated 01.04.1994.

3. On the other hand, it has been submitted on behalf of the accused persons that there is nothing on record to suggest that the aforesaid property had ever been mortgaged by the accused persons to Jammu & Kashmir Bank in as much as neither the loan agreement in respect of the loan allegedly taken by accused from the aforesaid bank nor the mortgage deed in respect of the aforesaid property has been seized by the IO during investigation. Besides, according to counsel for accused, the alleged agreements to sell dated 01.04.1994 and 01.07.1994 do not confer any title upon the complainant in respect of any part of the property so as to exclude the accused persons from dealing with the same. According to him, even it is admitted for the sake of arguments that the accused were excluded from dealing with the aforesaid property

on account of execution of documents dated 01.04.1994 and 01.07.1994 by them in favour of complainant, merely because the accused have dealt with the aforesaid property by selling the same to subsequent purchasers, they are not liable for their prosecution under section 420 IPC at the instance of the complainant in view of authoritative pronouncement of Hon'ble Supreme Court in ***Mohd. Ibrahim & Ors Vs. State of Bihar & Anr 2009 (4) JCC 2753*** and they can only be prosecuted on the complaint of subsequent purchasers. It is submitted by him, that the prospective purchasers under the last agreement to sell have already got an FIR registered against the accused persons for cheating and the offence has already been compounded with them. He further submits that it has been categorically held in the aforesaid judgment that if a person executes a document conveying a property claiming the same to be his property then irrespective of the fact that the same was not his property within his knowledge, he cannot be said to have executed a false document so as to attract section 464 of IPC and hence he cannot be prosecuted for committing forgery under any of the section 465/467/468/471 IPC. So far charge under section 448 IPC is concerned, it is submitted by him that there is no material on record to suggest that the complainant was in possession of the second floor immediately prior to the alleged breaking open of the lock of the same by the accused persons and as such, according to him, accused are liable to be discharged even under the aforesaid section.

4. In rebuttal, it has been submitted by APP for State that the Judgment of Hon'ble Supreme Court in ***Mohd. Ibrahim's case (Supra)*** is not applicable to the facts and circumstances of the present case in as

much as in the present case the accused have entered into agreement to sell dated 01.04.1994 and 01.07.1994 with the complainant with an intention to deceive the complainant inducing him to part with the agreed consideration without there being any intention on their part to fulfill the promise contained in the aforesaid agreements. According to him, dishonest intention on the part of accused since beginning is apparent from the fact that immediately after execution of the aforesaid documents in favour of complainant, they had mortgaged the entire property to Jammu and Kashmir Bank.

5. I have heard the submissions made on behalf of the parties and have also perused the record.

6. So far as the charge under section 468 IPC is concerned, the condition precedent for the aforesaid offence is forgery and condition precedent for forgery is making of a false document. It is by now well settled in view of the authoritative pronouncement of Hon'ble Supreme Court in ***Mohd. Ibrahim's case (Supra)*** that if a document is executed by a person claiming a property as his property, which is not actually his property, the said document cannot be said to be a ***false document*** irrespective of the fact whether he bonafidely believed that the aforesaid property was belonging to him or even if he was fully aware of the fact that the same does not belong to him. Relevant observations made by Hon'ble Supreme Court in the aforesaid judgment are hereby reproduced as under:-

“9. The term "forgery" used in these two sections is defined in section 463. Whoever makes any false documents with intent to cause damage or injury to the

public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into express or implied contract, or with intent to commit fraud or that the fraud may be committed, commits forgery. [Section 464](#) defining "making a false document" is extracted below :

"464. Making a false document.--A person is said to make a false document or false electronic record---

First.--Who dishonestly or fraudulently -

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any digital signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the digital signature, with the intention of causing it to be believed that such document or a part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or Secondly.--Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alternation; or Thirdly.--Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature

on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

Explanation 1 - A man's signature of his own name may amount to forgery.

Explanation 2 - The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

[Note: The words `digital signature' wherever it occurs were substituted by the words `electronic signature' by [Amendment Act 10 of 2009](#)]."

The condition precedent for an offence under [sections 467](#) and [471](#) is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.

10. An analysis of [section 464](#) of Penal Code shows that it divides false documents into three categories:

10.1) The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the

authority of some other person, by whom or by whose authority he knows it was not made or executed.

10.2) The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

10.3) The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

11. In short, a person is said to have made a 'false document', if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practicing deception, or from a person not in control of his senses.

12. The sale deeds executed by first appellant, clearly and obviously do not fall under the second and third categories of 'false documents'. It therefore remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of complainant's land (and that accused 2 to 5 as the purchaser, witness, scribe and stamp vendor colluded with first accused in execution and registration of the said sale deeds) would bring the case under the first category. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on

owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bonafide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of 'false documents', it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under [section 464](#) of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither [section 467](#) nor [section 471](#) of the Code are attracted".(Emphasis mine)

7. In view of authoritative pronouncement of Hon'ble Supreme Court in ***Suraj Lamp and Industries Pvt. Ltd. 2 v. State of Haryana (2012)1 SCC 656***, the documents dated 01.04.1994 and 01.07.1994, relied upon by the complainant in support of his title over the second floor, basement and ground floor of the aforesaid property, do not confer ownership rights in respect of the aforesaid portions of the property on the complainant. However, even if it is assumed for the sake of arguments that the aforesaid documents do confer any right, title or interest in respect of the aforesaid property on the complainant and exclude the accused persons from dealing with the aforesaid property, in view of the



observations quoted hereinabove from the judgment of Hon'ble Supreme Court in ***Mohammad Ibrahim's case***, the accused persons cannot be charged u/s 468 IPC since in none of the documents executed by them after the documents dated 01.04.1994 and 01.07.1994, they have claimed themselves to be empowered/ authorized by the owner of the said property to execute the said documents, rather, they have claimed themselves to be the owner.

8. Now coming to the charge u/s 420 IPC. At this stage, I deem it appropriate to reproduce the relevant portion of judgment of Hon'ble Supreme Court in ***Inder Mohan Goswami v. State of Uttaranchal***, (2007) 12 SCC 1 wherein the following observations as to the essential ingredients of offence under Section 420 IPC were made:

“40. Firstly, we shall deal with Section 420 IPC. Cheating is defined in Section 415 IPC and is punishable under Section 420 IPC. Section 415 is set out 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.”

41. Section 415 IPC thus requires—

1. Deception of any person.

2. (a) Fraudulently or dishonestly inducing that person—

(i) to deliver any property to any person; or

(ii) to consent that any person shall retain any property; or

(b) Intentionally inducing that person 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.

42. On a reading of the aforesaid section, it is manifest that in the definition there are two separate classes of acts which the person deceived may be induced to do. In the first class of acts he may be induced fraudulently or dishonestly to deliver property to any person. The second class of acts 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 need not be fraudulent or dishonest. ***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 a fraudulent or dishonest intention at the time of making the promise. From his mere failure to subsequently keep a promise, one cannot presume that he all along had a culpable intention to break the promise from the beginning.***(emphasis mine)

9. Thus, in view of the aforesaid authoritative pronouncement, it is the dishonest intention at the time of making the promise which is the gist of the offence of cheating and merely because he has subsequently failed to fulfil the promise he will not be liable for prosecution for the offence of cheating. It has been contended by the APP that the dishonest intention of the accused to cheat the complainant as on the

date of execution of documents dated 01.04.1994 and 01.07.1994 is apparent from the fact that immediately after execution of the aforesaid documents he had mortgaged the entire property with the Jammu and Kashmir Bank, however, in my considered opinion, there is nothing on record to substantiate the aforesaid allegations of mortgage of the entire property by the accused with Jammu & Kashmir Bank at any point of time. There is only one letter filed alongwith the chargesheet from M/s Jammu and Kashmir Bank which does not mention the date of the alleged loan taken by the accused persons from the bank or anything about the alleged mortgage of the property in question. The first document, allegedly executed by the accused persons in respect of the property which was the subject matter of the documents dated 01.04.1994 and 01.07.1994, and which has been filed alongwith chargesheet, is dated 16.02.2009 and since the same has been executed after a period of almost 15 years from the date of execution of documents in favour of complainant, in my considered opinion, it cannot be said that the accused were having dishonest intention to cheat the complainant as on 01.04.1994 and 01.07.1994.

10. It is significant to note that the accused persons were prosecuted for the offence of cheating by the prospective purchasers under the agreement to sell dated 25.10.2009 viz. Mr. Ashish Uppal, Mr. Manoj Kumar and Mr. Surender Kumar, which offence allegedly has already been compounded by the accused with the aforesaid persons.

11. Now coming to the charge u/s 448 IPC, in my considered opinion, there is no material on record to show that complainant was in actual physical possession of the second floor of the aforesaid property as on

the date when the possession of the same was handed over by the accused persons to the prospective buyers under agreement to sell dated 25.10.2009. Besides, the actual date of alleged house trespass has also not been mentioned in the chargesheet. Thus, in my considered opinion, even the charge u/s 448 IPC against the accused is groundless.

12. Accused persons are accordingly discharged from all the offences under Sections 420/468/448/34 IPC.

13. Ordered Accordingly.

*Announced in the open Court on this 25<sup>th</sup> day of October, 2016.*

(ARUN KUMAR GARG)

MM-4/SE/Saket/25.10.2016