



2026:AHC-LKO:22222

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL MISC. WRIT PETITION No. - 1006516 of 2014

Shashank Kumar Singh

.....Petitioner(s)

Versus

The State

.....Respondent(s)

Counsel for Petitioner(s)	:	Amberish Kumar, Amberish Kumar
Counsel for Respondent(s)	:	Govt. Advocate

Court No. - 14

HON'BLE SUBHASH VIDYARTHI, J.

1. Heard Sri Amberish Kumar, the learned counsel for the petitioner, Sri Mayank Sinha, the learned A.G.A. appearing on behalf of the State and perused the records.

2. By means of the instant petition filed under Article 226 of the Constitution of India the petitioner has challenged the validity of an order dated 03.10.2013, passed by learned Additional Chief Judicial Magistrate, Court no.32, Lucknow in Case No.2020 of 2013, whereby while discharging the petitioner from the offences under Sections 406, 467, 468, 471 I.P.C. the learned trial court has rejected the petitioner's request for being discharged from the offence under Section 420 I.P.C. The petitioner had challenged the aforesaid order by filing Criminal Revision No.550 of 2013 which has been dismissed by means of a judgment and order dated 30.08.2014 passed by the learned Special Judge, CBI, Court No.1, Lucknow and the validity of the revisional order has also been challenged by the petitioner.

3. Briefly stated, the facts of the case are that the opposite party no.2 lodged an F.I.R. No.454 of 2008 in Police Station Ghazipur, District Lucknow against the petitioner for the offences under Sections 420, 406 I.P.C. alleging that the complainant was working as Senior Area Sales Manager in a multinational company and he was maintaining a recurring deposit account in Canara Bank, Branch Munshi Pulia, in which the petitioner was working as the Branch Manager. The petitioner induced the complainant to purchase House No.422/9, situated at Panigaon, Lucknow and stated that the complainant would have to deposit Rs.2,00,000/- only and the balance amount of Rs.6,00,000/- would be paid through loan given by the bank and the bank's NPA account would be closed. The complainant could arrange Rs.1,70,000/- only and the petitioner gave a loan of Rs.30,000/- against the

amount deposited in the recurring deposit account of the complainant. The complainant deposited the entire amount of Rs.2,00,000/- as margin money for purchasing the property.

4. On 17.03.2008 the complainant received letter dated 22.02.2008 from the bank, which was actually posted on 14.03.2008, rejecting his loan application and it was stated that upon failure of the complainant to deposit the balance amount of Rs.6,00,000/- the margin money would be confiscated. The complainant alleged that the petitioner had demanded Rs.20,000/- as bribe.

5. The complainant had applied to LIC Housing Finance Limited for obtaining loan but the LIC rejected the loan application on 27.03.2008 stating that the visibility of Sarfaesi Act did not exist in respect of the property in question. The complainant alleged that the petitioner bank manager had usurp Rs.2,00,000/- of the complainant.

6. After investigation the Investigating Officer has submitted a charge sheet dated 24.06.2008 for the offences under Sections 406, 420, 467, 468 471 I.P.C.

7. The petitioner filed an application for discharge stating that he was working as Branch Manager of Canara Bank. He had not taken any money from the complainant. The money was deposited by the complainant with the Bank for purchasing a property from the bank. After paying the margin money the complainant could not pay the balance amount and, therefore, the bank had confiscated the margin money deposited by the complainant.

8. The discharge application has been partly allowed by means of the impugned order dated 03.10.2013 and the petitioner has been discharged for the offences under Sections 406, 467, 468, 471 I.P.C. but he has not been discharged from the offence under Section 420 I.P.C.

9. An interim order was passed in the present case on 10.10.2014, which reads as follows: -

"Heard learned counsel for the petitioner and the learned A.G.A. for the State.

The case of the petitioner is that at the relevant time the petitioner was the Branch Manager of Canara Bank. A property namely plot no.422 situated nearly Vaishali Enclave, Indira Nagar, Lucknow was put for sale under the provisions of SARFAESI Act and an advertisement to that effect was published by the authorized officer of the bank in accordance with the Rules framed under the said Act. The prosecution case is to the effect that the informant was allured by the accused (the petitioner) to purchase the said property and for that purpose the petitioner made a deposit of Rs.2,00,000/- towards earnest money. The prosecution case further is to the effect that

subsequently it was discovered that the said property had been transferred by the mortgager in favour of third party, yet, the earnest money of the informant was forfeited as he could not deposit the balance amount as per the terms and conditions of the advertisement under which the property was put to sale. The case of the prosecution is that since the property which had already been transferred was put to sale and, on allurement of the petitioner, the informant had made a deposit for purchase of property, which was forfeited without proper justification, therefore, the Branch Manager was guilty for various offences.

It appears that initially a charge sheet was laid by the police under Sections 406, 420, 467, 468 and 471 I.P.C., as a result, the petitioner applied for discharge under Section 239 Cr.P.C. on which he was discharged from all the offences except the one punishable under Section 420 I.P.C. Against the rejection of the discharge application to the extent it related to an offence punishable under Section 420 I.P.C., the petitioner filed revision, which has been dismissed by the impugned order.

The submission of the learned counsel for the petitioner is that there is no restriction in law on a mortgager to transfer the subject matter of mortgage to a third party. Since the bank was a mortgagee and the transfer, which has been alleged by the informant, was by the mortgager after the mortgage of the property with the bank, the petitioner could not be said to have committed any offence by putting the same on auction. The other submission of the learned counsel for the petitioner is that admittedly the notice on the basis of which the earnest money was deposited by the informant was issued by the authorized officer of the Bank, who was higher in rank than the petitioner, therefore, it cannot be said that any representation, much less dishonest, was made by the petitioner so as to make him liable for cheating.

The matter requires deeper consideration.

The learned Standing Counsel has accepted notice on behalf of the State-respondent no.1.

Issue notice to the respondent no.2, returnable within four weeks.

Steps for service may be taken within one week.

List this petition in the week commencing 24.11.2014, by which date, the respondents may file counter affidavit.

Till the next date of listing, further proceedings of Criminal Case No.2020 of 2013 pending in the Court of Additional Chief Judicial Magistrate, Court No.32, Lucknow under Section 420 I.P.C., shall remain stayed."

10. As per office report dated 19.10.2023 the notice sent to the opposite party no.2 through speed post has not been received back and thereafter fresh notices were sent to the opposite party no.2 and the office has again reported on 10.07.2025 that fresh notice issued has also not been received back. Thereafter, the office has submitted a report dated 03.12.2025 that the notice issued to the opposite party no.2 is deemed sufficient, yet the opposite party no.2 has not put in appearance to oppose the writ petition and he has chosen not to file a counter affidavit or an application for vacation of the interim order dated 10.10.2014. The State has also not filed any counter affidavit or an application for vacation of the interim order dated 10.10.2014.

11. The learned Counsel for the petitioner has reiterated the submissions recorded in the order dated 10.10.2014.

12. The learned trial court has recorded in the impugned order that the property in question had already been sold to one Surya Kumar Mishra and the same property could not be sold to the complainant. However, the contention of the petitioner that the notice on the basis of which the earnest money was deposited by the informant, was not issued by the petitioner and it was issued by an authorized officer of the Bank, who was higher in rank than the petitioner, has not been refuted by the prosecution or the complainant. There is no material to even prima facie establish that the petitioner had made any representation, much less a dishonest representation, to the complainant and, therefore, the petitioner cannot be charged for the offence of cheating.

13. The trial Court has held that confiscation of Rs.2,00,000/- by Canara Bank is the main cause of dispute between the parties. The learned trial court has mentioned in the impugned order dated 03.10.2013 that the complainant had sent legal notices on 15.04.2008 and 30.04.2008 through his counsel, copies whereof have been annexed as Annexure Nos.20 and 22 to the writ petition. The complainant had merely demanded return of money failing which he would be compelled to knock the door of the court and there was no allegation of any cheating or fraud committed by the petitioner.

14. From the aforesaid facts, it appears that the F.I.R. has been lodged merely for the reason that the complainant had demanded return of money paid to Canara Bank, from the complainant personally. Since the money was not paid to the complainant it was not refunded by him. The money was paid to Canara Bank and no refund was claimed from the Bank. Upon failure of the petitioner to refund the money paid to Canara Bank, the opposite part no.2 complainant filed an F.I.R.

15. The petitioner was acting in discharge of his official duties as Branch Manager and there was no allegation that he had not acted *bona fide* in performance of his duties. Non refund of margin money deposited with the bank upon failure of the purchaser to deposit the balance amount of sale consideration does not amount to commission of any offence and, therefore, no case of trial of the petitioner is made out.

14. In view of the foregoing discussions, I am of the considered view that the charge of committing offence of cheating is groundless and is is entitled to be discharged. Accordingly, the writ petition is allowed. The impugned order order dated 03.10.2013, passed by learned Chief Judicial Magistrate,

Court no.32, Lucknow in Case No.2020 of 2013 and the judgment and order dated 30.08.2014, passed by learned Special Judge, CBI, Court No.1, Lucknow are hereby set aside. The petitioner is discharged of the offence under Section 420 I.P.C. also.

March 30, 2026
Ram.

(Subhash Vidyarthi,J.)