

**Court No. - 81**     [WWW.LIVELAW.IN](http://WWW.LIVELAW.IN)

**Case :-** APPLICATION U/S 482 No. - 12495 of 2021

**Applicant :-** Richa Dubey

**Opposite Party :-** State of U.P. and Another

**Counsel for Applicant :-** Prabha Shanker Mishra

**Counsel for Opposite Party :-** G.A.

**Hon'ble Shamim Ahmed,J.**

Heard Sri Prabha Shankar Mishra, learned counsel for the applicant as well as Sri Manish Goyal, learned Additional Advocate General assisted by Sri Rajesh Mishra learned A.G.A. and Sri Abhijit Mukharji, learned Brief Holder for the State and perused the record.

This application has been filed by the applicant with a prayer to quash the entire proceedings including the charge sheet and cognizance/summoning order dated 18.2.2021, arising out of Case No.0323 of 2021 under Section 419, 420 IPC, P.S. Chaubeypur District Kanpur Nagar, pending in the court of Special Judge (D.A.A.), Ramabai Nagar (Kanpur Dehat).

Learned counsel for the applicant submits that as per the allegation in the FIR, the applicant and 8 other co-accused were using Sim in mobile phones which was registered on some other person's identity. The applicant was using mobile Sim card no.7317771173 wherein the sim card of Mahesh, son of Bharat Prasad, resident of Nigoha, Mau, was inserted. He further submits that the applicant has been falsely implicated in the present case. The mobile used by the applicant is of her servant and there is no allegation against the applicant that any misuse of the aforesaid number or any crime was committed by use of the aforesaid customer I.d. number of Mahesh son of Bharat Prasad.

Learned counsel for the applicant further submits that the applicant had no mobile phone of her own, so she used the mobile

phone Sim card No.7317771173 of her servant Mahesh whenever she needed and Mahesh had no problem with this. It was further submitted that on 3.7.2020 in Bikru village, Police Station Chaubeypur, District Kanpur Nagar, an incident of shoot-out (Bikru incident) had taken place in which husband of the applicant namely Vikas Dubey was made accused and after the shoot-out, Mahesh was afraid so he left applicant's house and went to Sitapur and left his mobile phone Sim card bearing No.7317771173 at the applicant house as she had no mobile phone and Sim card of her own.

Learned counsel for the applicant further submits that Mahesh stayed in his village almost about 3 months and during this period on the permission of Mahesh, the applicant transferred mobile Sim card No. 7317771173 on her own identity. The applicant never misused the mobile Sim card No. 7317771173 and presently the same is registered on her own identity and Mahesh has no problem with this even he is staying in her house which is located in Lucknow. Mahesh has given a notarial affidavit before the concerned authority in this regard. The applicant has never misused mobile Sim card No. 7317771173 for any illegal purpose or any criminal activity. From perusal of the entire case diary there is not a single whisper about the misuse of mobile phone Sim card No.7317771173 for any criminal purpose as well as the owner of sim card Mahesh has not made any complaint to the any police officer or telecommunication officer for misuse of his mobile and sim card by the applicant. In absence of the complaint the whole proceeding so initiated by the concerned police as well as Investigating Officer is abuse of process of law.

Learned counsel for the applicant further submits that Investigating Officer without considering the legal proposition as established by the law, in a mechanical manner has submitted the charge sheet against the applicant and the learned Magistrate has also taken cognizance in a routine manner.

Per contra, learned AGA has filed short counter affidavit and has submitted that the mobile SIM card was on the name of Mahesh having mobile Sim card No. 7317771173. This person Mahesh was the servant of Vikas Dubey, husband of the applicant. It is clear from the statement of Mahesh under Section 161 CrPC that his mobile Sim card No.7317771173 was used by the applicant since 2017 and for this he had not given any 'no objection' to the applicant.

It was further stated in the short counter affidavit that the FIR which was lodged on 19.11.2020 under Section 419, 420 IPC is based upon the detailed report of S.I.T. who has come to the conclusion that there has been gross violation of the guidelines of **Telecom Regulatory Authority** by the accused applicant and other co-accused persons, which is incriminating in nature, therefore, the ingredients of the offence under Section 419, 420 IPC is being made out. In this regard, the instructions and guidelines dated 9.8.2012 of the Government of India, Ministry of Communication, Information Technology, Department of Tele-communication, New Delhi was placed which is for the purpose of verification of mobile subscribers and Clause-7 of the guidelines is directly applicable in the case of the applicant. The above Clause-7 is reproduced hereinbelow:

**“Change in the name of Subscriber**

*The change of name of subscriber is not permitted as the SIM card in user terminal is not transferable. The change in name between the blood relatives/legal heirs is permitted provided new CAF and all the procedure as for registering a new subscriber is followed and new SIM card is issued. However, after the change in name the connection shall be treated as new connection. In such case, change in address is not permitted. Further, No Objection Certificate from the original user shall also be taken. In case of death of the original user, death certificate will suffice instead of No Objection Certificate.”*

A bare perusal of the aforesaid provision makes it clear that apart from blood relation the name of SIM card holder cannot be changed or used by any other person without any “No Objection Certificate”. This use shall entail and presumption of act, which has been done to cause the cheating as dishonest inducement or fraudulent method by another person to use SIM card without the consent of user.

Apart from this, Clause-10 of the guidelines also provides that FIR may be lodged by the concerned police official or any law enforcement agency for such fraudulent activities. Clause-10 of the guidelines is also reproduced hereinbelow:

**“Lodging Complaint/FIR**

(i) *TERM Cell shall indicate the apparently forged cases as per their observation in the CAF Audit giving reasons for prima facie observation to the Licensee and marking them as a failed case for CAF Audit. The Licensee shall investigate such cases at their level and take necessary action as detailed below.*

(ii) *In order to deal with the use of forged documents for obtaining mobile connections, complaint/FIR may be lodged with the law enforcement agencies under the law of land, The complaint should clearly mention the information about the mobile number, type of document forged along with the details about the issuing authority, date of issue, Reason for suspicion as forged document, name of the person suspected (e.g. name of subscriber/ PoS/Franchisee/Licensee)*

(iii) *In cases where forged documents are submitted by the subscriber and originals are also forged, police complaint/ FIR shall be lodged by the PoS/Franchisee against the subscriber within fifteen days of bringing it to the notice of the Licensee.*

(iv) *In case PoS/Franchisee fails to lodge complaint/FIC as above, Licensee shall lodge FIR/ Complaint against the subscriber and Franchisee/POS within further three days.*

(v) *In case where it is found that the forgery has been done by point or sale, the Licensee shall lodge the complaint / FIR against the franchisee/ point or sale within one week and financial penalty shall be imposed.*

(vi) *In case no action is taken by the Licensee as above or the Licensee itself is involved in forgery, TERM Cell shall lodge Complaint/ FIR against Licensee. Penalty shall be imposed on all such forged cases also.*

*(vii) In cases where it is found that the act of issuing connections were done by point of sale using the document of some other subscriber or any person without the knowledge of the subscriber or the person, or the documents were forged by the franchisee/PoS of Licensee, the concerned PoS/franchisee may be terminated by the Licensee under intimation to the Licensor (concerned TbRM cell of DoT) and the designated security agencies, in addition to the actions mentioned above. The same may be intimated to all other Licensee(s) in that Service Area by TERM Cell. The other Licensees after getting any such intimation shall terminate/ not appoint any such point of sale.*

*(viii) No penalty shall be imposed on the Licensee, if the laid down process of activation/verification applicable at the time of activation has been followed and the forgery is done by the subscriber. In case where activation/verification process is not followed by the Licensee, the penalty shall be imposed even if the documents are found to be forged.”*

Learned Additional Advocate General Sri Manish Goyal further argued that the charge sheet and cognizance order was rightly submitted against the applicants in accordance with law, therefore, prima facie offence is made out against the applicant.

In reply thereto learned counsel for the applicant has filed rejoinder affidavit and reiterated the same version made in the application under Section 482 CrPC. He further submits that submitted that though it is an admitted fact that there was an unfortunate incident in which several police officials were killed but the applicant has been roped falsely in the present case only for the reason that she is the wife of main accused.

After considering the arguments as advanced by the learned counsel for the parties and from the perusal of the charge sheet as well as cognizance order and the F.I.R., this Court is of the view that the SIM card was on the name of Mahesh having mobile Sim card No. 7317771173, who was the servant of Vikas Dubey (Bikru incident) and his wife i.e. present applicant. It is clear from the statement of Mahesh under Section 161 CrPC that his mobile Sim card No. 7317771173 was used by the wife of his master since 2017 and for this he had not given any ‘no objection certificate’. His master who

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was also a gangster could also take away his life if he would not comply. Therefore, the accused being in a dominating position could easily enable Mahesh to provide her the Sim and use the same for her benefit. The Sim card, therefore, may be read in the instant case within the purview of the word 'property' under Section 415 IPC.

Apart from the above, the acts and omissions of the applicant have otherwise tainted the reputation of the servant, which is part of his right to life under Article 21 of the Constitution of India and it was owing to the fear psychosis that the servant could not muster the courage to lodge an FIR against the master, who was a known gangster for using his Sim card against his own will. It is only after the incident of Bikru in Police Station Chaubeypur that the servant rather could muster courage to make the statement under Section 161 CrPC. So far as mobile Sim card No. 7317771173 is concerned, as per the record it reveals that during investigation it was found that the short convas under which the offences being made out are only on impersonation and deceiving, her servant and inducing him to deliver property (SIM Card) without his consent. Therefore, the ingredients for the offence under Section 419, 420 IPC are completely made out against the applicant. In doing so there is a clear *mens rea* of the applicant which is prima facie apparent on face of the record and also as per Clause-7 and 10 of the guidelines issued by the Government of India, Ministry of Communications and IT Department of Telecommunications, dated 9.8.2012, offence is prima facie made out against the applicant. Accordingly, the contention of the learned counsel for the applicant that no offence against the applicant is disclosed and the present prosecution has been instituted with a malafide intention for the purposes of harassment **has no force**.

At the stage of issuing process the court below is not expected to examine and assess in detail the material placed on record, only this has to be seen whether prima facie cognizable offence is disclosed or not. The Apex Court has also laid down the guidelines where the

criminal proceedings could be interfered and quashed in exercise of its power by the High Court in the following cases:-(i) **R.P. Kapoor Vs. State of Punjab**, AIR 1960 S.C. 866, (ii) **State of Haryana Vs. Bhajanlal**, 1992 SCC (Cri.)426, (iii) **State of Bihar Vs. P.P. Sharma**, 1992 SCC (Cri.)192, (iv) **Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq & Anr.**, (Para-10) 2005 SCC (Cri.) 283 and (iv) **M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra**, AIR 2021 SC 1918.

From the aforesaid decisions the Apex Court has settled the legal position for quashing of the proceedings at the initial stage. The test to be applied by the court is whether uncontroverted allegation as made prima facie establishes the offence and whether chances of ultimate conviction are bleak and no useful purpose is likely to be served by allowing criminal proceedings to be continue. In **S.W. Palankattkar & others Vs. State of Bihar**, 2002 (44) ACC 168, it has been held by the Hon'ble Apex Court that quashing of the criminal proceedings is an exception than a rule. The inherent powers of the High Court under Section 482 Cr.P.C itself envisages three circumstances under which the inherent jurisdiction may be exercised:-(i) to give effect an order under the Code, (ii) to prevent abuse of the process of the court ; (iii) to otherwise secure the ends of justice. The power of High Court is very wide but should be exercised very cautiously to do real and substantial justice for which the court alone exists.

The High Court would not embark upon an inquiry as it is the function of the Trial Judge/Court. The interference at the threshold of quashing of the criminal proceedings in case in hand cannot be said to be exceptional as it discloses prima facie commission of an offence. **In the result, the prayer for quashing of impugned charge sheet, cognizance order and the entire proceedings of the case is refused.** There is no merit in this application filed by the applicant under Section 482 Cr.P.C.

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In view of the aforesaid submissions made by learned counsel for the parties, this Court finds that prima facie no case is made out for interference by this Court exercising power under Section 482 CrPC.

Accordingly, this application under Section 482 Cr.P.C. filed by the applicant is **dismissed**.

**Order Date :- 1.10.2021**

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