REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 749 OF 2022

Rekha Jain ..Appellant (S)

Versus

The State of Karnataka & Anr. ..Respondent (S)

J U D G M E N T

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 15.09.2020 passed by the High Court of Karnataka at Bengaluru in Criminal Petition No. 3442/2020, by which, the High Court has dismissed the said criminal petition and has refused to quash the FIR/criminal proceedings against petitioners, the original writ petitioners before the High Court have preferred the present appeal.

2. At the outset, it is required to be noted that by order dated 08.01.2021, the present appeal in respect of petitioner No. 1 (Kamalesh Mulchand Jain) has been dismissed and the notice has been issued in respect of appellant – petitioner No. 2 (Rekha Jain). Therefore, the present appeal is required to be considered qua accused Rekha Jain only.

3. That respondent No. 2 herein – original complainant lodged a complaint against one Kamalesh Mulchand Jain (husband of Rekha Jain), alleging, inter-alia, that by misrepresentation, inducement and with an intention to cheat him, the said Kamalesh Mulchand Jain had taken away 2 kg and 27 grams of gold jewellery. A complaint was registered as FIR/Crime Case No. 75/2020 dated 13.03.2020 for the offence under Section 420 of Indian Penal Code (IPC). During the course of the investigation, it was found that appellant – Rekha Jain was absconding and the gold jewellery, taken away from the original complainant by her husband – Kamalesh Mulchand Jain, was with her, therefore, the investigation was carried out

against her also, which led to the said Rekha Jain to approach the High Court by way of a petition under section 482 of Cr.PC to quash the FIR against her for the offence under Section 420 of IPC. By the impugned order, the High Court refused to quash the criminal proceedings/FIR, even in so far as the accused – Rekha Jain is concerned. Hence, the present appeal.

4. Learned counsel appearing on behalf of the appellant – accused – Rekha Jain has vehemently submitted that considering the allegations in the complaint/FIR as they are, there are no allegations that accused Rekha Jain induced the complainant to deliver the gold jewellery. It is submitted that the entire allegations can be said to be against Kamalesh Mulchand Jain, who happens to be the husband of the appellant – Rekha Jain. It is submitted that therefore, when there are no allegations of inducement by present Appellant – Accused Rekha Jain, it cannot be said that the appellant – accused – Rekha Jain has committed any offence as alleged for the offence under Section 420 of IPC.

It is submitted that therefore the High Court has committed a grave error in not quashing the criminal proceedings against the appellant – accused - Rekha Jain for the offence under Section 420 of IPC.

5. The present appeal is vehemently opposed by Shri Saket Gogia, learned counsel appearing on behalf of the original complainant.

5.1 It is vehemently submitted by learned counsel appearing on behalf of the original complainant that the appellant – accused – Rekha Jain is found to be in possession of the gold jewellery, which was taken away from the complainant. That even the appellant – accused – Rekha Jain was absconding. It is contended that it cannot be said that the appellant has not committed any offence at all. That the appellant – accused may be charged for the other offences of keeping the gold jewellery, which is property obtained by her husband by cheating and deceiving. Therefore, it is prayed not to quash the criminal

proceedings/FIR even so far as the appellant – accused - Rekha Jain is concerned.

6. Learned counsel appearing on behalf of accused – Rekha Jain – the appellant has submitted that she has been chargesheeted for the offence under Section 420 of IPC and the said accused is shown as accused No. 4.

7. We have heard learned counsel appearing on behalf of the respective parties at length.

8. At the outset, it is required to be noted that the offence alleged against the appellant – accused – Rekha Jain is for the offence under Section 420 of IPC. She has been now chargedsheeted for the said offence. However, considering the allegations in FIR/complaint, it can be seen that the entire and all the allegations are against the accused Kamalesh Mulchand Jain. In the complaint/FIR, there are no allegations whatsoever to the effect that the accused - Rekha Jain induced the complainant to part with the gold jewellery. Therefore, in the absence of any allegation of inducement by the accused Rekha Jain, she cannot be

prosecuted for the offence under Section 420 of IPC. There must be a dishonest inducement by the accused.

As per Section 420 of IPC, whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, can be said to have committed the offence under Section 420 of IPC. Therefore, to make out a case against a person for the offence under Section 420 of IPC, there must be a dishonest inducement to deceive a person to deliver any property to any other person. In the present case, there is no allegation at all against accused – Rekha Jain of any inducement by her to deceive and to deliver the gold jewellery. The allegations of dishonest inducement and cheating are against her husband – accused – Kamalesh Mulchand Jain. Therefore, considering the allegations in the FIR/complaint as they are, and in the absence of any allegation of dishonest inducement by Rekha Jain, it cannot be said that she has committed any offence under Section 420 of IPC for which she is now chargesheeted. Therefore, the High Court has committed a grave error in not quashing the criminal

proceedings against Rekha Jain for the offence under Section 420 of IPC. This is a fit case where the High Court could have exercised its powers under Section 482 of Cr.PC and to quash the criminal proceedings against Rekha Jain for the offence under Section 420 of IPC.

9. In view of the above and for the reasons stated above, the present appeal succeeds in part. The criminal proceedings against the appellant – accused – Rekha Jain for the offence under Section 420 of IPC is hereby quashed. However, it is clarified that what is quashed is the criminal proceedings for the offence under Section 420 of IPC only and not for any other offence(s), if any, committed by the accused – Rekha Jain. The present appeal is limited to the offence under Section 420 of IPC only as at present she is chargesheeted only for the offence under Section 420 of IPC. The present appeal is allowed to the aforesaid extent.

.....J.
(M. R. SHAH)

.....J.
(B.V. NAGARATHNA)

New Delhi,
May 10, 2022