

IN THE COURT OF DISTRICT SESSION JUDGE LUCKNOW

Crl Revision No. of 2019

Mohd Akram Ansari, aged about 55 years, son of late Mohd Ishaq Ansari, resident of 47-Blunt Square, Durgapuri, P.S.Alambagh, Lucknow.

.....Revisionist

Versus

1. The State of UP,
2. Rajeev Asthana, Adult, son of Late N.N.Asthana, resident of 280/8-Kha, Asthana Sadan Apartment, Blunt Square, P.S.Alambagh, Lucknow.

.....Respondent

CRIMINAL REVISION UNDER SECTION 397/399 CODE OF
CRIMINAL PROCEDURE 1973 AGAINST THE ORDER
DATED 19.12.2018 PASSED BY LEARNED ADDITIONAL
CHIEF JUDICIAL MAGSITRATE-I COURT NO.25 LUCKNOW
IN CASE NO.520/2013 (STATE V/S RAJEEV ASTHANA)
UNDER SECTION 420, 506, 419, 467, 468, 471, 504 IPC
P.S. ALAMBAGH, LUCKNOW PASSED IN VIOLATION OF
ORDER DATED 28.01.2016 PASSED BY LEARNED
ADDITIONAL DISTRICT SESSION JUDGE COURT NO.10

LUCKNOW IN CRIMINAL REVISION NO.249/2015
(RAJEEV ASTHANA V/S STATE OF UP) THROUGH WHICH
THE ORIGINAL DISCHARGE ORDER DATED 14.07.2015
HAS BEEN SET ASIDE AND THE MATTER WAS REMANDED
BACK TO THE TRIAL COURT TO ADJUDICATE THE
DISCHARGE APPLICATION UNDER SECTION 239 Cr.P.C
SUBMITTED BY ACCUSED/RESPONDENT NO.2
FOLLOWING AMONG OTHER GROUNDS:-

BRIEF FACTS

The revisionist/complainant most humbly and respectfully submits as under:-

1. That the accused has submitted application under Section 239 Cr.P.C for discharging him from Crime No.03/2013 having Case No.520/2013 U/S 419, 420, 467, 468, 471, 504, 506 I.P.C P.S.Alambagh, District Lucknow on false ground and the contents shown in para 1 to 43 of the said application are not only misleading but the same is an attempt to place wrong facts on the basis of statements recorded by investigation officer under Section 161 Cr.P.C and on the basis of said statements the trial cannot be concluded regarding the offences committed by the accused person. Since the Revisional Court has already remanded the matter to this learned trial Court vide order dated 28.01.2016 with a direction that the discharge application dated 06.02.2015 be decided a fresh on merit.

2. That the complainant has submitted the First Information Report with police Alambagh which is registered as Crime No.03/2013 U/S 419, 420, 467, 468, 471, 504, 506 379 I.P.C against the accused Rajeev Asthana which has been registered under the order of Hon'ble Court passed under Section 156(3) Cr.P.C. The Police Alambagh after investigation submitted charge sheet no.17/2013 under Section 419, 420, 467, 468, 471, 504, 506 I.P.C on 11.02.2013 and learned Additional Chief Judicial Magistrate (IV) Lucknow on 05.04.2013 has been pleased to took cognizance and registered Case No.520 of 2013 (State v/s Rajeev Asthana).
3. That the First Information Report is based on true and correct facts. The accused Rajeev Asthana approached Hon'ble High Court against the charge sheet by filing petition under Section 482 Cr.P.C and on 05.07.2013 Hon'ble High Court has been pleased to pass the order in Criminal Case No.3131 of 2013 (Rajeev Asthana v/s State of UP and others) directing him to deposit the entire amount of sale consideration received by him in pursuance of registered agreement to sell within two weeks. But the accused has not deposited the entire amount received by him from the complainant amounting Rs.22,50,000/- and deposited only Rs.15,00,000/- in the registered of Hon'ble High Court. The Hon'ble High Court on 15.04.2015 in Petition No.3131 of 2013 (Rajeev Asthana v/s State of UP

and others) has been pleased to pass the order that there is no interim order operating and due to pendency of the petition the accused is soughting adjournment in the learned Trial Court as such it has been made clear that the pendency of the petition may not be deemed to be stayed the proceeding of the Trial Court and accordingly the order has been communicated to the Trial Court.

It is submitted that the offense under Section 379 I.P.C is also made out against the accused as the articles and other belongings of the complainant has been removed and stolen by the accused from Flat NO.ASFT 13 as the possession of the said flat was given to the complainant/applicant by Rajeev Asthana, his brother Sanjeev Asthana and builder Asadullah Siddiqui jointly as such all these persons are accused and the police has not investigated the crime properly and instead of submitting charge sheet against all the three accused persons the investigating officer has shown Asadullah Siddiqui, Gireesh Chandra and Vismit Saxena (purchaser) as witness in the charge sheet and a direction is required to be given to the police to submit a supplementary charge sheet against Sanjeev Asthana, Asadullah Siddiqui, Gireesh Chandra and Vismit Saxena after investigation for proper trial.

4. That the Writ Petition was filed by the accused against the First Information Report and the said writ petition became infructuous after submission of the charge sheet in the

matter and now the petition under Section 482 Cr.P.C against the charge sheet is pending before the Hon'ble High Court. Since the accused has already challenged the charge sheet before the Hon'ble High Court as such the application under reply itself is not tenable in the eyes of law and this Hon'ble Court could not exercise as a Appellate Authority when the charge sheet is already under challenge before a superior court.

5. That the application under reply is based on absolutely wrong facts as the total area of Plot No.14 measuring 18341 sq.ft belongs to eight co-sharers out of which the accused Rajeev Asthana and his brother Sanjeev Asthana has got only 7743.76 sq.ft land for which the accused and his brother Sanjeev Asthana entered into a registered builder agreement with "M/S Estate Developers" through its proprietor Asadullah Siddiqui.
6. That the building has already been constructed ground floor plus four storied and the ratio of owners and builders has also been distributed 39:61 respectively. After the final settlement regarding builder's agreement the possession of roof at fourth floor has already been handed over by the builder to the accused and his brother Sanjeev Asthana on 02.10.2011 and it was also finally settled that no further construction will be raised in the complex as per Permit No.30434 issued by Lucknow Development Authority on 15.01.2011.

7. That the share of owners and builders i.e. 39:61 over the land measuring 7743.76 sq.ft has been finally settled and the said agreement has already been registered on 09.02.2012 as such the exercise of construction and builder's agreement has already been concluded. The complainant was handed over the vacant and peaceful possession of ASFT 13 Flat and ASFT 16 at Fourth floor of the complex to the complainant on 24.04.2012 as such there was no occasion to dispossess the complainant from his lawful occupation which clearly shows that the offense has been committed by the accused as well as his aforesaid associates.
8. That the accused and his brother Sanjeev Asthana has got eight flats in the building on the basis of reallocation dated 02.10.2011 as well as roof over fourth floor and this fact has already been admitted by the accused in registered agreement to sell dated 10.10.2011 entered between accused, his brother Sanjeev Asthana and complainant regarding Flats ASFT 13 and ASFT 16.
9. That on 09.02.2012 registered supplementary agreement entered between the owners and builders in which the complainant is also one of the witness. The complainant after getting possession over the Flat No.ASFT 13 and ASFT 16 applied for electric connection for 5 KW and the same was allowed to the complainant regarding Flat No.ASFT 13 on 30.04.2012 vide receipt no.448689260781 having

Electric Connection No.4486892519 which clearly shows that the complainant was given actual physical possession of aforesaid two flats by the accused and his brother on 24.04.2012 as such there was no occasion for the accused and his associates to break the lock of the premises and removing the household effects and other valuable articles placed by the complainant in the said premises. Thus, the Investigating Officer has submitted charge sheet excluding the offence under Section 379 I.P.C which is also made out together with involvement of other accused persons including builder Asadullah Siddiqui who is also a conspirator in the offence under Section 120-B Indian Penal Code.

10. That the complainant is the purchaser of two flats at fourth floor i.e. ASFT 13 and ASFT 16 for which a registered agreement to sell dated 10.10.2011 has already entered between the parties and roof of the existing building has already been transferred by the accused and his brother Sanjeev Asthana in favour of complainant through registered sale deed dated 15.06.2011 after receiving the total sale consideration amounting Rs.3,50,000/-.
11. That after execution of registered agreement to sell dated 10.10.2011 in favour of complainant regarding Flat No.ASFT 13 and ASFT 16 at fourth floor is admitted. But the accused has with criminal intention converted Flat No.ASFT 13 as Flat No.ASFT 401 with an intention to deprive the

complainant from his property. But the accused in most fraudulent manner entered into an unregistered agreement dated 11.10.2012 with builder Asadullah Siddiqui by converting the Flat No.ASFT 13 as Flat No.ASFT 401 and on the basis of said unregistered agreement the parties agreed that the agreement is being entered for one week and subsequently the accused has executed a registered sale deed on 17.10.2012 in favour of Gireesh Chandra and Vismit Saxena regarding the converted Flat NO.ASFT 13 as Flat No.ASFT 401 on a sale consideration of Rs.36,00,000/- which clearly shows the criminal act of the accused with collusion of other persons, namely, GIreesh Chandra, Vismit Saxena, Asadullah Siddiqui and Smt Renu Asthana who is one of the witness in the unregistered agreement dated 11.10.2012. Thus, all these persons with collusion and criminal intention alienated the Flat No.ASFT 13 for which a registered agreement to sell dated 10.10.2011 together with Flat No.ASFT 16 already executed in favour of the complainant. This clearly shows the cheating on the part of aforesaid persons depriving the complainant from his property. The Flat No.ASFT 16 was let out and accused are realizing monthly rent regularly.

The Photostat copy of unregistered agreement dated 11.10.2012 entered between accused and builder Asadullah Siddiqui in which the wife of the accused has signed as witness is **Annexure-1** and Photostat copy of registered

sale deed dated 17.10.2012 executed by accused and his brother Sanjeev Asthana in favour of Gireesh Chandra and Vismith Saxena by converting the existing number of ASFT 13 as Flat No.ASFT 401 for which the registered agreement to sell is already in favour of complainant is **Annexure-2**.

12. That the complainant has already paid a sum of Rs.22,50,000/- towards the total sale consideration of two flats i.e. ASFT 13 and ASFT 16 and all the legal expenses and stamp duty has already borne by the complainant. After submitting the written complaint by the complainant against the accused the accused together with his associates executed a correction-cum-supplementary deed on 08.11.2012 enclosing the floor plan showing existing Flat No.ASFT 13 as Flat No.ASFT 401 and Flat No.ASFT 16 merged with Flat NO.ASFT 15 and converted these two flats as Flat No.ASFT 402 and this correction deed was entered between accused Rajeev Asthana, his brother Sanjeev Asthana with Gireesh Chandra and Vismith Saxena and this document has been registered on 09.11.2012 in Bahi No.I Zild No.14924 Pages.171 to 184 at Serial No.19946. Surprisingly, the document has been shown executed on 08.11.2012 though the stamp papers of Rs.100/- of denomination of Rs.20/- each and total stamp five in number have been purchased on 09.11.2012 which clearly shows the fraud on the part of accused.

The Photostat copy of registered correction-cum-supplementary deed dated 08.11.2012 executed by accused Rajeev Asthana and his brother Sanjeev Asthana in favour of Gireesh Chandra and Vismith Saxena is **Annexure-3**.

13. That the accused after completing the construction has got Electric Service Connection No.2710769270 of 7.5 KW on 20.04.2012 in his name. Thus, the building has already been completed but the accused Rajeev Asthana together with Asadullah Siddiqui have procured forged document showing that the building is completed till date ground plus four stories upto 30.05.2012 and proposal for remaining construction shall be taken up at the appropriate time and also got a document dated 05.05.2016 prepared in disregard of registered document through which the accused and builders have declared the complex has already been completed ground plus four stories and no further construction shall be raised any further on 09.02.2012 and accordingly the permit no.30434 dated 15.01.2011 issued by Lucknow Development Authority the construction is already completed at the site.

The Photostat copy of manipulated and forged document dated 30.05.2012 and 05.05.2016 are **Annexure-4** and **5** and documents dated 02.05.2013 received by RTI from the Labor Commissioner Lucknow is **Annexure-6**.

14. That on the basis of aforesaid facts and circumstances the trial of accused and other person involved in the crime deserves to be adjudicated on the basis of evidence and the complainant shall produce all the aforesaid necessary evidence before this Hon'ble Court at the time of trial. The police has submitted charge sheet and the discharge application cannot be decided on the basis of statement recorded under Section 161 Cr.P.C.
15. That the complainant is already one of the witness in the reallocation agreement as well as other documents regarding the said construction. The accused and the builder got permit no.30434 dated 15.01.2011 from Development Authority having its validity upto 14.01.2016 and after completing the ground floor and four storied building the accused has submitted an application for getting 120 KW electric connection in the newly constructed complex and the UP Power Corporation after inspecting the premises on 08.08.2011 sanctioned 120 KW electric connection in the building.

The Photostat copy of permit no.30434 dated 15.01.2011 issued by Development Authority in favour of Rajeev Asthana and his brother Sanjeev Asthana is **Annexure-7** and Photostat copy of 120 KW load sanctioned in the building by Power Corporation on 08.08.2011 is **Annexure-8**.

16. That the learned trial court ignoring the remand order dated 28.01.2016 passed in Criminal Revision No.249 of 2015 (Rajeev Asthana v/s State of UP) in most arbitrary manner recorded the finding that there is no need to interfere in the earlier order dated 14.07.2015 and relied the trial only under Section 420, 506 I.P.C hence this Criminal revision is being before this Hon'ble Court:-

GROUNDS

- (A) Because the learned trial court has totally ignored the direction dated 28.01.2016 issued by the Hon'ble Revisional Court in Criminal Revision No.249/2015 (Rajeev Asthana v/s State) by setting aside the order dated 14.07.2015 passed by learned trial court as such there is no occasion for the learned trial court to record the finding to the effect that there is no need to interfere in the earlier order dated 14.07.2015 which amounts Appellate order against the finding recorded by the Superior Court and the same is in violation of Judicial Hierarchy.
- (B) Because the learned trial court instead of considering the discharge application and the averments of objection dated 30.05.2017 submitted by the revisionist duly supported by affidavit and the documentary evidence which is part of charge sheet passed the order in most summary manner which is absolutely against the jurisprudence.

- (C) Because the learned trial court has ignored to consider the offenses committed by accused under Section 419, 420, 467, 468, 471, 504, 506 IPC as the investigating agency has submitted charge sheet against the accused after proper investigation and there is no occasion to discharge the accused for the offense prima-facie found against him by the investigating agency and without the trial it is not justified to discharge the accused from the offenses under Section 419, 467, 468, 471, 504, 506 IPC.
- (D) Because the accused has already challenged the charge sheet before the Hon'ble High Court by preferring Petition No.3131 of 2013 (Rajeev Asthana v/s State of UP and others) under Section 482 Cr.P.C which is still pending and the discharge application has been considered by the learned trial court without adjudication of the petition by the Hon'ble High Court and the accused cannot be allowed two remedies simultaneously for the same purpose as the accused one hand challenged the charge sheet submitted by the Police against him and the discharge application under Section 239 Cr.P.C has been moved and this important aspect of the legal position has been totally ignored by the learned trial court.
- (E) Because the learned trial court has passed the order in violation of direction given by the Revisional Court and without considering the objection submitted by the revisionist the order has been passed which amounts

miscarriage of justice and there is ample evidence available against the accused person and for the perusal of learned trial court the relevant documents have already been submitted which are admissible in the evidence being the registered document regarding the immovable property and there is tempering and forgery is evident from the document.

- (F) Because the learned trial court has even lost the sight by recording the finding that against the discharge order dated 14.07.2015 the complainant/revisionist has preferred the criminal Revision before this Hon'ble Court which was allowed on 28.01.2016 whereas the correct fact is that the Criminal Revision No.249 of 2015 (Rajeev Asthana v/s State) has been filed by the accused respondent no.2 and even the revisionist complainant was not party in the said criminal revision, this clearly shows that the learned Magistrate has passed the impugned order dated 19.12.2018 in most casual manner without application of mind.
- (G) Because the order dated 19.12.2018 passed by learned trial court is based on conjectures and surmises against the provisions of Law as such the same deserves to be reassessed by exercising Revisional jurisdiction vested with this Hon'ble Court and the discharge application under Section 239 Cr.P.C submitted by the accused before the learned trial court deserves to be considered in accordance

to law as the offense committed by the accused are not confined only upto Section 420, 506 IPC but there is ample evidence regarding offenses under Section 419, 467, 468, 471, 504 IPC against the accused and even the offense under Section 379 IPC is also made out against the accused as well as against Sanjeev Asthana, Builder Asadullah Siddiqui, Girish Chandra, Bismit Saxena (both purchaser of the flat belongs to the revisionist) and Smt Renu Asthana one of the witness in the said document and she is also involved in the conspiracy and perjury committed by the accused persons.

PRAYER

It is, therefore, most respectfully prayed that the Hon'ble Court be pleased to adjudicate the discharge application under Section 239 Cr.P.C after considering the objection and documents submitted by the revisionist after summoning the original record of learned trial court of Case No.520 of 2013 pertains to crime no.03/2013 under Section 420, 506, 419, 467, 468, 471, 504 IPC, P.S.Alambagh Lucknow and further be pleased to direct the learned trial court to consider the matter afresh.

The revisionist shall ever pray for this act of kindness.

Lucknow

Dated:22.01.2019

(X)

Advocate

Counsel for Revisionist

