

Allahabad High Court

Shivam And 3 Others vs State Of U.P. And Another on 3 September, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD Neutral Citation No. - 2025:AHC:156229 AFR RESERVED Court No. - 76 Case :- APPLICATION U/S 482 No. - 15400 of 2018 Applicant :- Shivam And 3 Others Opposite Party :- State of U.P. and Another Counsel for Applicant :- Mahipal Singh Counsel for Opposite Party :- G.A.,Rajesh Kumar Pandey Hon'ble Vikram D. Chauhan,J.

1. Heard learned counsel for the Applicants and learned A.G.A. for the State. No one appears on behalf of Opposite party no.2.
2. By order dated 18.4.2024, Opposite party no.2 was proceeded ex-parte. On 29.7.2025 also no one appeared on behalf of opposite party no.2.
3. This application under Section 482 Cr.P.C. is preferred by Applicants for quashing the impugned charge sheet dated 3.6.2017 in Criminal Case No.1702 of 2017, State Vs. Shivam and others, arising out of Case Crime No.107 of 2017, under Sections 406, 120-B I.P.C., Police Station Badhapur, District Bijnor.
4. It is submitted by learned counsel for Applicants that Applicant nos.1 and 3 are the real brothers. Applicant nos.2 and 4 are mother and father of Applicant nos.1 and 3. On 4.3.2017, present first information report was lodged by Opposite party no.2 against Applicants. It is alleged in first information report that informant Manju Tyagi and Manish Tyagi executed a sale deed in favour of Shivam Agarwal (Applicant no.1) on 6.4.2015 of agricultural land area 3.618 hectare situated at Mauja Bhajrawala Jagir, Pargana Badhapur, District-Bijnor including liability of agricultural debt. Shivam Agarwal and his father Hari Om Agarwal assured to pay the bank loan. On the same day i.e. 6.4.2015 his sister Monika Tyagi also executed a sale deed in favour of Smt. Rashmi Agarwal of agricultural land, area 1.070 hectare situated at Mauja Ramdas Bairagai, Pargana Badhapur, District Bijnor including liability of agricultural loan upon the said land. Rashmi Agarwal, her husband Hari Om Agarwal and their son Lavi Agarwal assured to pay the aforesaid bank loan. The loan amount was Rs.9,65,000/- from Punjab National Bank, Badhapur. It is alleged that they have not paid the aforesaid loan amount.
5. Investigating Officer investigated the matter and has recorded the statement of the informant and witnesses of the fact, namely, Smt. Manju Tyagi-informant and witnesses Smt. Manisha Tyagi, Smt. Monika Tyagi, Mohit Tyagi and Satendra Tyagi under Section 161 Cr.P.C. Thereafter, the Investigating Officer submitted charge sheet against Applicants under Sections 406, 120-B I.P.C. on 3.6.2017.
6. Learned counsel for Applicants submits that the father of opposite party no.2 and Monika Tyagi was posted as Sub-Inspector at Police Station-Kotwali, Najibabad, Bijnor in the year 2015. Applicants are businessmen and they are carrying business at Najibabad, Bijnor. The father of opposite party no.2 stated to Applicant no.1 to sell abovenoted agricultural land. He concealed the fact of loan amount, taken upon the said agricultural land. The Applicant no.1 trusted upon the father of opposite party no.2 and gave Rs.10 lacs as advance amount for purchasing the aforesaid agricultural land. Thereafter, the

Applicant no.1 made a query from the revenue department and found that there is agricultural loan of Punjab National Bank upon the said agricultural land. The Applicant nos.1 and 3 requested to return the advance amount of Rs.10 lacs due to agricultural loan upon the aforesaid land. But the father of the opposite party no.2 denied to return the aforesaid advance amount.

7. It is further submitted by learned counsel for the Applicants that thereafter, Applicant no.1 had to compromise and got executed sale deed in his favour, executed by opposite party no.2 and her sister Manisha Tyagi and another sale deed in favour of his mother Smt. Rashmi Agarwal executed by another daughter of opposite party no.2-Monika Tyagi on 6.4.2015. It is true that the Applicant no.1 assured to pay the said loan amount as mentioned in the sale deed, but Applicants did not state to pay the said loan amount within specific period. The opposite party no.2 and his sister Monika Tyagi did not pay any amount in respect of aforesaid loan since 2013 till the execution of sale deed dated 6.4.2015. While the said loan was taken in the year 2013 as Rs.2,33,000/- in one account and Rs.2,33,000/- in another account and Rs.1,86,000/- in the third account. The total amount was Rs.6,52,000/- in the year 2013 and which at present was Rs.13,16,000/-.

8. It is further stated that Applicant nos.3 and 4 are neither the party of both the sale deeds nor they are witnesses of said sale deeds. They have no concern with the aforesaid sale deeds. They are falsely implicated in this present case due to their relation being the family. Applicant no.1 as well as Applicant no.2 did not deny to pay the said loan amount. Till the payment of loan amount the said land purchased by them cannot be free and without payment of loan their names cannot be recorded in the revenue record. The aforesaid Applicants are having possession of aforesaid land since the date of sale deed, but due to the aforesaid loan amount their name could not be entered in revenue records.

9. Applicant nos.1 and 2 were ready to pay the said loan amount. Applicant no.1 went to Punjab National Bank, Badhapur and gave an Application on 10.3.2017 to Manager, Punjab National Bank, Badhapur requesting to provide statement of account for payment of said amount. It is relevant to state here that the Manager returned the said application on ground that the said account has become NPA (Non Performing Asset) and after taking instruction regarding the loan amount, loan may be adjusted under the scheme of One Time Settlement (OTS). So the Applicant no.1 and 2 were trying to pay the said loan amount after OTS Scheme.

10. Thereafter, the bank concern made correspondence with the Applicants and settled the loan amount under the OTS scheme with the Applicant nos.1 and 2. In respect of OTS scheme the Applicant nos.1 and 2 deposited token amount in all three loan accounts (1) A/c No.059200ae00001229 in the name of Monika Tyagi (2) A/c No.059200ae00001210 in the name of Manju Tyagi Rs.1,00,000/- (3) A/c No.059200ae00001238 in the name of Manisha Tyagi Rs.1,00,000/- on 17.11.2017. The bank concern received the said amount and issued receipt of the same to Applicant nos.1 and 2 as token amount. After settlement under the OTS scheme the Applicant nos.1 and 2 paid rest amount Rs.1,18,000/- by cheque. The said amount was debited from the account of Shubham Agarwal and credited in the account of Monika Tyagi on 6.1.2018.

11. Thereafter, the Applicant nos.1 and 2 deposited rest amount under the OTS scheme in pursuance of settled amount Rs.4,58,000/-. The bank concern issued no dues certificate on 17.1.2018 in the name of Manju Tyagi, Manisha Tyagi and Monika Tyagi separately by closing the loan account under OTS scheme. Bank concern executed reconveyance deed on 20.1.2018 and released the mortgage land. Applicant nos.1 and

2 deposited the token amount of Rs.2,10,000/- in all three loan account on 17.11.2017 under the OTS scheme and after clearing the loan amount, the bank concern issued no dues certificate on 17.1.2018 after closing the loan account of 15.1.2018.

12. Learned A.G.A. has opposed this application and submits that the charge sheet has been rightly submitted and the applicants have been summoned in accordance with law. The applicants have not deposited the loan amount as per the agreement and as such the present application is liable to be dismissed.

13. Initially, a first information report dated 4.3.2017 was lodged at Police Station-Badhapur, District-Bijnor, under Sections 420, 406 I.P.C. against the Applicants-accused. The first information report was lodged by one Manju Tyagi. As per the allegations in the first information, it is alleged by the informant that on 6.4.2015 the informant Manju Tyagi and Manish Tyagi sold their agricultural land to Shivam Agarwal-accused. At the time of the aforesaid sale of the land, there was agricultural loan against the aforesaid land and the accused Shivam Agarwal & his father Hariom Agarwal had assured the sellers that they would deposit the loan amount with the bank and aforesaid fact was also recorded in the sale deed. On the same day i.e. 6.4.2015 the sister of the informant, namely, Monika Tyagi has also executed sale deed of their agricultural land in favour of accused-Rashmi Agarwal and, on the aforesaid land, also there was agricultural loan which was assured to be deposited by Rashmi Agarwal, Hariom Agarwal and Lavi Agarwal and the recital in respect of the same was also recorded in the sale deed. Subsequently, the informant receives notice from the bank for Rs 9,65,000/-. On repeated requests, the accused persons have not deposited the amount due with the bank. The accused persons are utilising the aforesaid amount in the business.

14. In pursuance to the above-mentioned first information report, the Investigating Officer has recorded the statement of informant-Manju Tyagi, Manisha Tyagi, Monika Tyagi, Mohit Tyagi, Satyendra Tyagi, who have supported the prosecution case. Thereafter, the Investigating Officer submitted chargesheet dated 3.6.2017 under Section 406 I.P.C. read with Section 120B I.P.C. The court concerned, thereafter, has taken cognizance on 8.11.2017.

15. The sale deed of land in question has been executed by Manisha Tyagi in favour of Shivam Agarwal on 6.4.2015. The aforesaid sale deed contains a recital that on debt/loan on the land in question would be paid by the purchaser. Similarly, on 6.4.2015 sale deed has been executed by Monika Tyagi in favour of Smt. Rashmi Agarwal. The aforesaid sale deed also contained a recital that debt/loan on the land in question would be paid by the purchaser.

16. The Applicants case is to the effect that the Applicant nos.1 and 2 were ready to pay the loan amount and, in this respect, went to the Punjab National Bank and applied on 10.3.2017 to the Manager of the Punjab National Bank for providing the statement of account for payment of the loan amount in question. The Manager concerned returned the aforesaid application informing that the account has become NPA (Non Performing Asset) and only after seeking instruction regarding the loan amount, the loan would be adjusted under the One Time Settlement (OTS) scheme of Bank. It is also stated by the Applicants that the Applicants repaid the loan amount in question under the OTS scheme of bank and a reconveyance deed was executed on 20.1.2018 and the bank concerned has also issued a No Dues Certificate on 17.1.2018 in the name of the sellers by closing the loan account.

17. The Applicants are being proceeded under Sections 406 and 120B of I.P.C. Section 406 of I.P.C. provides punishment for criminal breach of trust. The offence of criminal breach of trust is defined under Section 405 I.P.C. The said section provides whoever,

being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits criminal breach of trust.

18. Under Section 54 of Transfer of Property Act, Sale is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. In the present case, the ownership of the property in question was transferred in favour of the Applicants by the informant. The sale deeds in question contained a stipulation that in the event of any loan against the property, the purchaser would pay the loan. The expression entrustment of property signifies that the person was handing over the property to another person, the first person continued to be owner of the property in question. The sale of the property does not create any trust between the seller and the purchaser and the sale transaction imports transfer of ownership. The transfer of ownership implies that the purchaser has all the rights in respect of the property in question including the right to enjoy the property as he intends to. It is true that the sale deeds in question contains a stipulation with regard to the payment of the loan against the property by the purchaser of the property. The aforesaid condition in the sale deed was the terms of transfer of liability against the loan in favour of the purchaser and did not create any trust between the seller and the purchaser.

19. In the case of State of Gujarat Vs. Jaswantlal Nathalal, AIR 1968 SC 700 the supreme court has held as under:-

8. The term entrusted found in Section 405 IPC governs not only the words with the property immediately following it but also the words or with any dominion over the property occurring thereafter see Velji Raghvaji Patel v. State of Maharashtra[(1965) 2 SCR 429] . Before there can be any entrustment there must be a trust meaning thereby an obligation annexed to the ownership of property and a confidence reposed in and accepted by the owner or declared and accepted by him for the benefit of another or of another and the owner. But that does not mean that such an entrustment need conform to all the technicalities of the law of trust see Jaswantrao Manilal Akhaney v. State of Bombay[[1956] SCR 483, 498-500] . The expression entrustment carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. Further the person handing over the property must have confidence in the person taking the property so as to create a fiduciary relationship between them. A mere transaction of sale cannot amount to an entrustment. It is true that the Government had sold the cement in question to BSS solely for the purpose of being used in connection with the construction work referred to earlier. But that circumstance does not make the transaction in question anything other than a sale. After delivery of the cement, the Government had neither any right nor dominion over it. If the purchaser or his representative had failed to comply with the requirements of any law relating to cement control, he should have been prosecuted for the same. But we are unable to hold that there was any breach of trust.

20. It is to be noted that the sale deed in question did not provide any stipulation that the loan amount against the property in question was required to be paid by the purchaser-Applicants within a stipulated time period. The sale deed contains a general stipulation that any loan against the property in question would be paid by the purchaser. The Applicants have made a specific case that the loan amount against the

property in question have been paid to the bank and no dues certificate has been issued in this respect by the concerned bank. The pleadings in this respect are contained in paragraph 16, 17 and 18 of the affidavit filed in support of this application. The opposite party-State has not denied the aforesaid averments of the Applicants in their counter affidavit.

21. It is further to be seen that the Applicants have repaid the loan amount and has honoured the condition in the sale deed. Even otherwise, there was no entrustment of the property by the informant to the Applicants, in fact the ownership of the property was transferred by sale transaction. In the present case, there is no material or circumstance to demonstrate entrustment of property and in fact the present case is a case of sale transaction. If any condition of sale contract is violated by any party to the contract, the liability would be a civil liability and no offence under Section 406 I.P.C. would be attracted. More particularly, in the circumstances where the loan in question has been repaid by Applicants to bank concerned and the bank concerned has issued a no dues certificate. Further, it has not been shown by opposite parties that the Applicants dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which is made touching the discharge of such trust. Mere inaction in completing the stipulations of contract of sale without disposition of the property would not constitute an offence under Section 406 of the Indian Penal Code. The transaction alleged or omission on part of Applicant in the present case is founded on the violation of the terms of contract which is civil wrong.

22. In view of the facts and circumstances and reasons stated hereinabove, the present 482 Cr.P.C application is allowed and the criminal proceedings including chargesheet dated 3.6.2017 in Criminal Case No. 1702 of 2017 (State Vs Shivam and others) arising out of Case Crime No. 107 of 2017, under Sections 406 and 120B I.P.C, Police Station-Badhapur, District-Bijnor are hereby quashed.

Order Date :-03.9.2025 Bhaskar

Disclaimer: These contents are provided for informational/educational purposes only and are not official court-certified copies. For any legal or official use, please refer to certified records from the concerned court.

By downloading and using these documents, you agree that the platform, its developers, and publishers shall not be held responsible for any loss, claim, or consequence arising from the use of such content.