
(2013) 09 JH CK 0072

In the Jharkhand High Court

Case No : Criminal M.P. No. 1644 of 2010

Abhimanyu Prasad @ Abhimanyu Prasad Seth

APPELLANT

Vs

The State of Jharkhand and Another

RESPONDENT

Date of Decision : 18-09-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 415, 420

Citation : (2013) 09 JH CK 0072

Hon'ble Judges : R.R. Prasad, J

Bench : Single Bench

Advocate : Yogesh Modi, for the Appellant; R.A. Choubey, Advocate, for the O.P. No. 2, for the Respondent

Final Decision : Allowed

Judgement

R.R. Prasad, J.—Heard learned counsel appearing for the petitioner, learned counsel appearing for the State and learned counsel appearing for the Opp. Party No. 2. This application has been filed for quashing of the entire criminal proceeding of Complaint Case No. 589 of 2008 including the order dated 14.12.2009 passed by Sri Dinesh Kumar, learned Judicial Magistrate, Koderma, whereby and whereunder, cognizance of the offence punishable u/s 420 of the Indian Penal Code has been taken against the petitioner.

2. Before advertng to the submissions advanced on behalf of the parties, the case of the complainant needs to be taken notice of.

3. It is the case of the complainant that the petitioner entered into an agreement with the complainant for selling a shop for consideration amount of Rs. 1,10,000/-. As against that, a sum of Rs. 30,000/- was paid, as an advance and rest of Rs. 80,000/- was to be paid during the period of three years in installment and that apart, it was agreed upon that the complainant would also pay Rs. 600 per month to the petitioner. Thereafter, the complainant did pay further a sum of Rs. 39,000/- and thereby, in total Rs. 69,000/- was paid to the

petitioner. When rest of the money was not paid, a legal notice was given to the complainant by the petitioner, calling upon him to pay the entire money. According to the petitioner, that notice was replied after expiry of six months wherein the complainant put forth his point that he would be paying only Rs. 10,000/- towards rest of the amount. Thereafter, again a notice was sent to the complainant whereby excess demand than what was due to be paid by the complainant was made and it was stated that if the money is not paid, the agreement would be terminated.

4. On such allegation, a complaint was filed being Complaint Case No. 589 of 2008, alleging therein that the petitioner was committed an offence of cheating as he did not execute the sale deed, as had been agreed upon under an agreement. On such allegation, cognizance of the offence u/s 420 of the Indian Penal Code was taken against the petitioner, which is under challenge.

5. Mr. Modi, learned counsel appearing for the petitioner submits that accepting the entire allegation to be true, no offence of cheating is made out, as the petitioner can never be said to have misrepresented or defrauded the complainant.

6. As against this, learned counsel appearing for the Opp. Party No. 2 submits that the shop, in question, never belongs to the petitioner rather it belongs to the wife of the petitioner, which fact was never divulged by the petitioner at the time of agreement, though that fact was divulged later on and that a clear cut stipulation was there in the agreement that the petitioner would execute the sale deed, but instead of executing the sale deed, further demand was made, which was excess than the agreed upon and, thereby, the petitioner certainly committed offence of cheating.

7. In the context of the submission, one needs to be taken notice of the provision as contained in Section 415 of the Indian Penal Code, which reads as follows:-

Cheating-Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any persons shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind reputation or property, is said to "cheat.

8. From its reading, it appears that following ingredients should necessarily be there for constituting offence of cheating.

(1) there should be fraudulent or dishonest inducement of a person by deceiving him

(2) (a) the person so deceived should be induced to deliver any property to any persons, or to consent that any person shall retain any property or

(b) the person so deceived should be intentionally induced to do or omit to do

anything which he would not do or omit if he were not so deceived.

(3) in cases covered by 2(b) the Act or omission should be one which causes or is likely to cause damage or harm to the person induced in bodily or reputation or property.

9. Thus, the first element necessary for constituting the offence of cheating is a deception of the complainant by the accused. Unless there is deception, the offence of cheating never gets attracted.

10. Applying the principle constituting a criminal offence of cheating in the context of the allegation it does appear that first element of deception constituting an offence of cheating is lacking as nowhere the allegations made in the complaint do indicate about the complainant being deceived by the petitioners in any manner.

11. In this regard, it be stated that it is the stand of the complainant that shop in question never belonged to this petitioner, rather it belonged to the wife of the petitioner, this fact does not seems to have been divulged, but while the agreement was existing, this fact according to the complainant, was divulged. It further appears that initially agreement was there where it had been agreed upon by the parties that on making payment of a sum of Rs. 1,10,000/-, sale deed would be executed. According to the case of the complainant itself, that amount was never paid and, thereby, even if a sale deed has not been executed, the petitioner cannot be fastened with the liability of the offence of cheating.

12. Thus, I do find that the complaint lacks ingredient, constituting offence of cheating.

13. Accordingly, entire criminal proceeding of Complaint Case No. 589 of 2008, including the order dated 14.12.2009, taking cognizance is hereby quashed. In the result, this application is allowed.