
(2012) 04 JH CK 0032
In the Jharkhand High Court
Case No : Criminal M.P. No. 76 of 2012

Ajay Kumar Gupta @ Ajay Gupta

APPELLANT

Vs

The State of Jharkhand and Another

RESPONDENT

Date of Decision : 10-04-2012

Acts Referred:

Companies Act, 1956 — Section 21, 23, 23(3)
Penal Code, 1860 (IPC) — Section 120B, 406, 415, 420

Citation : (2012) 04 JH CK 0032

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : I. Sinha and A.K. Saha, for the Appellant; Shailesh, Advocate for the Opp. Party No. 2, for the Respondent

Final Decision : Allowed

Judgement

R.R. Prasad, J.—Heard learned counsel appearing for the petitioner, State and learned counsel appearing for the Opp. Party No. 2. This application has been filed for quashing of the entire criminal proceeding of C.P. Case No. 287 of 2010 including the order dated 23.09.2010 passed by learned Sub Divisional Judicial Magistrate, Dhanbad whereby and whereunder, learned Sub Divisional Judicial Magistrate, took cognizance of the offences punishable under Sections 406/420 and 120B of the Indian Penal Code against the petitioner.

2. The case of the complainant, as has been made out in the complaint petition, is that the complainant-a proprietor of M/s M.K. Refractories, situated at Kumhardhubi, Chirkunda, Dhanbad, which manufactures fire bricks, supplied fire bricks to M/s VSS Electro Cast Pvt. Ltd. worth Rs. 9,41,729.28/- but the said company never made any payment to the complainant on one pretext or other. Instead of making payment of the amount due to be paid to the complainant, the accused persons, got the name of the company changed from M/s VSS Electro Cast Pvt. Ltd. to SRC Metalic Pvt. Ltd. whereby and whereunder the accused Nos. 1, 2 and 3 became the Directors and the Additional Director of the said SRC

Metalic Pvt. Ltd.

3. On such allegations of committing offence of cheating and misappropriation, a case was registered as C.P. Case No. 287 of 2010 under Sections 406/420 and 120B of the Indian Penal Code.

4. On holding inquiry, the cognizance of the offences punishable under Sections 406/420 and 120B of the Indian Penal Code was taken against the petitioner. That order is under challenge.

5. Mr. Indrajit Sinha, learned counsel appearing for the petitioner submits that taking the entire allegations to be true, no offence is made out either u/s 406 or 420 of the Indian Penal Code, so far as this petitioner is concerned, as the petitioner has never been alleged to have mis-represented dishonestly and fraudulently to induce the complainant-company to deliver the goods. If the goods were delivered, for which no payment was made, it would be out and out a case of civil liability as for breach of contract, one cannot be fastened with criminal liability.

6. Learned counsel, in support of his submission, has referred to a decision rendered in a case of "Vir Prakash Sharma V. Anil Kumar Agarwal & Anr." reported in [(2007) 7 SCC 373].

7. As against this, Mr Shailesh, learned counsel appearing for the Opp. Party No. 2 submits that from the averment made in the complaint, it is crystal clear that the petitioner had had intention right from the beginning to cheat the complainant-company and the intention would be discernible from the fact that the accused persons got the name of the Company VSS Electro Cast Pvt. Ltd. to whom fire bricks was supplied, got changed as SRC Metalic Pvt. Ltd. and, thereby the petitioner cannot escape from criminal liability.

8. In the context of the submission advanced on behalf of the parties, one needs to take notice of the provision as contained in Section 415, which reads as follows:-

415:- 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.

9. 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 t

(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.

10. 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. After deception has been practiced the person deceived should get induced to do or omit to do something. Then, the question arises as to what is the deception ?

11. In the ordinary sense "deception" has in it the element of misleading or making a person believe something that is false or inculcating one so that he takes the false as true, the unreal as existent, the spurious as genuine and it is also necessary that deception should be right from the beginning of the contract.

12. Applying the principle constituting a criminal offence of cheating in context of the allegation made in the complaint, it does appear that first element of deception necessary to constitute an offence of cheating is lacking as nowhere the allegations have been made in the complaint which do indicate that the petitioner ever induced the complainant fraudulently or dishonestly to supply fire bricks.

13. However, at this stage, it be recorded that the argument was advanced that since the accused persons got the name of the company, to whom the complainant company had supplied goods, changed, it can easily be assumed that intention was there to cheat the complainant-company from the very beginning.

14. I do not find substance in the submission, as it has been well established that there should be intention to cheat or defraud right from the beginning. Any subsequent conduct adopted by the accused may not be taken to infer as to whether he had had intention to cheat the complainant right from the beginning.

15. In this respect, I may refer to illustration (g) of Section 415 of the Indian Penal Code, which read as follows:-

(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

16. Aforesaid illustration make it explicitly clear that in order to constitute an offence under Sections 415/420 of the Indian Penal Code, intention to defraud or

cheat should be there right from the beginning.

17. Therefore, if the company gets its name changed, which the company, in view of the provision as contained in Sections 21 and 23 of the Companies Act, has right to get its name changed, the company or its Director cannot be charged with any illegality particularly when the provision as contained in Section 23 (3) speaks that the change of name shall not affect any rights or obligations of the company.

18. Under the circumstances, I do find that necessary ingredients are lacking to constitute an offence of cheating.

19. Further, since there was no intention right from beginning to cheat or to misappropriate the amount, necessary ingredients for constituting offence of misappropriation is also lacking.

20. Accordingly, the entire criminal proceeding of criminal proceeding of C.P. Case No. 287 of 2010 including the order dated 23.09.2010, taking cognizance is, hereby, quashed, so far this petitioner is concerned.

21. As the case out and out seems to be civil dispute, the complainant, for redressal of his grievance, may take recourse available under the law. In the result, this application is allowed.