
(2013) 07 GAU CK 0029
In the Gauhati High Court
Case No : Criminal Revision No. 2 (K) 2010

Amit Saraogi and Another	Vs	APPELLANT
State of Nagaland and Another		RESPONDENT

Date of Decision : 04-07-2013

Acts Referred:

Citation : (2013) 5 GLT 506

Hon'ble Judges : N. Chaudhury, J

Bench : Single Bench

Advocate : C.T. Jamir, Mr. Wati Jamir, Mr. N. Longkumer, Mr. Akum Jamir, Mr. Wati Walling, Mr. L. Jamir and Mr. Temsu Walling, for the Appellant; K. Wotsa, Public Prosecutor, Nagaland and Mrs. A. Modi, for the Respondent

Judgement

N. Chaudhury, J.—By this application u/s 482 Cr.P.C., the petitioner has prayed for quashment of a Complaint Case registered as C.R. No. 6/2010 under sections 415/418/420/120-B/34 I.P.C. of the Court of the learned Judicial Magistrate First Class, Dimapur. The brief facts involved in this case are stated thus:

The Opposite party/Complainant No. 2 Shri Amit Kumar Jain initially filed a Consumer complaint before the District Consumer Forum at Dimapur in the year 2009 which was registered as Case No. CFD-06/2009. In the said complaint, the complainant stated that the present petitioners had purchased plastic scraps on 13.06.2008 and the goods were delivered to them at Guwahati. But the present petitioners did not pay the agreed rate and sum of Rs. 70,000/- in all was not paid to the complainant by which they were served with legal notice on 27.06.2009 asking them for balance payment within 15 days. The notice remained un-responded and even an intervention of Industrial Entrepreneurs' Association and All Dimapur Scraps Owners' Association, failed to yield any result.

2. At paragraph 8 of the Complaint, the Opposite party No. 2 (the complainant) stated as below:

8. That the said CFD case has been withdrawn by the complainant which has been allowed by the Hon"ble President Consumer Disputes Redressal forum vide order dated 13/04/10 which is annexed herewith marked as Annexure-5.

It is also averred therein that the Opposite Parties No. 1 and 2 have not complied with the terms and conditions and have acted extremely negligently in attending the complaint of the complainant and that they are liable to compensate for the loss and injury caused to them.

3. In the prayer of the said Consumer complaint, recovery of Rs. 70,000/- as principal, Rs. 2,000/- as compensation and Rs. 230/- as cost of legal notice was claimed.

4. In course of the said consumer proceeding, the President of the District Consumer forum issued a warrant of arrest against the present petitioners on 04.09.2009. It appears that on being slapped with such non-bailable warrant of arrest, the present petitioners had rushed to this Court by W.P. (C) No. 153(K) 2009 and thereupon this Court by order dated 16.2.2010 set aside the order dated 04.09.2009 and thus non-bailable warrant of arrest ceased to exist. By the said order this Court left the parties at liberty to approach the Court below for redressal of their grievances. Thereafter, on 13.04.2010, the Opposite Party No. 2 (Complainant) withdrew his complaint unilaterally with liberty to file the matter in the appropriate Court. The said order was ex-parte one. Thereafter, by April 2010 the Opposite Party No. 2 as complainant has filed Criminal complaint before the learned Chief Judicial Magistrate, Dimapur on the same subject matter. In para 5 of the complaint it has stated as follows:

5. That the accused persons have cheated the complainant by withholding the payments thereby causing undue financial loss to the complainant and mental harassment with sole intention to cheat the complainant.

The complainant was examined by the learned Magistrate and thereafter, cognizance was taken under sections 415/418/420/120-B/34 I.P.C. on 19.04.2010. On being served with summons in the said case for appearing before the learned Magistrate, the petitioners have approached this Court u/s 482 of the Cr.P.C. with prayer for quashment of the complaint.

5. I have heard Mr. C.T. Jamir, learned senior counsel for the petitioner and Mr. K. Wotsa, learned Public Prosecutor. None appears for the Opposite party No. 2.

6. The learned counsel Mr. Jamir argued that even if the statements made in the complaint are taken at face value, the same do not disclose the ingredients of Sections 415/418/420/120-B/34 IPC. Mr. Jamir had strenuously urged that except making a bald statement in paragraph 5 of the complaint that the accused persons have been withholding the money of the complainants and have cheated him, there is no other averment so as to show that the necessary ingredients of cheating under criminal conspiracy have been made out. While there is no averment in regard to conspiracy and that, too, after meeting of mind of the

accused persons taking of cognizance under said sections of law, namely section 120-B/34 IPC is unjustified and as such taking cognizance u/s 120-B IPC is liable to be quashed, argues learned counsel.

7. The learned counsel further argued that for making out offences u/s 418 and 420 IPC it is necessary to establish that there was an act of cheating within the meaning of section 415 IPC. Section 415 IPC is quoted below:-

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 person shall retain any property, or intention ally 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".

It is on these circumstances, the learned counsel asserts that in view of the law laid down by the Hon''ble Supreme Court in R.P. Kapur Vs. The State of Punjab, followed by catena of decisions including the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, the complaint in question is liable to be quashed.

8. Learned counsel Mr. Jamir has further argued that the dispute between the parties, if any, is essentially civil in nature and there is no element of criminality in it. The complainant admittedly initiated a civil action before the District Consumer forum in the year 2009 in regard to transaction of business in the year 2007. A bare perusal of the recital of the complaint before the District Consumer forum it appears that never before in the last 3 years the complainant made any accusation of criminal act or acts by the petitioner. All throughout it was the case of the complainant that he is entitled to recover Rs. 70,000/- being the balance amount of payment on the basis of the agreed rate.

9. Relying on the Judgment of Harshendra Kumar D. Vs. Rebatilata Koley Etc., the learned counsel asserts that the public document apparently genuine produced by accused person before the Court deserves consideration by High Court while deciding a case for quashment of the complaint u/s 482 Cr.P.C. So, Annexure A of this revision petition should be considered and in that event it would be clear that the dispute between the parties is nothing but a civil dispute without there being any element of criminality in it. The learned counsel has drawn my attention to para 26 of the Judgment in Hashendra Kumar (supra) and has submitted that the criminal prosecution is serious matter and no greater damage can be done to the reputation of a person than dragging him to court in a criminal case. According to the learned counsel, since the dispute is civil in nature and there is no element of criminality in it, the complaint petition is liable to be quashed u/s 482 Cr.P.C. In this regard, the learned counsel has relied on the Judgment of the Hon''ble Supreme Court in the case of Suneet Gupta Vs. Anil Triloknath Sharma and Others, In that case also a criminal action was sought to be initiated after expiry of 2 years from the date of alleged occurrence. Pointing

out the resemblance of facts of the said reported case to the same in the case in hand, the learned counsel argues that here in this case alleged violation of term to make full payment at agreed rate took place in the year 2007. After expiry of 3 years since then, even a Civil suit being not maintainable the Opposite party No. 2 has chosen to proceed in oblique manner in filing a criminal complaint and that, too, before the Court which apparently does not have territorial jurisdiction over the place of occurrence. Even if the statements made in the complaint are taken up at face value, the goods are delivered at Guwahati and the petitioners are residents of Guwahati and there is no statement that any part of cause of action has arisen outside Guwahati. According to Mr. Jamir, the proceeding is not maintainable before the Court of the learned Chief Judicial Magistrate, Dimapur. The learned counsel says that to establish the alleged offences it is required on the part of the complainant to show that there was an agreed rate for payment of the amount and that the petitioner failed to honour the said agreement, but there is no material whatsoever on record and there is no material fact either in the complaint or in the initial deposition that any settlement between the parties had taken place and that there was an agreement in regard to the rate for payment of price of the goods and as such there is no chance whatsoever for establishment of the allegation made in the complaint

10. Relying on the case of *Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandojirao Angre and Others*, the learned counsel submits that the action of the complainant being an oblique one amounts to abuse of the process of the Court and that a breach of trust being a civil wrong and in view of the factual position, chance of conviction is bleak and as such it requires quashment of the complaint case.

11. I have heard the learned Public Prosecutor on these points. It is clear from a bare perusal of Section 415 Cr.P.C. quoted above, that to constitute an offence of cheating there has to be -- (i) Deception of any person (ii) Fraudulent or dishonestly inducing him to deliver any property. The essential statements of facts to make out these ingredients are missing in the case in hand. If there is no allegation that the accused persons committed the deception fraudulently or dishonestly inducing the complainant to deliver a property no offence of cheating within the meaning of section 415 IPC can be said to have been made out. In this view of the matter the averments made in the complaint obviously do not disclose an offence u/s 415 and consequently offence under sections 418/420 IPC also cannot be said to have been made out.

12. After hearing the learned counsel for the parties and after perusal of the materials on records including the lower Court records I find that even if the statements made in the complaint are taken at face value, it cannot be said that the elements of sections 415/418/420/120-B/34 IPC have been disclosed. There is neither any allegation of inducement of the complainant by the accused persons nor is there any allegation of fraud and dishonest action on the part of the accused persons. A bare perusal of the statement made in the complaint as

well as initial deposition shows that the complainant sold plastic scraps to the accused persons and the sold goods were delivered at the place of the accused persons at Guwahati while the complainant is a resident of Dimapur. It also transpires from the statement that the accused persons have made some payment for the goods purchased by them. The complainant claims that he is entitled to a further sum of Rs. 70,000/- which according to the complainant is based on the agreed rate. There is no material whatsoever on record to show prima facie that an agreement in regard to rate was there. Annexure-A to the present revision petition shows that the accused persons claim to have made full payment to the complainant already and thus the dispute between the parties is only with respect to claim of the complainant for further payment. Obviously the dispute is civil in nature and there is no element of criminality involved in the present case even on the face of the statements made in the complaint as well in the deposition. In this view of the matter, I am constrained to hold that none of the offences under sections 415/418/420/120-B/34 IPC have been disclosed in the complaint and/or in the initial deposition. No element of criminality is discernible in the transaction held between the parties. Dispute, if there be any, between the parties is purely civil in nature. Consequently, continuance of the proceeding before the trial Court will amount to abuse of the process of the court and as such the same is liable to be quashed. Accordingly the C.R. Case No. 06/10 under sections 415/418/420/120-B/34 IPC pending in the Court of the learned Judicial Magistrate Dimapur is hereby quashed.

Send down the record immediately.

No order as to cost.