**(2012) 04 JH CK 0094**

**In the Jharkhand High Court**

**Case No :** Criminal M.P. No. 727 of 2007

Amrit Sagar Mittal APPELLANT

Vs

The State of Jharkhand and Another RESPONDENT

**Date of Decision :** 11-04-2012

**Acts Referred:**
Penal Code, 1860 (IPC) — Section 406, 420

**Citation :** (2012) 04 JH CK 0094

**Hon'ble Judges :** Rakesh Ranjan Prasad, J

**Bench :** Single Bench

**Advocate :** Rajesh Kumar, Advocate Mr. A.K. Sahani, for the Respondent

**Final Decision :** Allowed

## Judgement

R.R. Prasad, J.—Before the case was taken up for hearing, it was pointed out by Mr. Sahani that in this case he has been appearing on behalf of the Opp. Party No. 2, but in the order dated 25.11.2011, his name was wrongly recorded as counsel for the petitioner. It does appear that perhaps on account of inadvertence, the name of Mr. Sahani has been recorded against the name of the petitioner, in fact, his name should have been recorded against the name of the Opp. Party No. 2 on merit.

2. Heard learned counsel appearing for the petitioner and learned counsel appearing for the Opp. Party No. 2.

3. This application has been filed for quashing of the entire criminal proceeding including the order dated 19.9.2006 passed in Complaint Case no.197 of 2005 whereby and whereunder cognizance of the offences punishable under Sections 406 and 420 of the Indian Penal Code has been taken against the petitioner and others.

4. The complainant lodged a complaint case bearing C.P. No. 197 of 2005 stating therein that he had been awarded work by South Eastern Railway for construction of Spur & Guide Bund on left bank of river Koel. On getting work

 

order, the complainant approached the Regional Area Manager of M/s International Tractors for providing hydraulic tractor, dozer and other such machinery/equipments, who agreed to supply the same on payment of Rs. 27,45,372/-. M/s. Ashok Leyland Finance Limited on the request of the complainant, agreed to finance the complainant and thereby the payment of the amount was directly made to Sonalika International but the dealer never supplied tractor, dozer and other equipments in time, as a result of which, man force which was mobilized by the complainant remained sitting idle and thereby the complainant incurred heavy loss.

5. Further case is that when those materials were not supplied, the complainant even wrote to the petitioner, who happens to be Regional Area Manager of Sonalika International but nothing fruitful was done by this petitioner. However, after eight days. those materials were supplied but instead of supplying new accessories with machinery, it supplied machinery fitted with old accessories but dozer was not supplied, as a result of which, the progress of work got hampered.

6. Thereupon, a request was made to replace those materials but nothing was done. On such allegation, a case was registered under Sections 406 and 420 of the Indian Penal Code. On making enquiry, cognizance of the offences as alleged was taken which is under challenge.

7. Learned counsel appearing for the petitioner submits that accepting the entire allegations to be true, the petitioner-the Director of M/s International Tractors, cannot be said to have made any misrepresentation inducing the complainant dishonestly and fraudulently to part with the money and hence, no offence is made out against the petitioner.

8. As against this, Mr. Sahani learned counsel appearing for the Opp. Party No. 2 submits that the petitioner, happens to be the Managing Director of a Company, namely, Sonalika Tractor and hence, he was responsible for day-to-day affairs of the Company but this petitioner did not act upon a complaint made to him when the vehicles were not supplied in time and, therefore, the petitioner can be held liable for the offence under which cognizance has been taken.

9. Having heard learned counsel appearing for the parties and on perusal of the record, I do find that it has been admitted position that the complainant never entered into an agreement with this petitioner rather whatever agreement was there, it was there in between the complainant and the accused No. 1-the Regional Area Manager of Sonalika International.

10. Furthermore, the petitioner has never been alleged to have made any misrepresentation, inducing the complainant fraudulently and dishonestly to part with the money and, therefore, no offence either under Sections 406 or 420 of the Indian Penal Code gets attracted as against this petitioner.

11. So far theory advanced on behalf of the complainant that the petitioner can be held liable for the offence as alleged for the reason that he being a head of

 

the Company is supposed to have concerned with day-to-day affairs of the company.

12. I may respectfully say that in absence of anything in the statute, one cannot be held liable vicariously.

13. In this respect, I may refer to a case of Dinesh M.N. (S.P.) Vs. State of Gujarat, , wherein at paragraph 19, it has been observed as follows:

19. As, admittedly, drafts were drawn in the name of the company, even if the appellant was its Managing Director, he cannot be said to have committed an offence u/s 406 of the Penal Code. If and when a statute contemplates creation of such a legal fiction, it provides specifically therefor. In absence of any provision laid down under the statute, a Director of a company or an employee cannot be held to be vicariously liable for any offence committed by the company itself.

14. Under the situation, when there has been no allegation of any deception on the part of the petitioner, no case is made out either u/s 406 or 420 of the Indian Penal Code against the petitioner.

15. Accordingly, the entire criminal proceeding of C.P. Case No. 197 of 2005 including order dated 19.09.2006 taking cognizance, is hereby set aside. In the result, this application is allowed.