(2013) 03 JH CK 0028

In the Jharkhand High Court

Case No : Cr. M.P. No. 1129 of 2012

Awadhesh Kumar Pandey APPELLANT

Vs

The State of Jharkhand and Another RESPONDENT

Date of Decision : 20-03-2013

Acts Referred:

Citation : (2013) 03 JH CK 0028

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Judgement

Rakesh Ranjan Prasad, J.—Heard the parties. This application has been filed for quashing of the entire criminal proceeding of Complaint Case No. 168 of 2011, including the order dated 30.5.2012 passed by the then Chief Judicial Magistrate, Latehar, whereby and whereunder cognizance of the offence punishable u/s 420 of Indian Penal Code as well as u/s 138 of Negotiable Instrument Act has been taken against the petitioner.

2. The case of the complainant as it appears from the complaint is that the petitioner, an Income Tax Lawyer known to the complainant from before, approached to the complainant and conveyed him that the marriage of his daughter has been fixed for which he will presently require Rs. 3 lakhs and later on at the time of marriage more money would be required. He further told him that the money which would be paid by him, would be returned within two months. Believing the version of the petitioner to be true, a sum of Rs. 3 lakhs was paid to the petitioner. The marriage was to be solemnized on 5.3.2011. In the last week of February the petitioner again approached to the complainant and said that he could not arrange the money for marriage of his daughter and, therefore, a sum of Rs. 20 lakhs be given to him which he would be returning after two months. Again believing the version of the petitioner true, a sum of Rs. 14 Lakhs was given. After expiry of two months when the money was demanded, a cheque of Rs. 5 lakhs and another cheque of Rs. 9 lakhs were given to the complainant which on its deposit got dishonoured on account of insufficiency of

fund. Thereafter a legal notice was given. On receiving the notice, the petitioner again came and made promise to return the money within 15 days but subsequently a legal notice was sent whereby the petitioner denied that he had ever received money from him rather it was the petitioner who had given money to the complainant.

3. On such allegation, a compliant was lodged which was registered as Complaint Case No. 168 of 2011 u/s 420 of Indian Penal Code as well as u/s 138 of Negotiable Instrument Act in which cognizance of the offence as aforesaid was taken against the petitioner vide order dated 30.5.2012 which is under challenge.

4. Mr. Kashyap, learned senior counsel appearing for the petitioner, submits that accepting the entire allegation made in the complaint to be true, no offence is made out u/s 420 of Indian Penal Code, as the petitioner has never been alleged to have induced the complainant dishonesty and fraudulently to part with money and in such event, no case is made out u/s 420 of Indian Penal Code.

5. As against this, Mr. Rakesh Kumar, learned counsel appearing for the complainant, submits that it is not that the petitioner took money from the complainant once for which the case was lodged but earlier also in the year 2008 the money had been given but he never returned and in such situation, the case of cheating is made out and, therefore, the court has rightly taken cognizance of the offences punishable u/s 420 of Indian Penal Code and u/s 138 of Negotiable Instrument Act which never warrants to be quashed.

6. In context of the submission advanced on behalf of the parties, one needs to consider as to whether the allegation made in the complaint does constitute offence of cheating or not?

7. The offence of cheating has been defined u/s 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 by the person alleged to have deceived the complainant.

(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. After deception has been practiced the persons deceived should get induced to do or omit to do something. At the same time, it has also been held by the Hon''ble Supreme Court in number of cases that deception should be right from the beginning of the contract.

10. Applying the principle in 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 petitioner in any manner.

11. In a case of Iridium India Telecom Ltd. Vs. Motorola Incorporated and Others, the Hon''ble Supreme Court taking notice of Section 415 of the Indian Penal Code has been pleased to hold that deception is a necessary ingredient for the offence of cheating under both parts of the Section.

12. Thus, as I have noted above that there has been absolutely nothing in the entire complaint to show that the petitioner dishonestly and fraudulently induced the complainant to part with the money, no case of cheating is made out against the petitioner and thereby the court committed illegality in taking cognizance of the offence u/s 420 of Indian Penal Code.

13. Accordingly, that part of the order dated 30.5.2012 under which cognizance of the offence u/s 420 of Indian Penal Code has been taken against the petitioner, is hereby quashed.

14. So far as Section 138 of Negotiable Instrument Act is concerned, necessary ingredients are there for constituting the offence u/s 138 of Negotiable Instrument Act and as such, that part of the order dated 30.5.2012 taking cognizance of the offence u/s 138 of Negotiable Instrument Act never warrens to be interfered with. In the result, this application stands partly allowed.

