
(2015) 10 DEL CK 0183
In the Delhi High Court
Case No : Criminal Rev. P.762/2014

Babu Lal Aggarwal

APPELLANT

Vs

State (NCT of Delhi) and Others

RESPONDENT

Date of Decision : 06-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 227, 228, 239, 240
Penal Code, 1860 (IPC) — Section 120-B, 34, 40, 415, 418

Citation : (2015) 4 JCC 2567

Hon'ble Judges : Ashutosh Kumar, J.

Bench : Single Bench

Advocate : R.N. Mittal, Sr. Advocate and Suman Chaudhary, Advocate, for the Appellant; Alpana Pandey, APP and Harish Kumar, SI, for the Respondent

Judgement

Ashutosh Kumar, J.—Babu Lal Aggarwal, the informant of FIR No. 58/2013 (PS Palam Vihar) challenges the order dated 25.11.2014 passed by the learned Additional Sessions Judge-V, Dwarka Courts, Delhi, in Criminal Revision Petition No. 89/2014 whereby the charges framed against Respondent no.2 by the learned Metropolitan Magistrate, South-West District, Dwarka Courts, Delhi, on 26.02.2014 has been set aside and Respondent no.2 has been discharged.

2. The petitioner had lodged a written complaint on 17.12.2012 alleging that his neighbours Suresh Chand @ Mast Ram and Daya Nand Aggarwal insisted upon him for purchasing an agricultural land situated in a village at Haryana, which land stood in the name of Smt. Bina (Respondent no.2), who was stated to be the sister-in-law of Suresh Chand. Financial stringency and the need for raising funds were the avowed reasons for the insistence on purchase of the said plot of land from Respondent no.2. The petitioner agreed for purchasing the plot of land in question and in order to fix the deal, issued one cheque of Rs. 20 lacs and two cheques of Rs. 10 lacs each dated 15.06.2010 drawn on HDFC Bank, Gopi Nath Market, Delhi Cantt, New Delhi. The aforesaid cheques were issued in the name of Narender and Surender as Bina (Respondent no.2) was not having any bank

account. Two more cheques of Rs. 15 lacs each were also issued by the petitioner. The petitioner was assured that Respondent no.2 and others would execute a proper agreement for sale. The accused persons dilly-dallied in executing the agreement to sale despite receiving cheques but on persuasion for the same, a further demand of money in cash was made on the ground that the cheques issued by the petitioner had not been encashed by the accused persons. Believing the assertions of the accused persons, the petitioner paid Rs. 35 lacs in cash to Respondent no.2 and Suresh Chand at his residence in the presence of Daya Nand Aggarwal and others. A receipt was issued by Respondent no.2 of the said amount. An agreement to sale dated 27.07.2010 was executed which was signed by Suresh Chand and Daya Nand Aggarwal as witnesses.

3. The prosecution case is that at the time of execution of the agreement to sell, Respondent no.2 represented herself to be the owner and in possession of the property which was sought to be sold. A promise was made by Respondent no.2 and Suresh Chand that the cheques issued by the petitioner would be returned to him at the time of Registry of the conveyance deed.

4. A perusal of the agreement dated 27.07.2010 discloses that it was agreed upon between the parties that the sale deed would be executed on or before 20.04.2011. After the execution of the agreement, there was a further demand of money by Respondent no.2 and her brother-in-law Suresh Chand as they were in need of money. An amount of Rs. 10 lacs was given by way of two cheques of Rs. 5 lacs each which were drawn on Axis Bank, Palam Village from the account of the son of the petitioner. The aforesaid cheques were issued in the name of Rahul Kumar Sharma and Suresh Chand as till then, Respondent no.2 did not have any account.

5. A request was made by the petitioner to accept the balance amount and execute the sale deed but such request was avoided.

6. Later, the petitioner learnt that the property which was agreed upon to be purchased by him and against which the petitioner had made payment of Rs. 45 lacs to Respondent no.2 and Suresh Chand, did not belong to them and they were not the rightful owners of the said property.

7. On detection of such fraud, and on being confronted, a promise was made by the accused persons that the amount accepted by them would be returned in three installments. The petitioner had no option but to acquiesce.

8. When the aforesaid promise of return of the amount was not honoured, the petitioner filed the FIR (FIR No. 58/2013) on 22.02.2013 at PS Palam Vihar for the offences under Section 420 /448 /506 /34 of the IPC.

9. After the completion of investigation, chargesheet was submitted on 07.05.2013, sending up Respondent no.2 for trial. A supplementary chargesheet was also filed.

10. The learned Magistrate vide his order dated 26.02.2014 held that there was

a prima facie material to proceed against Respondent no.2 for the offences in which chargesheet was submitted. The charges were directed to be framed against the Respondent on 20.03.2014.

11. The Trial Court passed the aforesaid order on perusal of the police papers and found that prima facie case existed against the accused persons including Respondent no.2, which order was challenged by Respondent no.2 by way of revision.

12. The Revisional Court vide its order dated 25.11.2014 (impugned order) held that no case of cheating was made out and non-execution of the sale deed was primarily in the nature of a breach of contract and therefore a civil wrong. On the ground that the initiation of the criminal proceeding in the case would be an abuse of process of law, the order of learned Metropolitan Magistrate holding that prima facie case is made out against Respondent no.2 was set aside and the Respondent no.2 was discharged.

13. It has been contended on behalf of Respondent no.2 that at the stage of framing of charge under Section 227 /228 of the Cr.P.C., the Court was required to evaluate the material and documents on record with a view to find out as to whether, the facts emerging there from, taken on their face value disclose the existence of the ingredients constituting the offence alleged. Such exercise was not done by the Trial Court and the Revisional Court was, therefore, justified in setting aside such a cryptic order passed by the Trial Court. It has further been contended on behalf of Respondent no.2 that merely because Respondent no.2 entered into an agreement to sell, it would not create any offence as defined under Section 40 of the Indian Penal Code (for short "IPC").

14. For bringing home the offence punishable under Section 420 of the IPC, it has to be established that the offence of cheating has been committed and the ingredients of Section 415 of the IPC which defines the offence of cheating is fulfilled. It has been argued that there should be a dishonest or fraudulent intention at the time of making the promise for the purposes of causing inducement to deliver any property to any person.

15. Respondent no.2 asserts that there was no intention to cheat from the beginning. There is an essential difference between a breach of contract and an offence of cheating. There is no disclosure in the complaint or in the statement recorded under Section 161 of the Cr.P.C. of the petitioner about any document other than the agreement for the purposes of entering into an agreement. That apart, it has been urged, the payments made in advance by cheques were issued in the name of Narender and Surender and not Respondent no.2. This pre-supposes that the petitioner was aware of the rights and interests of Respondent no.2 in the said property when money was being invested. Thus, there was no inducement from the beginning and the grievance of the petitioner fell in the arena of civil wrong.

16. In *Hridaya Ranjan Pd. Verma and Others Vs. State of Bihar and Another*, ,

the Supreme Court after examining the definition of "cheating" opined that there are two separate class of acts which the persons deceived may be induced to do. In the first place, he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, the inducement may be fraudulent or dishonest. In the second class of acts, the inducement must be intentional but not fraudulent or dishonest.

17. In *Hirdaya Ranjan Prasad Verma & Ors. vs. State of Bihar & Anr.* (Supra), the Supreme Court elucidated as here under (SCC pg. 177) :

"15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.

16. Judged on the touchstone of the principles noted above, the present case, in our considered view warrants interference inasmuch as the ingredients of the offence of cheating punishable under Section 420 IPC and its allied offences under Sections 418 and 423 has not been made out. So far as the offences under Sections 469 , 504 and 120-B are concerned even the basic allegations making out a case thereunder are not contained in the complaint. That being the position the case comes within the first category of cases enumerated in *State of Haryana and others Vs. Ch. Bhajan Lal and others*, and as such warrants interference by the Court. Reading the averments in the complaint in entirety and accepting the allegations to be true, the ingredients of intentional deception on the part of the accused right at the beginning of the negotiations for the transaction has neither been expressly stated nor indirectly suggested in the complaint. All that Respondent 2 has alleged against the appellants is that they did not disclose to him that one of their brothers had filed a partition suit which was pending. The requirement that the information was not disclosed by the appellants intentionally in order to make Respondent 2 part with the property is not alleged expressly or even impliedly in the complaint. Therefore the core postulate of dishonest intention in order to deceive the complainant- Respondent 2 is not made out even accepting all the averments in the complaint on their face value. In such a situation continuing the criminal proceeding against the accused will be, in our considered view, an abuse of the process of the court. The High Court

was not right in declining to quash the complaint and the proceeding initiated on the basis of the same."

18. The present case, stands on a different factual footing. Respondent no.2 was not the owner of the property and there should have been no occasion for her to enter into any agreement to sell such property of which she is not the rightful owner. The fact that she accepted the money in cash but the cheques were asked to be issued in the name of Narender and Surender is, at this stage, a strong evidence to suggest that the intention to cheat was from the beginning.

19. In *State of Kerala Vs. A. Pareed Pillai and Another*, , the Supreme Court highlighted the ingredients of cheating as follows (SCC pg. 667) :

"16. It would follow from the above that it was not in pursuance of any representation regarding the consignment of oil tins to the railway that the bank gave credit to the firm of the accused for the amounts of the demand drafts. On the contrary, the amounts of demand drafts were credited in the account of the firm immediately on receipt of the demand drafts even though they were not accompanied by the railway receipts. The railway receipts were, no doubt, to be sent by the accused to the bank subsequently, but there is no cogent evidence to show that at the time when the accused sent the demand drafts they did not have the intention to send subsequently railway receipts in respect of oil tins which were actually delivered to the railways. The material on record indicates that more than 5000 oil tins were despatched to various stations from Alwaye railway station on behalf of the firm of the accused-Respondents during the period from February 2, 1963 to April 24, 1963. Those oil tins were appropriated by the railway authorities towards the railway receipts of earlier dates and were sent to various stations. The fact that more than 5000 oil tins were despatched on behalf of the firm of the accused to the various stations during the above period is hardly consistent with a dishonest intention on their part. It may be that the accused could not keep up the delivery of the oil tins to the railways and no tins could be despatched in respect of the said thirteen railway receipts but that fact can give rise only to a civil liability of the accused. It is not sufficient to fasten a criminal liability on them. To hold a person guilty of the offence of cheating, it has to be shown that his intention was dishonest at the time of making the promise. Such a dishonest intention cannot be inferred from the mere fact that he could not subsequently fulfill the promise."

20. In *G.V. Rao Vs. L.H.V. Prasad and Others*, , the Supreme Court has again held thus:

"7. As mentioned above, Section 415 has two parts. While in the first part, the person must "dishonestly" or "fraudulently" induce the complainant to deliver any property; in the second part, the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional. As observed by this Court in *Jaswantrao Manilal Akhaney*

Vs. The State of Bombay, a guilty intention is an essential ingredient of the offence of cheating. In order, therefore, to secure conviction of a person for the offence of cheating, "mens rea" on the part of that person, must be established. It was also observed in Mahadeo Prasad Vs. State of West Bengal, that in order to constitute the offence of cheating, the intention to deceive should be in existence at the time when the inducement was offered."

21. Similar view was expressed by the Supreme Court in S.W. Palanitkar and others Vs. State of Bihar and another, , wherein it was held that in order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise to say that he committed an act of cheating. A mere failure to keep the promise subsequently cannot be presumed as an act of leading to cheating.

22. The ingredients of the offence for cheating are:

I. There should be fraudulent or dishonest inducement of a person by deceiving him;

II. (a). The person who deceived should be induced to deliver any property to any person or to consent that any person shall retain any property; or

(b). The persons who 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; and

III. In cases covered by II (b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

In distinction to the above ingredients, for an offence of criminal breach of trust, the requirements are different.

23. Coming to the facts of the present case, the Respondent no. 2 is suspected to have cheated the informant in a planned manner as he was approached through his neighbors for purchase of such property. Later Respondent no.2 entered in the scene and executed an agreement to sell the property for a large sum of money as consideration. The demand of payment by cash, the plea of Respondent no.2 not having a bank account, not sticking to the schedule as agreed upon in the agreement, not showing up at the Registry office, on the appointed date for conveying Respondent no.2 not being the owner of the property which she agreed to sell and not keeping up the promise of even returning the amount to the petitioner, do make out a very strong case of cheating against Respondent no.2. The defence taken by the Respondent no.2 could be considered only at the trial.

24. In Md. Ibrahim and Others Vs. State of Bihar and Another, , the Supreme Court lamented about the growing tendency of the complainants in giving a cloak of criminal offence to matters which were essentially and purely of a civil flavor.

The Supreme Court identified the reason for doing so as well. Such effort is only for the purposes of putting pressure on the accused or for wreaking out vengeance or settling scores or putting the accused to harassment. However, the Supreme Court was not oblivious of the fact that in many cases, arising out a dispute of civil nature, there were ingredients of criminal offences also and the same was required to be looked into and tried as a criminal offence even if some part of such alleged action would fall in the domain of a civil dispute.

25. In *Arun Bhandari Vs. State of U.P. and Others*, , the Supreme Court has summed up very succinctly that sometimes a case may apparently look to be of a civil nature or may involve a commercial transaction but such civil disputes or criminal disputes in circumstances may also contain ingredients of criminal offences and such disputes have to be entertained notwithstanding that they are also civil disputes.

26. Thus, the distillate of the precedents is that primacy ought to be accorded to the intention of the person who induced the victim on his representation and not the nature of transaction. The nature of transaction will not be decisive factor in coming to the conclusion whether the offence has been committed or not.

27. What is necessary now to determine is whether the Trial Court was justified in holding that the prima facie case was made out against Respondent no.2. It has been settled by a long line of decisions that at the stage of framing of charge, a Court is required to evaluate the material and documents on record with a view to find out whether the offence alleged has been committed. The Court is not required to delve deep into the matter, fish out the probative value of the materials on record and hold a kind of mini trial. If there is strong suspicion against the accused, charges ought to be framed against him.

28. In *State of Karnataka Vs. L. Muniswamy and Others*, , a Three Judges Bench of the Supreme Court had observed that at the stage of framing the charge, the Court has to apply its mind to the question whether or not there is any ground for presuming the commission of the offence by the accused. Since framing of charge affects a person's liberty substantially, there is a need for a proper consideration of material before such an order is passed.

29. In *State of Maharashtra, Etc. Etc. Vs. Som Nath Thapa, Etc. Etc.*, , three pairs of sections of Cr.P.C. namely (i) Sections 227 & 228 (concerning sessions trial); (ii) Sections 239 & 240 (relatable to trial of warrant cases); and (iii) Sections 245(1) & (2) (summons cases), all of which dealt with the question of framing of charge or discharge, were discussed. At all the stages, it was held, that the probative value of the material of record could not have been gone into and only the materials brought on record by the prosecution had to be accepted as true, at that stage.

30. In a later decision in *State of Madhya Pradesh Vs. Mohanlal Soni*, , the Supreme Court referred to several previous decisions and crystallized the judicial view that at the stage of framing of charge, the Court has only to prima facie

consider whether there are sufficient grounds for proceeding against the accused.

31. The Trial Court, therefore, was absolutely justified in holding that a prima facie case was made out for trying Respondent no.2.

32. The Revisional Order cannot be sustained for the reasons afore recorded and therefore, has to necessarily go.

33. The order impugned is set aside.

34. The case is remitted to the Court of the learned Magistrate for proceeding with the trial of Respondent no.2 in accordance with law.