

(2010) 02 J&K CK 0020
In the Jammu And Kashmir High Court
Case No : 561-A No. 84 of 2006

Balwant Singh

APPELLANT

Vs

Manzoor Ahmad Ganai and Others

RESPONDENT

Date of Decision : 17-02-2010

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2010) 2 JKJ 368

Hon'ble Judges : Muzaffar Hussain Attar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Muzaffar Hussain Attar, J.—This petition is filed by one Balwant Singh who is named accused No. 1 in the complaint filed by the

Respondents against him and other person under Sections 415, 416, 417, 418, 419 and 420 RPC. The allegations which led to filing of the

complaint have been summarized in para 3 to 5 of the complaint which are reproduced as under:

3. That for some time the accused persons used to sent the medicines/items of their company to the complainants. However on 23.8.2004 the

complainant sent a draft for an amount of Rs. 40,000/- bearing draft No. 050401 dated 23.8.2004 and on 1.11.2004 another draft for an amount

of Rs. 30,000/- bearing draft No. 183648 dated 1.11.2004 to the accused No. 2.

4. That the accused persons after receiving the said drafts have not sent the required items of medicines. The complainants waited for some time

and thereafter contacted the accused persons and had lot of telephonic conservations but every point of time the accused persons were assuring

that the items will be delivered within days, but the accused persons till date failed to sent the said items.

5. That the accused persons have cheated the complainants and it has come to the knowledge of the complainant that the accused persons have

appointed some other person as distributor for their items for the Kashmir Valley and the said new dealer is selling the items.

2. On the basis of this complaint process was issued by the learned trial Magistrate against the Petitioner and other accused person. Petitioner

being aggrieved of the complaint has filed this petition seeking quashment of the same.

3. Heard learned Counsel for the parties. Considered the matter.

4. Learned Counsel for the Petitioner submitted that reading of the complaint in its entirety does not disclose commission of any offence. Learned

Counsel further submitted that there is not even any whisper in the complaint against the Petitioner for his involvement in any offence.

5. Learned Counsel for the Respondents submitted that the Respondents/ complainants have been cheated by the Petitioner and other accused

person. Learned Counsel referred to Section 415 of RPC Svt. 1989 (for short 'the Act of 1989') to persuade the Court that by reading the

averments made in the complaint it can be safely arrived at that the offence of cheating has been prima facie committed by the Petitioner. Section

415 of the Act of 1989 is reproduced as under:

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 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 of omission causes or is likely to cause damage or harm to that person in body, mind, reputation or

property, is said to ""cheat"".

6. It is alleged in the complaint that an amount of Rs. 70,000/- was sent to accused No. 2 through Bank Draft and the accused had to supply

medicine to the Petitioner which was not supplied and the complainants have been accordingly cheated. These are the allegations made in the

complaint.

7. Section 415 is attracted when it is alleged that 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 intentionally induces the person so deceived to do anything which he would not do if he were not so deceived, would constitute offence of cheating. Testing the allegations made in the complaint on the anvil of the language in which Section 415 is couched, it becomes clear that a person is said to have committed offence of cheating if he has fraudulently or dishonestly induced other person to deliver any property. It can be safely said that the complaint does not disclose any of the ingredients of the offence of cheating.

8. A conjoint reading of para 3 to 5 of the complaint does disclose that there has been transaction but same is of civil nature and on such allegations cognizance of the offence could not be taken by the learned Magistrate and even process should have not been issued against the accused persons.

9. Taking of cognizance of offence and issuance of process in a criminal case is a matter of moment and it affects valuable right to liberty of a person which is guaranteed by Article 21 of the Constitution of India. The moment cognizance of an offence is taken and process is issued the accused person is required to furnish the bail bonds/surety bonds and resultantly his liberty gets abridged. The Learned Magistrate has to be cautious and apply judicial mind when a complaint is presented before him to find out as to whether any offence is made out on reading it. The process cannot be issued in a casual manner.

10. As the complaint, which is sought to be quashed in this petition, on the face of it does not disclose commission of any offence, keeping it on the file of Learned Magistrate would tantamount abuse of process of Court.

11. For the above reasons this petition is allowed. Complaint titled Manzoor Ahmad Ganai and Ors v. Balwant Singh and Anr., pending on the files of Learned Judicial Magistrate 1st Class (City Munsiff), Srinagar, is quashed.