

(2015) 05 JH CK 0033

In the Jharkhand High Court

Case No : Criminal Revision No. 1200 of 2013

Bhanu Prasad Singh and Others

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 20-05-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 245
Penal Code, 1860 (IPC) — Section 211, 323, 341, 420

Citation : (2015) 3 JLJR 489

Hon'ble Judges : Ravi Nath Verma, J

Bench : Single Bench

Advocate : Rohit Roy and Nishant Roy, for the Appellant

Final Decision : Dismissed

Judgement

Ravi Nath Verma, J.—By the instant revision application, the petitioners have challenged the order dated 03.10.2013 passed by Smt. Archana Kumari, learned Judicial Magistrate, Ranchi in C-2179/09 whereby and whereunder the application filed by the petitioners under Section 245 of the Code of Criminal Procedure (in short "the Code") for their discharge has been rejected and the court below has fixed the date for framing of charges.

2. At the instance of present opposite party No. 2/complainant, the aforesaid complaint case was filed on the allegation that the petitioner No. 1 entered into the agreement with the complainant for purchase of 37 decimals of land on 09.06.2006 on a consideration amount of Rs. 1,48,000/-. Out of that an amount of Rs. 38,500/- has been shown to be paid to the complainant but in fact no such part consideration amount had ever been paid to him. The petitioner No. 1 had assured the complainant that he would apply for loan from a bank on the basis of the said agreement and after getting loan he would pay the entire consideration amount. It is also alleged that the complainant being uneducated person, believed on the assurance of petitioner No. 1 but when he approached the petitioner for payment, he denied to purchase the land and assured to return the

original agreement deed. Later on, the same petitioner approached the complainant to sale only 20 decimals of land out of 37 decimals which the petitioner No. 1 agreed to purchase for his acquaintance Chitrانjan Singh and Uma Singh whereafter a deed was executed and in the deed though it was mentioned that Rs. 1,00,000/- by cash has been paid as consideration amount to the complainant/opposite party but in fact only Rs. 55,000/- has been paid through bank draft. In the sale deed, petitioner No. 1 is also a witness. It is also alleged that the petitioners with a view to grab remaining 17 decimals of land of the complainant/opposite party filed a Complaint Case No. 389 of 2007 in the court of Chief Judicial Magistrate, Ranchi and the court after recording the evidence of the present petitioners took cognizance of the offence but subsequently the said complaint case was dismissed due to non-prosecution. It further appears from the record that on the basis of the above allegation the court after inquiry, took cognizance of the offence under Sections 323/341/211/420 of the Indian Penal Code and thereafter two witnesses have been examined before framing of charge. When the petition under Section 245 for discharge was filed by the petitioners, the same was rejected as indicated above.

3. Learned counsel for the petitioners assailing the order impugned as being erroneous further submitted that the dispute being civil in nature relating to transfer of land, allowing criminal proceeding to continue against the petitioners would tantamount to abuse of process of the court. It was also submitted that a Title Suit bearing No. 187 of 2009 is pending in the court of Sub Judge, Ranchi at the instance of the petitioners and the issues involved are almost similar in nature and only with an intention to force the petitioners to withdraw the said suit, this criminal case has been instituted and none of the ingredient responsible to constitute offence under Section 420 of the Indian Penal Code is available on the record. It was also submitted that the order impugned being cryptic and as no reason has been assigned, it is fit to be set aside and the petitioners deserve to be discharged.

4. At the very outset, it is necessary to discuss that on perusal of the complaint, it is apparent that there was an agreement to sale the land and the consideration amount was also fixed and out of that a sum has been shown to be paid to the complainant but actually no amount had ever been paid. It further appears that this petitioner had though assured the complainant that he would apply for loan from bank and after getting the said loan, he would pay the entire consideration amount but later on refused to purchase the land but again approached the complainant to sale part of the land to his acquaintance and the deed was executed and though in the deed the entire consideration amount was shown to be paid in cash but actually the less amount had been paid through bank draft. Apparently, the main offence alleged to have been committed by the petitioner is cheating, punishable under Section 420 of the Indian Penal Code. In a case of Hridaya Ranjan Pd. Verma and Others Vs. State of Bihar and Another, AIR 2000 SC 2341 : (2000) CriLJ 2983 : (2000) 3 JT 604 : (2000) 2 SCALE 694 : (2000) 4

SCC 168 : (2000) 2 SCR 859 : (2000) AIRSCW 2077 : (2000) 3 Supreme 13 the court while scanning the definition of cheating and breach of contract held as follows:

"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."

5. In another case State of Kerala Vs. A. Pareed Pillai and Another, AIR 1973 SC 326 : (1972) CriLJ 1243 : (1972) 3 SCC 661 : (1972) SCC(Cri) 705 the Hon"ble Supreme Court while dealing with the ingredients of cheating ruled as follows:

"To hold a person guilty of the offence of cheating, it is to be shown that his intention was dishonest at the time of making promise and such a dishonest intention cannot be inferred from mere fact that he could not subsequently fulfill the promise."

6. At this stage, it is not very difficult to come to a conclusion that sometime a case may apparently look to be of civil nature or may involve a commercial transaction but such civil disputes or commercial disputes, in certain circumstances may also contain ingredients of criminal offences and such dispute have to be entertained notwithstanding these are also the civil disputes. In this context, reliance can be placed upon a judgment of the Hon"ble Supreme Court in a case Md. Ibrahim and Others Vs. State of Bihar and Another, (2010) CriLJ 2223 : (2009) 11 JT 533 : (2009) 12 SCALE 250 : (2009) 8 SCC 751 : (2009) 9 UJ 4349 wherein the Hon"ble Supreme Court in Paragraph 8 has held as follows:

"This Court has time and again drawn attention to the growing tendency of the complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes. But at the same time, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes."

7. Before I proceed, it is seemly to refer one case M. Krishnan Vs. Vijay Singh and Another, (2001) 8 AD 494 : AIR 2001 SC 3014 : (2001) CriLJ 4705 : (2001)

8 JT 540 : (2001) 7 SCALE 126 : (2001) 8 SCC 645 : (2001) AIRSCW 4142 : (2001) 7 Supreme 397 wherein the Hon"ble Supreme Court has discussed as follows:--

"Accepting such a general proposition would be against the provisions of law inasmuch as in all cases of cheating and fraud, in the whole transaction, there is generally some element of civil nature. However, in this case, the allegations were regarding the forging of the documents and acquiring gains on the basis of such forged documents. The proceedings could not be quashed only because the respondents had filed a civil suit with respect to the aforesaid documents. In a criminal court the allegations made in the complaint have to be established independently, notwithstanding the adjudication by a civil court. Had the complainant failed to prove the allegations made by him in the complaint, the respondents were entitled to discharge or acquittal but not otherwise. If mere pendency of a suit is made a ground for quashing the criminal proceedings, the unscrupulous litigants, apprehending criminal action against them, would be encouraged to frustrate the course of justice and law by filing suits with respect to the documents intended to be used against them after the initiation of criminal proceedings or in anticipation of such proceedings. Such a course cannot be the mandate of law. Civil proceedings, as distinguished from the criminal action, have to be adjudicated and concluded by adopting separate yardsticks. The onus of proving the allegations beyond reasonable doubt, in a criminal case, is not applicable in the civil proceedings which can be decided merely in the basis of probabilities with respect to the acts complained of."

8. Relying upon the ratio decided in the above discussed cases, in my considered view, the present case false in the category which cannot be stated at this stage to be purely civil in nature from the allegations made in the complaint petition or what has come out in the deposition of the witnesses. Prima facie, there is an allegation that there was a guilty intention to deceive the complainant by showing payment of full consideration amount, but actually a less amount was paid. It is not a case where there is no substance in the complaint rather besides the complainant, two witnesses have been examined before framing of charge and both have supported the allegation made in the complaint and in my opinion the court below has rightly refused to discharge the petitioners finding prima facie case of sufficiency of materials available on record against them.

9. In view of the aforesaid discussions, I do not find any plausible ground to interfere with the order impugned. There being no merit, this revision application is, hereby, dismissed. However, I must clarify that I have not expressed any opinion on the merits of the case one way or the other and any observation made by this Court must be construed limited to the question of discharge or framing of charge. The learned Magistrate shall decide the case on its own merit without being influenced by any observation made in this order.