
(2015) 04 JH CK 0097

In the Jharkhand High Court

Case No : Criminal M.P. No. 246 of 2011

Bharat Vyas and Others

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 245, 464, 467, 471
Penal Code, 1860 (IPC) — Section 120B, 323, 405, 406, 420

Citation : (2015) 3 AJR 4

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Indrajeet Sinha, for the Appellant

Judgement

Rakesh Ranjan Prasad, J.—Heard learned counsel appearing for the petitioners, learned counsel for the State and the learned counsel appearing for O.P. No. 2.

2. Initially, this application was filed for quashing of the order dated 15/09/2009, passed by the then S.D.J.M., Jamshedpur, in C/1 Case No. 1759 of 2007, whereby and whereunder the petition filed under Section 245 of the Code of Criminal Procedure, for discharge was rejected, which was affirmed by the learned Sessions Judge, East Singhbhum, vide its order dated 12/01/2011. Subsequently, when the charges were framed under Sections 420/120B, 406/120B, 467/120B, 427, 504, 323, 506 of the Indian Penal Code, vide order dated 09/05/2011, that order was also challenged.

3. The case of the prosecution, as has been made out in the complaint petition, is that initially there was a Firm known as " Chhotelal G. Vyas and Sons" to which Chhotelal G. Vyas and his son Bharat Vyas (petitioner No. 1) were the partners. After the death of Chhotelal G. Vyas, which occurred in the year 2001, his son petitioner No. 1 started claiming the said Firm as his Proprietorship Firm though after the death of Chhotelal G. Vyas his other sons and family members had interest over the properties of the Firm.

Further case is that one Firm known as M/s. Bharat Packaging Industries, situated over the Plot No. A-3, was a partnership Firm to which petitioner No. 1 was never the partner, still he, after the death of his father Chhotelal G. Vyas, claimed to be the proprietor of the said Firm though petitioner No. 1, one of the sons of Chhotelal G. Vyas, was never even a partner to that Firm. The said Firm was surrendered to AIADA by petitioner No. 1 claiming himself to be the sole proprietor and, thereby, the other partners or the family members of Chhotelal G. Vyas suffered injuries.

Further case is that one other Firm known as "Bharat Engineering and Refractories Industries, was a partnership Firm to which petitioner No. 1 had never been a partner, still he by claiming himself to be one of the proprietors made an application before AIADA for its transfer to another Firm, which has been formed by him alongwith his wife.

Further allegation is that petitioner No. 1 when appeared before the Women's Commission in a case which was lodged by the complainant-the mother of petitioner No. 1, made statement before the Women's Commission that he is trying to revive the Industries, whereas he submitted an application before AIADA to the effect that he has formed a new partnership Firm consisting of petitioner No. 1, Ram Swarup Goyel, Binod Kumar Bhukania and Rakesh Bali and all these mischief was done by petitioner No. 1 after taking away the documents relating to those Firms surreptitiously or stealing away those documents.

Further allegation is that the rent collected from the joint house properties was kept by the petitioners with themselves and misappropriated it and even petitioner No. 1 had assaulted the complainant and under the circumstances, allegation was made that the petitioners committed the offence of forgery, cheating as well as offence under Sections, 427, 504, 323, 506 IPC.

4. When cognizance of the offences was taken, the petitioners did appear and filed an application under Section 245 Cr.P.C for discharge, which was rejected. Against that order, a revision was preferred before the Sessions Judge, which also got dismissed and all those orders have been challenged before this Court. While the matter was pending, even the charges were framed, which order was also challenged.

5. Mr. Indrajeet Sinha, learned counsel appearing for the petitioners submits that accepting the entire allegations made in the complaint to the effect that the petitioners claimed the partnership Firm as his proprietorship Firm, to be true, no offence is made out either of forgery or cheating as the petitioners have never misrepresented to the complainant, rather petitioner No. 1, who was having interest in the properties, simply claimed to be the proprietor though as per the case of the complainant he was neither proprietor nor even the partner but even then no offence is made out of forgery and cheating. In support of his submissions, learned counsel has referred to a decision rendered in a case of 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 .

6. As against this, Mr. Manish Kumar, learned counsel appearing for the complainant- O.P. No. 2 submits that it is the case of the complainant that one Firm named as "Chhotelal G. Vyas and Sons" was there to which Chhotelal G. Vyas and his one of the sons-petitioner No. 1 were the partners. After the death of Chhotelal G. Vyas, all the other sons and family members derived interest but petitioner No. 1 claimed the said Firm as his proprietorship Firm and, thereby, right of the other persons, who were having interest in the properties of the Firm, was denied and was put to wrongful loss. Further, it was submitted that the petitioners fraudulently surrendered the properties of one Firm M/s. Bharat Packaging Industries standing over Plot No. A-3 to AIADA by claiming himself to be the proprietor though he was neither the proprietor nor he was even the partner to that Firm and similarly, one other Firm namely M/s. Bharat Engineering and Refractories Industries, standing over Plot No. A-31, was claimed by the petitioner No. 1 to be his proprietorship Firm though he was not even the partner or the proprietor, still he submitted an application before AIADA for transferring land to a partnership Firm consisting of petitioner No. 1 and his wife (petitioner No. 2) and, thereby, the complainant by the act of the petitioners suffered loss and, hence, the case is made out of cheating and forgery. Further, it was submitted that after the charges were framed even three prosecution witnesses have been examined and, therefore, under the circumstances, this is not the stage to interfere with the orders impugned.

7. In the context of the allegations and the counter allegation, it is to be seen as to whether offence of forgery and cheating is made out or not?

8. In this context, I would straight away referred to a decision rendered in a case of 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 Their Lordships have laid down the proposition under which case of forgery and cheating is made out. In this regard, I may refer to the observations made in Para- 16 and 17, which reads as under:--

"16. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The Second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of " false documents", it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or

executed.

17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted."

9. Thus, it appears that if a person executes a document though he is not the owner of the property but claiming bonafidely that property belongs to him, he cannot be said to have executed a forged documents. Here in the instant case whatever documents have been executed before AIADA or any other authority the petitioners have claimed the property of their own. It is never the case that the petitioners by impersonating someone else have executed the documents and, thereby, even if the petitioners had submitted an application either for transfer of the properties or had claimed themselves to be the proprietor of the Firm, the petitioners cannot be said to have submitted the false documents. In that view of the matter, no offence of forgery is made out.

10. Going further in the matter it never happens to be the case of the complainant that the petitioners ever made any misrepresentation before the complainant. In that view of the matter, offence under Section 420 IPC is also not made out as the following three ingredients of the offence of cheating is absent:--

"(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;

(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property."

11. Further, I do find that even the offence of criminal breach of trust is not made out. Criminal breach of trust has been defined in Section 405, which reads as follows:--

"405. Criminal breach of trust - Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust".

12. From its perusal, it does appear that if one is entrusted with the property or is given dominion over the property and if he dishonestly misappropriates or convert to his own use that property or dishonestly uses or disposes of that property in violation of any direction of law of legal contract, he can be said to have committed criminal breach of trust.

13. Here it is never the case of the complainant that the petitioners had been given dominion over any property of the Firm, rather petitioner No. 1 is claiming himself to be the sole proprietor, whereas according to the complainant he was not even partner over those properties and that there has been no contract in between the parties to act in a particular manner.

14. Under the circumstances, I do find even the offence under Section 406 IPC is not made out. However, from the allegations made out in the complaint, I do find that the offence is made out under Sections 323, 427, 504 and 506 of the Indian Penal Code.

15. Accordingly, that part of the order dated 09/05/2011, under which charges have been framed under Section 420/120B, 406/120B and 467/120B of the Indian Penal Code, is hereby set aside.

In the result, this application is allowed, but in part.