
(2009) 09 JH CK 0005
In the Jharkhand High Court
Case No : Criminal M.P. No. 1066 of 2006

Bimal Prasad

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 08-09-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 406, 415, 417

Citation : (2011) 1 JCR 267

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prashant Kumar, J.—In both the applications, Petitioners prayed for quashing the entire criminal prosecution in connection with Complaint Case No. 507 of 2006 pending in the Court of Judicial Magistrate. 1st Class, Ranchi. Petitioners further pray for quashing the order dated 20.6.2006 whereby and whereunder learned Court below took cognizance of the offence under Sections 417 and 406 of the IPC.

2. As both the cases arose from same complaint petition and similar points have been raised for determination, therefore, they are heard together and are disposed of by this common order.

3. The case of complainant in brief is that the RITES Ltd. had obtained a contract for consultancy and project management services for overhead transmission line in the State of Jharkhand. It is further stated that the RITES Ltd. awarded sub-contract of the Ramjee Structures Pvt. Ltd. (complainant) to undertake the work. It is further stated that as per the agreement between complainant and RITES Ltd., the complainant is required to furnish a Bank guarantee of Rs. 1,81,250/- towards security deposit and is further required to furnish another Bank guarantee of Rs. 1,25,000/- in lieu of mobilization advance. It is further alleged that in view of the condition of agreement, Petitioners furnished two Bank

guarantees of Rs. 1,81,250/- and Rs. 1,25,000/- and deposited the same with Mr. A.K. Chopra, General Manager (RE), RITES Ltd. at Gurgaon. It is further stated that in terms of the contract, the complainant further handed over three mobile phones and also paid Rs. 3,000/- to these Petitioner for connection of mobile sets with stipulation that the same will be returned to the complainant after completion of the work. It is alleged that even after furnishing of the Bank guarantee, the RITES had not released the mobilization advance, though several requests have been made in that regard. It is further stated that ultimately on the direction of Mr. A.K. Chopra, General Manager (RE), RITES Ltd. and Mr. B.K. Agrawal. Managing Director. RITES Ltd., Petitioner Bimal Prasad rescind the agreement. It is further alleged that thereafter on 26.9.2005 and 19.1.2006 the aforesaid two Bank guarantees were invoked by the RITES Ltd. and they encashed the said amount. It is also alleged that after rescind of contract, the complainant requested the Petitioners for returning of the mobile sets and Rs. 3,000/- but the accused persons declined to return it. Accordingly, the present complaint filed for prosecuting RITES Ltd. and accused Nos. 1 to 4 including the Petitioners for offences under Sections 406 and 417 of the IPC.

4. It appears that after enquiry, learned Judicial Magistrate took cognizance of the offences and directed to issue summon to the Petitioners and RITES Ltd. Against that the present application has been filed.

5. It is submitted by Sri Binod Poddar, Senior Advocate that no offence under Sections 406 and 417 of the IPC is made out against Petitioners. It is submitted that from the plain reading of entire complaint petition, statement of complainant on S.A. and statements of witnesses, it is clear that no property entrusted to these Petitioners. It is further submitted that the complainant admitted that the Bank guarantees furnished in favour of RITES and deposited with Mr. A.K. Chopra, General Manager (RE), RITES at Gurgaon on the direction of officers having their office at Gurgaon. It is further submitted that witnesses stated that as per the contract they have given three mobile phones and Rs. 3,000/- as connection charge to RITES Ltd. Thus, it is submitted that there is no entrustment to these Petitioners and therefore the offence of criminal breach of trust is not made out. It is further submitted that there is no allegation against these Petitioners that they have induced the complainant for entering into an agreement with the RITES Ltd. Thus, complainant had not furnished or deposited the Bank guarantees with the RITES Ltd. on being induced by Petitioners. Under the said circumstances, no offence u/s 417 of the IPC is made out. It is then submitted that the dispute between the parties is purely civil dispute for non-performance of contract i.e. for not releasing the mobilization advance. It is submitted that the complainant had filed a civil suit in the Court of Senior Civil Judge, Tis Hazari Courts. Delhi for declaration that the alleged invocation of Bank guarantees in question is illegal, void and unenforceable. In the said suit the complainant also prayed for injunction for restraining the RITES Ltd. from encashing the aforesaid two Bank guarantees. It is submitted that the said suit has been dismissed on 13.3.2006 for non-prosecution. It is submitted that the

aforesaid fact has been suppressed by the complainant with some ulterior motive. Accordingly, it is submitted that the present criminal proceeding against the Petitioners is an abuse of the process of Court, which cannot be sustained.

6. On the other hand, Mr. Pandey Niraj Rai appearing for the complainant (opposite party No. 2) submits that just after the agreement, the complainant furnished and deposited two Bank guarantees on the instruction of Petitioners at Gurgaon office. It is further submitted that the said instruction given by the Petitioners amounts to dishonest inducement because the Petitioners are knowing that even after furnishing of Bank guarantees the RITES Ltd. is not going to release mobilization advance. It is further submitted that the three mobile phones handed over to the Petitioners and Rs. 3,000/- also paid to them as connection charges. It is submitted that as per the contract the Petitioners are required to return the said mobile phones, after completion of the work, but even on demands, the Petitioners declined to return the mobile phones. Accordingly, it is submitted that the offences under Sections 406 and 417 of the IPC are made out. It is submitted that it is well settled that only because civil law can be taken recourse to would not necessarily mean that the criminal proceeding should be barred. It is submitted that though civil liability is made out under the Contract Act, but criminal case can also be filed. It is further submitted that the Court below had rightly taken cognizance against the accused persons, which requires no interference by this Court.

7. Having he(sic)d the submissions, I have gone through the record of the case. It is admitted by the complainant in its complaint petition that the RITES Ltd. is a Government Company. Mr. B.K. Agrawal, Managing Director and Mr. A.K. Chopra, General Manager (RE), RITES Ltd. are directly responsible for day-to-day affairs of RITES Ltd. and they are the decision taking authority. It is also an admitted position that Petitioners are employees of the RITES Ltd. posted at Ranchi and they are looking into the affairs of RITES Ltd. in the State of Jharkhand. It further appears that the complainant had entered into an agreement with the RITES Ltd. and as per the agreement he deposited two Bank guarantees with Mr. A.K. Chopra, General Manager, RITES Ltd. at Gurgaon. It is also an admitted position that as per the agreement, three mobile phones were given to the RITES Ltd. and Rs. 3,000/- as connection charges. The witnesses including the complainant had stated in the Court below that on the instruction of Officers at Gurgaon, the Bank guarantees deposited at Gurgaon with Mr. A.K. Chopra. CW-1. at paragraph No. 7 of his deposition had categorically stated that complainant had given three mobile phones and Rs. 3,000/- as connection charges to RITES Ltd. Thus from the material available on record, it is clear that the Bank guarantees deposited with Mr. A.K. Chopra, General Manager at Gurgaon and mobile phones and Rs. 3,000/- had been given to RITES Ltd.

8. In *S.K. Alagh v. State of U.P. and Ors.*, reported in 2008 (4) ECC 11: 2008 (2) SC 152 their lordships of Supreme Court at paras 16 and 17 held as follows:

16. Indian Penal Code, save and except some provisions specifically providing

therefor, does not contemplate any vicarious liability on the part of a party who is not charged directly for commission of an offence.

17. A criminal breach of trust is an offence committed by a person to whom the property is entrusted.

9. As noticed above no property has been entrusted to these Petitioners therefore, simply because they are employees and looking into the affairs of RITES Ltd. for the State of Jharkhand, they cannot be held vicariously liable for the offence u/s 406 of the IPC. Hence, I find that no offence u/s 406 of the IPC is made out.

10. Section 415 of the IPC defines of the offence of cheating which is as follows:

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 or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

11. Thus an offence of cheating cannot be made out unless the following ingredients are fulfilled:

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

(ii) fraudulently or dishonestly inducing any person to deliver any property; or

(iii) to consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

12. In the instant case, there is no averment in the complaint petition to show that at any point of time these Petitioners induced the complainant for entering into a contract with RITES Ltd. The complainant in his S.A. simply stated that RITES awarded sub-contract to Ramjee Structures and as per the agreement, the complainant company deposited two Bank guarantees in the office of RITES on the instruction/direction of the officers of RITES at Gurgaon. CW 1 stated that RITES Ltd. have nominated the complainant company for sub-contract and according to the sub-contract two Bank guarantees deposited with the RITES Ltd. through Mr. A.K. Chopra, General Manager having his office at Gurgaon. Thus, there is no evidence on record to show that the said Bank guarantees furnished with the RITES on the inducement of these Petitioners.

13. Under the said circumstance, I find that ingredients for the offence of cheating are missing in the instant case.

14. Even if all the averments made in the complaint petition are taken to be correct, no case under Sections 417 and 406 of the Indian Penal Code is made

out against the Petitioners, because there is nothing on record to show that Petitioners fraudulently or dishonestly induced the complainant for delivery of any property, nor there is any iota of evidence to show that the said properties entrusted with the Petitioners, which they converted into their own use. From the allegations made in the complaint petition it appears that a civil dispute exists between the parties for nonperformance of contract for which the remedy lies in the civil Court. It appears that the complainant had rightly filed a suit before Senior Civil Judge, Tis Hazari Courts, Delhi, but Annexure-14 reveals that the same had been dismissed for non-prosecution.

15. As discussed above, the present complaint petition and initiation of proceeding on the basis of said complaint petition is an abuse of the process of Court, therefore, the same cannot be sustained.

16. In the result, both the aforesaid applications are allowed. The entire criminal proceeding including the order taking cognizance in connection with a Complaint Case No. 507 of 2006 pending in the Court of Sri Anand Prakash, Judicial Magistrate, 1st Class, Ranchi is quashed.