**(2005) 01 MP CK 0014**

**In the Madhya Pradesh High Court**

**Case No :** Miscellaneous Cri. Case No. 5206 of 2003

Cadbury Schweppes Beverage India Pvt. Ltd. APPELLANT

Vs

State of M.P. RESPONDENT

**Date of Decision :** 25-01-2005

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120B, 34, 420

**Citation :** (2005) 4 MPLJ 20 : (2005) 4 RCR(Criminal) 743

**Hon'ble Judges :** S.L. Jain, J

**Bench :** Single Bench

**Advocate :** Rajendra Singh and Anoop Nair, for the Appellant; J.K. Jain, Government Advocate for State and Manish Datt, for the Respondent

**Final Decision :** Allowed

## Judgement

S.L. Jain, J.

Invoking extraordinary jurisdiction of this Court u/s 482 of the Code of Criminal Procedure (hereinafter referred to as the ''Code'') the petitioners have filed this petition for quashing the First Information Report (hereinafter referred to as the ''FIR'') registered as Crime No. 18/01 dated 8-1-2001 in police station Govindpura, Distt. Bhopal for the offences punishable u/s 420 read with sections 34 and 120-B of the Indian Penal Code (hereinafter referred to as the ''Indian Penal Code'')

Facts leading to filing of this petition succinctly narrated are thus :

i. The petitioner No. 1 was a company registered under the Indian Companies Act having its registered office at 502, Veer Savarkar Marg, Prabhadevi, Mumbai. From 24-11-1999, the Company is known as Georges Beverages India Pvt. Ltd. and has its registered office at 13, Silk House, 630, Shankar Seth Road, Mumbai. The company having sold its brands to a subsidiary of Coca Cola Company is currently not engaged in any business. At the time of the alleged commission of offences the Company was engaged in the business of manufacturing and sale of syrups which were used in the manufacture of certain non-alcoholic beverages sold in India under various brand names.

ii. At the time of alleged commission of the offence, the second to fifth petitioners were office bearers in the first petitioner''s Company and were the Chairman, Finance Director, Managing Director and General Manager Finance respectively.

iii. Sometime in the month of November, 2000, a Criminal Complaint came to be filed by one Sanjiva Bottling Company Pvt. Ltd. through its Director Rajiv Mehta in the Court of Judicial Magistrate, First Class, Bhopal alleging the commission of offences under sections 420/34 and 120-B of the Indian Penal Code by the petitioners.

iv. It was alleged in the complaint that the first petitioner had failed to make a payment of Rs. 2,43,794.00 (Two lacs forty three thousand and seven hundred ninety four only) to one M/s Universal Glass Ltd, which had supplied bottles to Sanjiva Bottling for the said amount. And thus cheated Sanjiva Bottling by causing to it wrongful loss.

v. Earlier, one other complaint was filed by Sanjiva Bottling against the present petitioners and some other persons on 24-7-2C00 in the Court of Judicial Magistrate, First Class, Bhopal with regard to an agreement entered into between the parties. The offences alleged were those u/s 420, 120-B and 511 of the Indian Penal Code. The learned Magistrate referred the complaint to the police for investigation u/s 156(3) of the Code.

vi. On 31-10-2000, police submitted a report in this case stating that the case was of civil nature and that no offence had been committed by the accused persons.

vii. The learned Magistrate, however, came to the conclusion that the report filed by the police was not in the correct format as prescribed by the rules and directed the police to file it in the correct format vide order dated 16-11-2000.

viii. Pursuant to the order of the Magistrate, the police not only registered complaint filed on 24-7-2000 as Crime No. 5/2001 but on its own registered the present complaint filed on 23-11-2000 as Crime No. 18/2001 and once again started the investigation.

ix. It is the case of the applicant that the complaint which was registered as Crime No. 18/2001 fails to disclose the commission of any offence. The FIR is bald and does not assign any individual or overt act on any of the accused persons. From the reading of the FIR no criminal act can be made out. The only allegations in the complaint are that the accused persons wanted to cause wrongful loss to the complainant and the letters of the complainant are not properly replied. In the complaint the complainant only stated that the accused persons want to cause wrongful loss. It fails to mention that wrongful loss has in fact been caused. x. It is averred in the petition that the entire money which was debited from the account of the complainant has already been paid to M/s Universal Glass Ltd. which destroys the entire foundation of the case. A copy of the letter dated 9th December, 1998 issued by M/s Universal Glass acknowledging the receipt has been filed with the petition. It has been also pleaded in the petition that there is no allegation whatsoever in the FIR with regard to the conspiracy. It has been stated that the allegations made by the complainants are purely of a civil nature and the disputes if any, are governed by the Rules of Arbitration of the International Chamber of Commerce. As per the agreement dated 1-3-1996, referred in the complaint disputes in connection with the agreement were required to be referred to the Arbitration. The complainant has infact invoked the Arbitration Clause and had issued a notice to the petitioners. The petitioners submit that the complaint has been filed to unduly pressurise and harass the petitioners all of whom are residing outside from the jurisdiction of the Court of Bhopal in a dispute clearly of civil nature.

I have heard Dr. Rajendra Singh, Senior counsel with Shri Anoop Nair counsel for the applicants, Shri J. K. Jain, Government Advocate for the State and Shri Manish Datt, counsel for respondent No. 2.

Dr. Rajendra Singh, learned senior counsel appearing for the applicants submitted that there is absolutely no allegations in the complaint that the applicants at any time made any kind of misrepresentation to the complainant/ respondent No. 2 or had asked it to do or omit to do anything and as such, no offence u/s 420 of the Indian Penal Code is made out against them. It has thus been urged that the allegations made in the complaint, even if accepted at its face value, do not disclose the commission of any offence by the applicants and, therefore, the proceedings of the complaint case and also the FIR lodged against the applicants are liable to be quashed.

The learned Government Advocate appearing for the State of M. P. and Shri Manish Datt, Advocate for respondent No. 2 submitted that the allegations made in the complaint and the FIR disclose commission of an offence u/s 420 of the Indian Penal Code by the applicants and the case has been registered at police station and investigation being carried out.

I have given my careful consideration to the submissions made by the learned counsel for the parties. It may be stated at the very outset that the main allegations made in the complaint are against petitioner No. 1.

Cheating has been defined u/s 415 of the Indian Penal Code and it says 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 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''.

 

A guilty intention is an essential ingredient of the offence of cheating. In other words ''mens rea'' on the part of the accused must be established before he/they can be convicted for an offence of cheating Jaswantrai Manilal Akhaney Vs. The State of Bombay, .

In Mahadeo Prasad Vs. State of West Bengal, , the Apex Court held thus :

where the charge against the accused is u/s 420 in that he induced the complainant to part with his goods, on the understanding that the accused would pay for the same on delivery but did not pay, if the accused had at the time he promised to pay cash against delivery an intention to do so, the fact that he did not pay would not convert the transaction into one of cheating. But if on the other hand he had no intention whatsoever to pay but merely said that he would do so in order to induce the complainant to part with the goods then a case of cheating would be established.

In Hari Prasad Chamaria Vs. Bishun Kumar Surekha and Others, it was held that unless the complaint showed that the accused had dishonest or fraudulent intention at the time the complainant parted with the money it would not amount to an offence u/s 420 of the Indian Penal Code and it may only amount to breach of contract. Similar view has been expressed by the Apex Court in G.V. Rao Vs. L.H.V. Prasad and Others, . Thus, in order to constitute an offence of cheating the intention to deceive should be existing at the time when the inducement was offered.

The only allegation in the complaint is that the petitioners had failed to make a payment of Rs. 2,43,794 to M/s Universal Glass Ltd. which had supplied bottles to Sanjiva Bottling for the said amount. The petitioners have alleged that the entire money which was debited from the account of the complainant was paid to M/s Universal Glass Ltd. Copy of the letter dated 19-12-1988 issued by M/s Universal Glass acknowledging the receipt of the amount which is claimed to have been fraudulently retained by the petitioners has been filed. Even if it is accepted that the money has not been paid, it will at the most be a civil liability.

A breach of contract or a breach of faith is not a criminal offence. Where no dishonest intention is alleged in business contract and only allegation is of deceit due to betrayal of confidence, it does not constitute an offence of cheating. Failure to pay the amount within stipulated period is no criminal offence where there is no allegation of criminal intention of the accused at the time the act is said to have been committed. The matter should not be allowed to be continued in the Criminal Court. Failure to return consideration of agreement does not constitute a criminal offence. In such matters there is an alternative remedy available to the aggrieved party of invoking the jurisdiction of the Civil Court.

The question which now arises is that whether the complaint or the FIR which does not disclose commission of a cognizable offence can be quashed at the initial stage?

 

In State of West Bengal and Others Vs. Swapan Kumar Guha and Others, it was held that the FIR which does not allege or disclose that the essential requirements of the penal provision are prima facie satisfied, cannot form the foundation or constitute the starting point of a lawful investigation. It is surely not within the province of the police to investigate into a report which does not disclose the commission of a cognizable offence and the Code does not impose upon them the duty of inquiry in such cases. It was further held that an investigation can be quashed if no cognizable offence is disclosed by the FIR. The same question has been considered in State of Haryana and others Vs. Ch. Bhajan Lal and others, .

As mentioned earlier, the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute any offence as against the applicants. Therefore, the FIR registered against the applicants is liable to be quashed.

In the result, the petition is allowed. The FIR registered as Crime No. 18/2001 against the applicants is hereby quashed.