

(2024) 02 JH CK 0009

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 1516 Of 2018

Dharamveer Garg And Others

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 01-02-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 405, 406, 415, 420

Citation : (2024) 02 JH CK 0009

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Amit Kumar Das, Lily Sahay, A.K. Sahani, Ajit Kumar

Final Decision : Allowed/Disposed Of

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Amit Kumar Das, learned counsel for the petitioners, Mrs. Lily Sahay, learned counsel for the State and Mr. A.K. Sahani along with Mr. Ajit Kumar, learned counsel for opposite party no.2.

2. This petition has been filed for quashing of the entire criminal proceeding in connection with Complaint Case No.443 of 2016 including the order dated 15.12.2016, pending in the Court of the learned Judicial Magistrate, 1st Class, Ramgarh.

3. The complaint case was filed by opposite party no.2 on 16.09.2016 relating to occurrence of 05.06.2016, 10.08.2016, 24.08.2016 and 12.09.2016 alleging therein that petitioner nos. 1 and 2 are relatives and petitioner no.2 is running a grocery shop in Chati Bazar, Ramgarh and is known to the complainant having business transaction. On 05.06.2016, petitioner no.2 asked the complainant to lend a sum of Rs.50,000/- and on request the complainant gave the same to the petitioner no.2 on condition of return of the money within two weeks. Petitioner no.1 stood guarantor to the said transaction. However, money was not returned.

On 10.08.2016, all the petitioners threatened the complainant and demanded Rs.2 Lakhs. The complainant was also manhandled on 12.09.2016 when all the petitioners stopped the vehicle of the complainant and assaulted him by fists, legs and danda and also removed a sum of Rs.50,000/- and some documents from the vehicles. On hulla, the petitioners fled away.

4. Mr. Amit Kumar Das, learned counsel for the petitioners submits that the present case has been filed against the petitioners as a counter blast of Ramgarh P.S. Case No.329 of 2016, which was filed by petitioner no.1 against the complainant alleging therein that the complainant along with 9 other persons have conspired to create a forged deed and got it registered by playing fraud, in which, the petitioner no.1 was the informant and other petitioners were witnesses in the said case. He submits that by way of retaliation, the present case has been filed against the petitioners. He further submits that petitioner nos. 1, 2 and 5 are businessmen, petitioner no.3 is a Government Teacher posted at Bokaro, whereas, petitioner no.4 is an old ailing person aged more than 72 years. He also submits that in between 10.09.2016 to 18.09.2016, petitioner no.1 was travelling to New Delhi, which is apparent from Annexure-3 of the petition. He submits that petitioner no.3 is the Teacher in Government School and on the alleged date, he was discharging his duty. He refers Annexure-4 of the petition, which is the attendance register relating to petitioner no.3. He also submits that the allegation that petitioner no.2 had taken loan from the complainant, is false as there was no necessity for petitioner no.2 to take loan. He is a man of means and is an income tax payee. He refers income tax returns relating to petitioner no.2, annexed at Annexure-5 of the petition. He submits that petitioner no.4 is an old ailing person and at that time, his lower limbs and waist were fractured, but he has also been made accused. He refers medical reports relating to petitioner no.4, contained in Annexure-6 of the petition. On these grounds, he submits that the entire case has been maliciously filed against the petitioners as a counter blast case.

5. Mr. A.K. Sahani, learned counsel for opposite party no.2 submits that the allegations are there and in view of that, the learned Court has rightly taken cognizance against the petitioners. He submits that at this stage, this Court may not interfere sitting under Section 482 of Cr.P.C.

6. Mrs. Lily Sahay, learned counsel for the State submits that the case is arising out of complaint case.

7. It is an admitted position that petitioner no.1 has filed the case being Ramgarh P.S. Case No.329 of 2016 against opposite party no.2, who is complainant. Rest of the petitioners were witnesses in that case and all have been implicated as accused in the present complaint case.

8. Further, even an old ailing person, who is petitioner no.4 and who was having fracture on his limbs and waist, was also implicated as one of the accused in the present case. Annexure-6 is the medical reports relating to petitioner no.4.

Petitioner no.1 was travelling on the alleged date of occurrence, which is apparent from reservation ticket of Railways, contained in Annexure-3. Petitioner no.3 was discharging his duty on the relevant date, which is apparent from the attendance register, contained in Annexure-4 of the petition. Further, the allegation was made that the loan was taken by petitioner no.2. It is also admitted that the complainant was knowing petitioner no.2 and for recovery of the aforesaid amount, the present complaint case was filed.

9. Section 405, 406, 415 and 420 of the Indian Penal Code was considered by the Hon'ble Supreme Court in the case of Satishchandra Ratanlal Shah v. State of Gujarat and another, reported in (2019) 9 SCC 148, wherein, in paragraphs 11 and 13 it has been held as under:

"11. Having observed the background principles applicable herein, we need to consider the individual charges against the appellant. Turning to Section 405 read with Section 406 IPC, we observe that the dispute arises out of a loan transaction between the parties. It falls from the record that Respondent 2 knew the appellant and the attendant circumstances before lending the loan. Further it is an admitted fact that in order to recover the aforesaid amount, Respondent 2 had instituted a summary civil suit which is still pending adjudication. The law clearly recognises a difference between simple payment/ investment of money and entrustment of money or property. A mere breach of a promise, agreement or contract does not, ipso facto, constitute the offence of the criminal breach of trust contained in Section 405 IPC without there being a clear case of entrustment.

13. Now coming to the charge under Section 415 punishable under Section 420 IPC. In the context of contracts, the distinction between mere breach of contract and cheating would depend upon the fraudulent inducement and mens rea. (See Hridaya Ranjan Prasad Verma v. State of Bihar [Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168 : 2000 SCC (Cri) 786] .) In the case before us, admittedly the appellant was trapped in economic crisis and therefore, he had approached Respondent 2 to ameliorate the situation of crisis. Further, in order to recover the aforesaid amount, Respondent 2 had instituted a summary civil suit seeking recovery of the loan amount which is still pending adjudication. The mere inability of the appellant to return the loan amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, as it is this mens rea which is the crux of the offence. Even if all the facts in the complaint and material are taken on their face value, no such dishonest representation or inducement could be found or inferred."

10. In view of the above, so far as the present case is concerned, if any case is made out i.e. civil in nature in view of the fact as narrated hereinabove. How the case has been instituted against the petitioners, clearly suggests that the case was maliciously filed against the petitioners.

11. In view of the above facts, reasons and analysis, the entire criminal proceeding in connection with Complaint Case No.443 of 2016 including the order dated 15.12.2016, pending in the Court of the learned Judicial Magistrate, 1st Class, Ramgarh are quashed.

12. Accordingly, this petition is allowed in above terms and disposed of.