(2004) 11 CHH CK 0011

In the Chhattisgarh High Court

Case No : Misc. Criminal Case No. 1835 of 2003

D.P. Dhawad — APPELLANT

Vs

S.C. Jain — RESPONDENT

Date of Decision : 05-11-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 482
Penal Code, 1860 (IPC) — Section 34, 415, 420

Citation : (2004) CriminalCC 781

Hon'ble Judges : Vijay Kumar Shrivastava, J

Bench : Division Bench

Advocate : B.P. Sharma, for the Appellant; Prashant Jaiswal, for the Respondent No.1, Mr. Dashrath Gupta, Government Advocate, for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

V.K. Shrivastava, J.—Being aggrieved by the order dated 8.4.2003 passed by Chief Judicial Magistrate, Dhamtari I Criminal Case No.396/2003 (S.C.Jain vs. Antony Samy and others) whereby cognizance of offence u/s 420 read with Section 34 of the I.P.C. has been taken against all the petitioners and issuance of notice to them have been ordered, this petition for quashing the said order and proceeding pending before Chief Judicial Magistrate in that criminal case has been filed.

2. Complainant/respondent No. 1 S.C.Jain was a partner is Siddarth Rice Mill, a registered partnership concern and the said Rice Mill was a customer of Bank of Baroda, Branch Dhamtari Bank of Baroda has sanctioned a term loan of Rs.25 lacs to the Firm Siddharth Rice Mill also sanctioned a cash credit limit of Rs.4 Lakhs in the year 1992. The Firm Siddharth Rice Mill several times approached Bank of Baroda to enhance the limit of Rs.4 lacs to Rs. 12 lacs. At the relevant time, Petitioner No.3, Antony Samy was posted as Branch Manager of Bank of Baroda at Branch Dhamtari, Petitioner No.2, T.C.Tekam was posted as field

Officer of that branch and petitioner No.1, D.P.Dhawad was posted at Regional Office of the Bank at Raipur. All the petitioners, on 29.3.1996, came to Siddharth Rice Mill and told the complainant that they had increased the cash credit limit by Rs.8.00 lacs which has now become Rs. 12.00 lacs and as a security, requested for a cheque of Rs. 10 lacs and assured Respondent No.1 and all other partners of the firm that that the cheque will only be retained by them as a security for the loan and shall not be used or misused in any manner. On their assurance, a cheque of Rs.10 lacs was issued under the signature of B.C.Jain, a partner of Siddharth Rice Mill on behalf of the firm and was handed over to Antony Samy, petitioner No.1, who in support of their assurance gave a letter in writing, but petitioners obtained the said cheque along with Term Loan Deposit slip and on the same day i.e., 29.3.1996 deposited the said cheque in the term loan account of Siddharth Rice Mill. As a result of that, the cash credit limit of that partnership firm reduced from Rs. 12 lacs to Rs.2 lacs, and owing to that Siddharth Rice Mill suffered damages and the working of Mill also disturbed. The petitioners always kept on assuring the respondent No.1 that they would correct the account by adjustment, but instead of doing so have now called upon the firm to liquidate the entire balance in cash credit loan.

3. On these allegations, a complaint against petitioners has been filed in the Court of Chief Judicial Magistrate, who after recording the statement of respondent No.1 u/s 200 of the Cr.P.C. ordered for enquiry by Superintendent of Police Dhamtari, Superintendent of Police, Dhamtari got the matter enquired and submitted his report to the Court. Chief Judicial Magistrate, after taking into consideration the statement of complainant and the enquiry report held that petitioners, while posted at Bank of Baroda, Dhamtari Branch, fraudulently obtained cheque from Respondent No.1 and his partnership firm and after fraudulently obtaining a cheque of Rs.10.00 lacs loss was caused to the respondent No.1 and in this way there is prima facie material on record for taking cognizance of an offence u/s 420/34 of the I.P.C. against the petitioners, and therefore, vide order dated 8.4.2003, a case against petitioner has been registered and issuance of notice has been ordered.

4. For quashing the criminal proceedings pending in a Court, if the case arises out of a complaint, following are the criteria laid down by Hon''ble the Apex Court in State of Haryana and others Vs. Ch. Bhajan Lal and others, -

xxxxx xxxxx xxxxx xxxxx

1. Where the allegations made in the First information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. xxxxxxxxxx xxxxx xxxxx

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. xxxxxxxxxx xxxxx xxxxx

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously, instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

5. Respondent No. 1, in his written complaint, has made allegation against all the petitioners stating that on 29.3.1996, all the petitioners came to his Rice Mill, and by inducing, obtained a cheque of Rs.10 lacs duly signed by B.C.Jain, one of the partners of Siddharth Rice Mill, but in his statement u/s 200 of the Cr.P.C., he has deposed that D.P.Dhawad and Antony Samy, on telephone asked him to hand over a cheque of Rs.10 lacs and assured to increase the cash credit limit from Rs.4 lacs to Rs.12 lacs, he declined to issue the cheque and also asked to clarify why a cheque of Rs.10 lacs is being demanded from him. Thereupon Bank of Baroda gave a letter dated 29.3.1996 and by that letter it was informed that the cheque is being demanded as a security for increasing cash credit limit and they told that the said cheque will not be utilized in any of our loan account. He also deposed that thereafter on the same day the Bank of Baroda transferred the amount of the said cheque in their Term Loan Account and increased the cash credit limit from Rs.4.00 lacs to Rs.12.00 lacs. Now on 5.2.2002 the Bank had given a letter asking repayment of loan of Rs.33.00 lacs against cash credit account and in this way officers of Dhamtari Branch of Bank of Baroda committed fraud.

6. The letter has been issued by the Branch Manager, Bank of Baroda, Branch Dhamtari on 29.3.1996, wherein it was informed to B.C.Jain, the partner of Siddharth Rice Mill that they are processing the matter of enhancing cash credit limit and to enhance the same, they asked to give a cheque of Rs.10 lacs with depositing the same, in term loan deposit slip and also promised that the Bank would never present this cheque as it is just a security measure. Superintendent of Police, in his enquiry report, disclosed that a cheque of Rs.10 lacs by applicants (Siddharth Rice Mill) and a cheque of Rs.1 lac issued by Poonam Cloth Stores have been issued and tendered to Antony Samy and others towards security amount. It was also reported that Branch Manager although has declined that he signed and issued the letter yet a letter dated 29.3.1996 has been issued in the photo copy of letter head of Bank of Baroda under seal and signature.

7. From the averment of complaint, statement of complainant u/s 200 of the Cr.P.C. and from the enquiry report, prima facie there was material that Branch Manager, Dhamtari, petitioner No.3 induced the partners of Siddharth Rice Mill to issue a cheque of Rs.10 lacs in favour of term loan deposit with deposit slip and assured that the same will be kept intact as a security amount and will not be deposited in his cash credit account, and as result of that, Siddharth Rice Mill issued a cheque of Rs.10 lacs and handed it over to the Bank of Baroda, Branch Dhamtari.

8. It is not disputed that the said cheque was deposited on the same date in the cash credit account of Siddharth Rice Mill and thereby a payment of Rs.10 lacs from cash credit account was made by transfer to a term loan account of Siddharth Rice Mill. Prima facie, it is evident that the cash credit limit of Rs.12 lacs as unveiled in arguments, was reduced by Rs.10 lacs. It is also not in dispute that during the period of transaction, Antony Samy petitioner No.3 was the Branch Manager of Bank of Baroda, Branch Dhamtari.

9. Petitioner No.1, D.P.Dhawad actually met, with respondent No.1, S.C.Jain and asked to give a cheque of Rs.10 lacs, to substantiate it the complainant/ respondent No.1-S.C.Jain in his deposition, did not state a single word. As regards petitioner No.2, T.C.Tekam, how he was involved in this transaction of issuance of cheque of Rs.10 lacs nothing has been unveiled by complainant S.C.Jain in his statement. Therefore, as regards petitioner No.1, D.P.Dhawad and petitioner No.2. T.C.Tekam, allegation levelled against them there was neither any evidence nor any material to substantiate the same. As regards petitioner No.3, Antony Samy who was Branch Manager, Bank of Baroda at the relevant time. From the statement of complainant u/s 200 of the Cr.P.C. and from the enquiry report, the allegation that by inducing Siddharth Rice Mill to deliver a cheque of Rs.10 lacs and to keep it as security amount and not to deposit the same against any account, he in the capacity of Branch Manager of the Bank, has played important role and prima facie not only oral but in writing he gave assurance and obtained a cheque of Rs.10 lacs from Siddharth Rice Mill duly signed by one of its partners on 29.3.1996 and got the same cheque deposited in cash credit account of Siddharth Rice Mill.

10. The relevant Sections of I. P.C. i.e., Section 415 and Section 420 of the I.P.C. are reproduced below:-

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".

Explanation.-A dishonest concealment of facts is a deception within the meaning of this section.

420. "Cheating and dishonestly inducing delivery of property-Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

11. Petitioners'' contention is that for the sake of argument, if it is believed that cheque of Rs. 10 lacs has been obtained from Siddharth Rice Mill, then also the same has been deposited in the account of Siddharth Rice Mill and nothing has been obtained by the petitioners towards their personal gains, therefore, their act and conduct do not come within edifice of any offence. This argument has no force because Siddharth Rice Mill had a account with Bank of Baroda under cash credit limit as well as under term deposit. Siddharth Rice Mill certainly, by depositing of this cheque prima facie sustained a loss of enjoyment of Rs. 10 lacs on the date of its deposit and thereafter. If there would be no assurance, it was difficult for a man of prudence to issue such a cheque. Therefore, obtaining a cheque of Rs. 10 lacs by inducement and on false assurance and thereafter in violation of assurance depositing the same against cash credit limit of Siddharth Rice Mill, prima facie establishes the ingredients of Section 415 of the I.P.C. and as cheque of Lacs has been delivered, therefore, the offence u/s 420 of the I.P.C. comes into picture.

12. I am of the opinion that, Chief Judicial Magistrate in Criminal Case No.396/2003 vide order 8.4.2003 took cognizance of offence u/s 420 read with Section 34 of the I.P.C. against petitioner Nos.1 and 2 did commit illegality as there appears nothing to connect both these officers with the crime and therefore, the said order and criminal proceeding against petitioner Nos.1 and 2 are causing miscarriage of justice, but as regards petitioner No.3, Antony samy, the order passed by Chief Judicial Magistrate is neither unauthorized, illegal nor will cause miscarriage of justice to petitioner No.3, whatever contentions he has raised all those are virtually his defence and that can only be raised during trial and are not to be considered at this stage.

13. The petition, filed u/s 482 of the Cr.P.C. by the petitioners, is party allowed. The order, taking cognizance and criminal proceeding pending against petitioner Nos. 1 and 2, namely D.P.Dhawad and T.C.Tekam respectively, are quashed, but the order taking cognizance and proceeding with case against petitioner No.3, Antony Samy, maintained.

