(2021) 03 JH CK 0140

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 4117 Of 2019

Dr. Jayantilal V. Gada @ Jayantlal Gada — APPELLANT

Vs

State Of Jharkhand And Ors — RESPONDENT

Date of Decision : 15-03-2021

Acts Referred:
Indian Penal Code, 1860 — Section 34, 405, 406, 415, 420, 506

Citation : (2021) 03 JH CK 0140

Hon'ble Judges : Ananda Sen, J

Bench : Single Bench

Advocate : Rupesh Singh, Rajesh Kumar

Final Decision : Allowed

Judgement

1. In this criminal miscellaneous petition, the petitioner has prayed for quashing the First Information Report, registered as Bokaro Steel City Police Station Case No.321 of 2018 for offences alleged under Sections 420, 406, 506 and 34 of the Indian Penal Code.

2. After hearing the parties at length, order was reserved in this case on 22.02.2021.

3. Counsel for the petitioner submited that by no stretch of imagination, a criminal offence is made out, which would be apparent from bare perusal of the First Information Report. He submits that a business transaction has been given color of a criminal case. He further submits that the parties agreed to invest in a joint venture business. Sharing of the profit or loss cannot come within the purview of a criminal offence. He submits that in view of the proposition of law settled by the Hon'ble Supreme Court in the case of State of Haryana & Others versus Bhajan Lal & Others, reported in 1992 Supp(1) SCC 335, no offence is made out, thus, the First Information Report needs to be quashed.

4. Counsel for the opposite party No.2 and the counsel for the State submits that the informant has been cheated. He was induced to invest in the business and

thereafter the petitioners misappropriate the funds and committed breach of trust. It has been stated that no profit from the distribution of rights of films was provided to the complainant, which itself is an offence.

5. I have gone through the First Information Report. The First Information Report has been instituted by the opposite party No.2, stating therein that this petitioner, who is the owner of PEN Films, met the complainant along with one Pawan Sharma, owner of PUN Films. On their convincing, the complainant paid Rs.10 lakh as advance to start a movie "Wah Taj" with 50% share holding in the film. An agreement was signed and thereafter the complainant states in the complaint that he was forced to pay Rs.2.25 crore in the name of expenses in shooting the film as 50% of the shooting was complete in February 2013 itself. It has been alleged that despite asking for reconciliation of accounts, no details were provided, rather, Rs.1.15 crore was further extracted from the complainant. Further, in April, 2014, an agreement was signed between Spider Wave Films, PUN Films and PEN Films, having hare holding of 45%, 45% and 10% respectively (be it noted that Spider Wave Films belongs to the complainant). It is stated that further Rs.30 lakh was paid by the complainant to get subsidy from the Uttar Pradesh Government. Complainant, thereafter, found that the film was completed only spending Rs.2.50 crore, thus, the petitioner and others have defalcated a huge amount, which was invested by the informant. It has been stated that the subsidy amount was also defalcated and the profit was not distributed to the complainant. It has been mentioned that Rs.20 crore was defalcated. Lastly, the complainant states that whenever he goes to the office of PEN Films or PUN Films, the accused threatens to kill him.

6. From the aforementioned facts narrated in the First Information Report, I find that there was a business agreement between the parties and the informant's company was 45% share holder. Admittedly, there was an agreement between the parties. The said agreement is a part of the First Information Report and is on record. From the agreement, it is clear that all the parties, i.e., PUN Films Pvt. Ltd., Spider Wave Films (informant's company) and PEN Films entered into an agreement for making a film titled as "Wah Taj". From the agreement, I find that the petitioner, who is one of the directors, approached the assignee, i.e., PEN Films to invest money in marketing and distribution of films. Thus, it is the informant, who has approached the accused to invest money as PEN Films is the organization of the accused. In view of the aforesaid admitted fact, which is part of the First Information Report, itself, it cannot be said that the petitioner has induced the informant to invest money, rather, it is just the opposite, where the informant had approached the petitioner to invest Rs.5 crore. Further, from the agreement, it is quite clear that the entire transaction was a business transaction and the parties entered into a joint venture agreement. The allegation in the First Information Report suggests that the informant has not been paid his due share of profit. Non- payment of due share of profit arising out of business transaction or not allowing the informant to inspect the records of the joint venture cannot be said to be a criminal offence.

7. The requirement of Section 415 IPC has been set forth in paragraph 41 of the judgment rendered in the case of Inder Mohan Goswami versus State of Uttaranchal & Others reported in (2007) 12 SCC 1 by the Hon'ble Supreme Court. Paragraph 41 reads as under: -

41. Section 415 IPC thus requires -

1. Deception of any person

2. (a) Fraudulently or dishonestly inducing that person-

(i) to deliver any property to any person; or

(ii) to consent that any person shall retain any property; or

(b) Intentionally inducing that person 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.

8. The Hon'ble Supreme Court in the case of Vinod Natesan versus State of Kerala reported in (2019) 2 SCC 401 has upheld quashing of the proceeding wherein the allegation was civil in nature and a civil dispute was tried to be converted into a criminal dispute. The Hon'ble Supreme Court in the case of Vesa Holdings (P) Ltd. & Another versus State of Kerala & Others reported in (2015) 8 SCC 293 has observed in paragraphs 12 and 13 of the said judgment as follows: -

12. .... The settled proposition of law is that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. ...

13. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because of civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not.

9. The Hon'ble Supreme Court in the case of Binod Kumar & Others versus State of Bihar & Another reported in (2014) 10 SCC 663 has held that civil liability cannot be converted to criminal liability and had also held that criminal proceedings are not a shortcut for other remedies.

10. Further, the Hon'ble Supreme Court in the case of Anand Kumar Mahatta versus State (NCT of Delhi) reported in (2019) 11 SCC 706 had taken note of the growing trend in business circle to convert purely civil dispute into a criminal case. In the aforesaid judgment, reliance was placed on Indian Oil Corporation versus NEPC India Ltd. & Others reported in (2006) 6 SCC 736 wherein the Hon'ble Supreme Court at paragraph 13 observed as follows:-

"13. .... Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged."

11. From the narration made in the First Information Report, which has been dealt in the earlier paragraphs, I find that it has only been stated that the informant has invested huge amounts at various points of time in the joint venture with the accused persons and there was an agreement according to which informant was 45% share holder. Admittedly, there was an agreement between the parties, from which it is clear that the parties entered into an agreement for making film titled "Wah Taj". The allegations in the First Information Report suggests that the informant has not been paid his due share of profit and he has not been allowed to inspect the records. These allegations do not contain any criminal aspect. There is nothing in the First Information Report to suggest that since the very inception of the transaction there was a criminal intention to deceive the informant. Even in the FIR there is no such averments. The Hon'ble Supreme Court in the case of S.W. Palanitkar & Others versus State of Bihar & Another reported in (2002) 1 SCC 241 has held that there has to be an averment that since the inception of transaction there was a fraudulent intention of the accused persons. This basic ingredient is absolutely missing in the entire First Information Report. In the case of Inder Mohan Goswami versus State of Uttaranchal & Others reported in (2007) 12 SCC 1, the Hon'ble Supreme Court, while interpreting Section 415 of the Indian Penal Code, has held that there has to be deception of a person and the person has to be fraudulently or dishonestly induced to deliver any property to any person or the consent has been obtained fraudulently. Further, there has to be intentional inducement of a person to do or omit to do, which he would not have done or omitted to have done if he was not so deceived. In paragraph 42 of the said judgment, the Hon'ble Supreme Court had made the following observation: -

42. On a reading of the aforesaid section, it is manifest that in the definition there are two separate classes of acts which the person deceived may be induced to do. In the first class of acts he may be induced fraudulently or dishonestly to deliver property to any person. The second class of acts is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but need not be fraudulent or dishonest. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had a fraudulent or dishonest intention at the time of making the promise. From his mere failure to subsequently keep a promise, one cannot presume that he all along had a culpable intention to break the promise from the beginning.

12. Applying the aforesaid provisions of law, which has been laid down by the Hon'ble Supreme Court, I find that the instant case, at best, can be said to be a subsequent failure to keep a promise. The element of dishonest intention is absolutely lacking in this case, which is evident from bare perusal of the First

Information Report itself. Further, I find that ingredients of Section 405 of the Indian Penal Code is also missing in the instant case so as to attract offence punishable under Section 406 of the Indian Penal Code. In the entire First Information Report, the basic ingredients of dishonest misappropriation is missing. The case can, at best, be that of a civil dispute of money claim.

13. The sum and substance of the allegation is that the due share of profit has not been paid to the informant. From this First Information Report, as there is no allegation that there was intention to cheat from the very inception, the dispute can be said to be civil in nature arising out of a business agreement. Thus, in view of the judgment passed by the Hon'ble Supreme Court in the case of Binod Kumar & Others versus State of Bihar & Another reported in (2014) 10 SCC 663 as also in the case of Anand Kumar Mohatta & Another versus State (NCT of Delhi), Department of Home & Another reported in (2019) 11 SCC 706, I find that the allegations made in the FIR do not constitute any criminal offence.

14. In view of what has been held above, and relying on the judgments cited above, the First Information Report being Bokaro Steel City Police Station Case No.321 of 2018 is hereby quashed and set aside and so is the entire proceeding therein, so far as it relates to the petitioner herein.

15. This criminal miscellaneous petition, is accordingly, allowed.

