
(2002) 08 JH CK 0085

In the Jharkhand High Court

Case No : Criminal Miscellaneous No. 8283 of 1998 (R)

Gautam Sinha and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 02-08-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2003) CriLJ 635

Hon'ble Judges : Vishnudeo Narayan, J

Bench : Single Bench

Advocate : A.K. Kashyap, for the Appellant; S.K. Jha and S. Thakur for opposite party No. 2 and APP, for the Respondent

Final Decision : Allowed

Judgement

Vishnudeo Narayan, J.—This application has been filed by the petitioners u/s 482 of the Cr PC for quashing of the entire criminal proceeding i.e. C/1 Case No. 515 of 1998 instituted against the petitioners including the order dated 13.8.1998 passed by Sri L.P. Choubey, J.M. 1st Class, Jamshedpur whereby and whereunder a prima facie case under Sections 420 and 406 of the Indian Penal Code having been found, cognizance has been taken against them and summons were ordered to be issued.

2. The facts giving rise to this case are as follows. O.P. No. 2, Kundan Verma filed a petition of complaint before the Court of Chief Judicial Magistrate Jamshedpur on 31.7.1998 giving rise to C/1 Case No. 515 of 1998 against the petitioners for summoning them for trial for the offence punishable under Sections 406 and 420, IPC regarding the occurrence which is said to have taken place in the month of April 1996 and continuing since then till today. Learned Chief Judicial Magistrate vide order dated 31.7.1998 transferred the case to the Court of Sri L.P. Choubey u/s 192(1), CrPC for inquiry and disposal O.P. No. 2 was examined on S.A. on 7.8.1998. Thereafter one Kalidas Sen Gupta was examined on behalf

of O.P. No. 2 u/s 202, Cr PC and finding sufficient ground for proceeding against the petitioners and a prima facie case having been made out, cognizance in the case was taken under Sections 406 and 420, IPC against the petitioners and they were summoned for trial vide order 13.8.1998.

3. The prosecution case as averred in the petition of complaint of O.P. No. 2 is that he is a Civil Contractor and Builder by profession and undertakes the construction work in and around Jamshedpur for its customer and the petitioners approached him to make construction in the western portion of TISCO holding No. 504, Kasidih Lease Area, P.S. Sakchi on an area measuring 82" 8" x 59" 9" as per approved building plan having the building permit No. 23342 dated 14.11.1991 of Jamshedpur Notified Area Committee and also agreed to pay him the construction cost. @ Rs. 200/- per sq. ft. for completing the construction as per building plan. It was further agreed that the cost of shutters and other materials would not be covered by the said construction cost of Rs 200/- per sq. ft. and that the entire construction shall be completed within 15 months from the date of the signing of the agreement. Accordingly, an agreement was executed between the petitioner Nos. 1 to 4 and O.P. No. 2 on 5th January, 1995 which was also duly notarised by the Notary Public on 18.1.1995. In pursuance of the agreement O.P. No. 2 started construction work at his own cost and thus he made construction of 4553 sq. ft., for which a sum of Rs. 9,10,000/- was payable by the petitioners to O.P. No. 2 @Rs. 200/- per sq. ft. It is also alleged that O.P. No. 2 also did some construction work beyond the agreement at the request of the petitioners, the cost of which comes to Rs. 2,30,(sic)/-. It is also alleged that O.P. No. 2 completed the entire construction work within the stipulated period and the petitioners have paid him a sum of Rs. 3,64,000/- only and there is still balance outstanding against the petitioners amounting to Rs. 7,77,586/-. The petitioners evaded to pay balance of the outstanding amount aforesaid on some pretext or the other and sensing some foul play in the intention of the petitioners, O.P. No. 2 sent bills by registered post to petitioner No. 5 for payment which was not received by him. It is further alleged that from the conduct of the petitioners it is apparent that they with dishonest intention got the construction work done under the agreement and did not make payment of the cost of the construction even after repeated reminders and thereby they have committed criminal breach of trust punishable u/s 406, IPC and they have fraudulently and dishonestly induced O.P. No. 2 to invest his money and they did not pay the cost of construction to O.P. No. 2 which amounted to cheating O.P. No. 2 making out a case u/s 420, IPC.

4. It has been submitted by the learned counsel for the petitioners that no offence under Sections 406 and 420, IPC is at all made out as per the averment made in the petition of complaint and at best it can be said to be a case of civil dispute for which no criminal proceeding can ever be initiated or be allowed to continue. It has also been contended that O.P. No. 2 has not completed the construction work as per the agreement and he was informed in writing to complete the construction work but all in vain and it can be said that there has

been a violation of terms of the agreement entered into by and between the parties and for breach of the contract, if any, a civil suit will lie and no criminal liability is at all made out in this case against the petitioners. It has also been contended that O.P. No. 2 has himself committed the breach of the terms of the agreement and has thereby caused wrongful loss to the petitioners amounting to Rs. 5,00,000/- due to the defective construction of work with sub-standard materials against the terms of the agreement. It has been submitted that no criminal liability can at all be fastened in this case against the petitioners in view of the averment made in the complaint petition read with the agreement dated 5.1.1995 and it is out and out a civil dispute, the remedy for which lies before the competent civil Courts and the learned court below has wrongly exercised its jurisdiction and has erred in taking cognizance in the case under Sections 406 and 420, IPC for proceeding against the petitioners which amounts to an abuse of the process of law. It has also been submitted that a mere breach of contract cannot give rise to a criminal prosecution for cheating and it is necessary for the prosecution to show that dishonest intention at the time of making the promise and in this case Rs. 3,64,000/- has already been paid by the petitioners to O.P. No. 2 and further there was no intention of the petitioners at all to dupe O.P. No. 2 at the time of making of the agreement and nonpayment of the amount as claimed by O.P. No. 2 which was withheld due to the substandard construction work cannot be presumed to be an act of cheating. In support of his contention reliance has been placed on the case of *Hridaya Ranjan Pd. Verma v. State of Bihar and Anr.* 2000 (3) SCC 13 : 2000 (2) ECC 634 and *S.W. Palanitkar and others Vs. State of Bihar and another*, 5. It has been contended by the learned counsel for O.P. No. 2 that in terms of the agreement O.P. No. 2 has completed the construction work within the stipulated period and possession of the constructed building has already been delivered by O.P. No. 2 to the petitioners and though part payment has been made by the petitioners but with dishonest intention the petitioners are not making the payment of the balance amount to O.P. No. 2 only with a view to dupe him and with this intention the petitioners had entered into an agreement at the very initial stage for making the said construction. It has also been submitted that in a commercial transaction the crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not and O.P. No. 2 in his complaint petition has clearly stated that he was induced to believe that the petitioners would honour payment in terms of the agreement and O.P. No. 2 later on realized that the intention of the petitioners were not clear and in view of the averments aforesaid a prima facie case under Sections 406 and 420, IPC is made out against the petitioners. It has also been submitted that facts averred in petition of complaint clearly make out a case under Sections 406 and 420, IPC and besides that the facts as averred in the petition of complaint may also give a rise of civil claim and merely because a civil claim is maintainable it does not mean that a criminal complaint cannot be maintained and the present complaint is not definitely a frivolous one. In this view of the matter the

application of the petitioners for quashing of the criminal case is not at all maintainable. In support of his contention reliance has been placed upon the case of Rajesh Bajaj Vs. State NCT of Delhi and Others, and Lalmuni Devi Vs. State of Bihar and Others, p> 6. It will admit of no doubt that the petitioners are the owners in possession of land measuring 82' 8" x 59' 9" on the western portion of TISCO holding No. 504 situated at Kashidih Lease Area, Sakchi in the town of Jamshedpur allotted to them for residential as well commercial purposes and a building plan for the construction on the aforesaid land was duly sanctioned by the prescribed authority. O.P. No.2 being a builder and being satisfied with the ownership, and possession of the petitioners on the aforesaid land and examining the sanctioned plan for the construction had entered into an agreement with the petitioners for construction of the commercial complex building on the aforesaid land and an agreement was executed between them on 5.1.1995. According to the terms of the agreement O.P. No. 2 has to complete the construction as per the sanctioned plan within 15 months of the execution of the agreement @ Rs. 200/- per sq. ft. and O.P. No. 2 has to invest the entire money from his own fund for the said construction. It has been clearly stipulated in para 5 of the agreement that no inferior material will be utilized for construction by O.P. No. 2 and if the materials are found to be defective or inferior quality the petitioners will have the right to point out the same to O.P. No. 2 who will remove the defective materials in the construction of the said commercial complex and after completion of the construction O.P. No. 2 will hand over the possession of the commercial complex building to the petitioners. There is further a clause in the deed of agreement that if the work is not completed by O.P. No. 2 within the specified period, the petitioners will have every right to continue the aforesaid construction by themselves and in that case O.P. No. 2 will have no claim or objection of any kind in respect thereof. There is further an averment in the agreement that O.P. No. 2 will ensure that construction is made of standard quality. There is also no dispute in respect of the fact that during the stipulated period of construction the petitioners have paid Rs. 3,64,000/- to O.P. No, 2 on demand. It further appears from Annexure 3 of the application that petitioner No. 5 R.N. Sinha had sent a letter on 12.2.1996 under certificate of posting to O.P. No. 2 which is to the effect that the construction work done by him is substandard and cracks have developed in the construction of the building as a result of which shops in the complex are not being booked. It has further been stated in Annexure 3 "that in the better interest of our relationship and goodwill, I request him to kindly prepare a final bill for the job you have completed till today and submit to me and no further work may be done". From the facts aforesaid, the controversy between the parties appears to be a civil dispute regarding the breach of the terms of the agreement. It also appears that there is total absence of criminal dishonest intent on the part of the petitioners to dupe O.P. No. 2 in view of Annexure 3 aforesaid. Further it will be safely inferred from the facts of this case that there was total absence of any dishonest intention on the part of the petitioners when they have entered into an agreement with O.P. No. 2 for the construction of the commercial complex building in the aforesaid

land. The facts of this case do not at all show the fraudulent and dishonest intention on the part of the petitioners right at the inception of the transaction when the agreement was executed between them. The criminal Intent is the gist of the offence of cheating and there is nothing on the record to show that the petitioners had fraudulent or dishonest intention at the time of entering into an agreement with O.P. No. 2 for the construction of the commercial complex building. Criminal intent of the petitioners cannot be presumed at the inception of the agreement from the mere fact of the non-payment by the petitioners of the cost of construction at the rate of Rs. 200/-per sq. ft. to O.P. No. 2 as claimed. Therefore, in the given facts of this case no offence under Sections 406 and 420, IPC is prima facie made out against the petitioners. The principle of law settled in the case of Hridaya Ranjan Fd. Verma and S.W. Palanitkar, (supra) squarely covers the case of the petitioners. Therefore, in this case there is breach of the terms of the agreement for which there is civil remedy and no criminal liability is fastened on the petitioners. Therefore, the case laws relied upon by O.P. No. 2 referred to above is of no help to O.P. No. 2.

7. To sum up on plain reading of the petition of complaint it is evident that the dispute is of a civil nature which involves the breach of the terms of the agreement and it cannot be said that at the inception of the agreement itself there was any dishonest intention of the petitioners to dupe O.P. No. 2. On careful consideration of the materials on record I find and hold that the case of complainant is of purely civil nature and no offence under Sections 406 and 420, IPC is at all made out. The learned court below has committed a manifest error in taking cognizance in the case against the petitioners by the impugned order and thus the impugned order is illegal. Hence this is a fit case in which the impugned order dated 13.8.1998 taking cognizance of the offence under Sections 406 and 420, IPC and subsequent proceeding thereto must be quashed for the ends of justice as the continuance of the criminal proceeding will tantamount to the abuse of the process of law.

8. There is merit in the application and the same is hereby allowed. The impugned order dated 13.8.1998 and the subsequent criminal proceeding in C/1 Case No. 515 of 1998 pending in the Court of Sri L.P. Choubey, J.M. 1st Class Jamshedpur is hereby quashed.