

(2005) 12 AHC CK 0038

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 16624 of 2005

Hanuman Prasad, Girish Chand through its Proprietor, Girish Chandra and Girish Chandra APPELLANT

Vs

State of Uttar Pradesh and Goverdhan Saree Centre RESPONDENT

Date of Decision : 21-12-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 482
Penal Code, 1860 (IPC) — Section 420

Citation : (2005) 12 AHC CK 0038

Hon'ble Judges : M.K. Mittal, J

Bench : Single Bench

Advocate : Abhishek Tripathi, for the Appellant; R.K. Mishra and A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

M.K. Mittal, J.—Heard Sri Abhishek Tripathi, learned counsel for the applicants, Sri R.K. Mishra, learned counsel for the opposite party No. 2, learned A.G.A. and perused the record.

2. Application u/s 482 Cr.P.C has filed to set aside the Criminal Complaint case No. of 2002 pending in the Court of A.C.M.M.-II, Kanpur Nagar

3. Brief facts are that the opposite party No, 2 filed a complaint against the applicants alleging that there was business transaction between the parties, On 24.4.1999 at about 11.30 a.m. accused No. 2 asked the complainant for supply and entrustment of the clothes of different varieties as per his need, requirement and choice in the presence of the witnesses and induced the complainant to have trust on him and assured that he would pay the amount under the subject deal without any delay or default and also requested the complainant that he wanted to take the clothes in 5-6 instalments in the span of two months and would finally clear up and pay the total amount in the last week of June 1999 and expressed his inability that due to some personal problem he was not capable to

pay or clear up the amount till third week of June 1999. The complainant having been induced by the clear and specific assurances as well as the words of honour given by accused No. 2 and also keeping in mind to keep and maintain cordial relation, entrusted him the clothes on the very same day as well as on subsequent occasions when the accused No. 2 visited the complainant.

4. Bills were issued and the clothes were given to the accused No. 2. The accused also used to request him to book the ready bales of clothes through M/s New Behraich Express Transport company and the complainant used to book the consignment as desired. Details of the transport receipts have been mentioned in the complaint. On 23.6.1999 accused No. 2 again) visited the premises of the complainant and assured to pay the total amount in the last week of June 1999 more particularly between 25th to 30th June. The accused did not pay the amount inspite of the demands. According to the complainant the accused had a well matured, mala fide, pre-existing, criminal and dishonest intention in his mind from the very inception with the sole intention and ulterior motive to cheat the complainant by deliberately causing wrongful loss to him and to gain wrongfully in as much as that accused No. 2 with malice and clear dishonest mind induced him firstly by giving assurances and words of honour so as to win his confidence and got the supply and entrustment of the cloth and consequently trapped him under his net and deceived him by playing fraud and successfully cheated the complainant to the tune of Rs. 89,829/- so far as it relates to the transaction of the case in hand for his deliberate wrongful gain. These allegations have been made in the complaint.

5. The complainant examined himself and his witnesses u/s 200/202 Cr.P.C. and thereafter learned Magistrate finding a prima facie case directed to summon the accused u/s 420 IPC vide order dated 11.4.2002. Against that order the accused filed criminal revision which was allowed by order dated 31.5.2003 and the case was remanded by Addl. Sessions Judge, Kanpur Nagar. Accused applicants also filed objection for their discharge but the learned Magistrate vide order dated 7.1.2005. rejected the same and directed to summon them.

6. Learned counsel for the applicants has contended that the dispute between the parties is of civil nature and that the complainant had to show that the accused had intention to cheat at the inception of transaction, He has further contended that there were transactions between the parties for the last several years and the applicants had paid all the money to the complainant and it appears that there was some error in the account. The complainant; had also given a notice but in that notice more amount was demanded whereas in the complaint less amount has been mentioned. But the contention of the learned counsel for the accused applicant is not tenable. The criminal proceedings cannot be barred on the ground that the matter is also of civil nature or that it is a case of accounting.

7. The contention of the learned counsel for the accused applicants is that the complainant has to show that the accused had intention to deceive at the

beginning of the transaction. In support of his contention he has placed reliance on the case of Ajay Mitra Vs. State of M.P. and Others, , where it has been held that guilty intention is an essential ingredient of the offence of cheating. Learned counsel for the accused applicants has also placed reliance on the cases of State of Kerala Vs. A. Pareed Pillai and Another, ; Satyabrata Bhattacharya v. Jarnal Singh 1976 CrL. L. J. 446; Alpico Finance Ltd v. P. Sadasivan and Anr. JT 2001 (2) SC 88; S.W. Palanitkar and others Vs. State of Bihar and another, ; Hari Prasad Chamaria Vs. Bishun Kumar Surekha and Others, and Vasudeo Kulkarni v. Suryakant Bhatt and Ors. XIV 1977 ACC 323. There is no dispute about the legal position as laid down in these cases. But the question is as to at what stage it has to be seen. In the case of Inspector of Police, C.B.I. v. B. Rajagopal and Ors. XXXIV 2002 ACC 758, Hon"ble Apex Court, has held that the plea that there was neither a,ny intention to Cheat nor there was any act of forgery, these matters are for the trial Court to decide when the final conclusion is made. Therefore the accused applicants can take the pleas as raised by them in the Trial Court at appropriate stage. The allegations as made in the complaint prima facie make out a case against the applicants. There is no ground to quash the criminal proceedingss at the threshold and therefore the application is devoid of merits and is liable to be dismissed.

8. Application Tiled u/s 482 Cr.P.C. is hereby dismissed.