(2005) 05 JH CK 0021

In the Jharkhand High Court

Case No : Criminal M.P. No. 1282 of 2004

Hari Krishna Budhia APPELLANT

Vs

State of Jharkhand and Another RESPONDENT

Date of Decision : 20-05-2005

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 202, 415, 482
Penal Code, 1860 (IPC) — Section 402, 406, 420

Citation : (2005) CriLJ 4235

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Biren Poddar, Ajay Poddar and S.K. Mishra, for the Appellant; N.K. Sahani, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In this application u/s 482 of the Code of Criminal Procedure petitioner has prayed for quashing the entire Complaint Case being C.P. Case No. 283/2004 pending in the Court of judicial Magistrate, 1st Class, Bokaro including the order dated 12-8-2004 passed in the afore said case taking cognizance and issuing summons against the petitioner u/s 420 I.P.C.

2. The order dated 12-8-2004 taking cognizance reads as under :-

"The complainant is represented through counsel. The ease is fixed for order on the basis of the enquiry conducted u/s 202 of Cr. P.C.

It has to be determined whether there are sufficient material on record to issue process against the proposed accused.

It is case of the complainant that, in year 1996 the accused entered into an agreement for transport of raw-materials of goods from Bokaro to Ramgarh at his factory, with the complainant. The complainant is proprietor of Laxmi Transport Agency and Shree Laxmi Transport Company of Chas Bokaro. The goods of the accused Hari Kishan Budhia was transported till 1997, by the two transport agency of the complainant. The total transportation cost was Rs. 8,27,860.00. However the accused on one or other false-pretext did not pay any amount to the complainant, for last six years on ground of ill nesses and closure of factory, Finally on 18 7-04, when the accused was at Bokaro the complainant, in presence had requested the accused for payment of due amount. The accused refused to pay the said amount. Thus, the accused has cheated the complainant and misappropriated his due amount for his personal gain. Resultantly the complainant was compelled to file this complaint petition.

The complainant, in order to support its contention has examined three witnesses all the witnesses have supported the case of the complainant. At this stage on the basis of the documentary and the oral evidence I do not. find any reason to disbelieve with this ease of the complainant I find sufficient material on record to issue process u/s 420 of I.P.C. against accused Hari Kishan Budhia.

The complainant is directed to file requisite (sic) within 8 days for issuing of summons.

Thereafter summons to be issued on accused for appearance on 13-9-04."

3. Mr. Biren Poddar, learned counsel appearing for the petitioner assailed the impugned order of cognizance as being illegal and wholly without jurisdiction. Learned counsel has drawn my attention to the Complaint Petition and submitted that the Complaint Case has been filed only for the recovery of the money and no allegation of cheating or misappropriation of money or breach of trust has been made. Learned counsel also submitted that transportation took place in 1996-97 and the Complaint Case was filed after 7 years i.e. in 2004.

4. Before appreciating the submission of learned counsel, I would like to place hereinafter some of the relevant paragraphs of the complaint,

5. In the complaint petition the complainant is the proprietor of Laxmi Transport Agency and petitioner-accused is the proprietor of Bihar Foundry and Casting .Ltd. They were known to each other much prior to the transaction took place between them. Petitioner met with the complainant and asked for transportation of slab and blades that is the materials purchased by the petitioner from B.S.L. Plant. They entered into a contract according to which the complainant transported the materials on various dates. Materials were supplied from 2-2-96 to 27 3 96. The complainant thereafter demanded the balance dues from the petitioner and the latter assured that he will make payment yearly of each year''s transportation. All of a. sudden, petitioner stopped business with the complainant staling that, the firm is running in loss. Thereafter the complainant alleged to have visited the accused at his firm at Ramgarh and also contacted on telephone several times. The accused always made false and fabricated excuses. It is alleged that on 26-6-2004 petitioner-accused in presence of the witnesses flatly denied to make any payment to the complainant. In para-11 of the complaint it is stated that the accused by such act thus committed breach of contract and the complainant thus compelled to believe that the accused is now

suffering from his guilty mind to misappropriate the balance amount and thereby committed offence under Sections 406/402 I.P.C.

6. It is well-settled that judicial process should not be an instrument to oppression or needless harassment. The court should be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances before issuing process lest it would be an instrument in the hand of private complainant as vendetta to harass the person needlessly. It is, there fore, the duty of the Court to examine the question whether the complainant ex-facie makes out any offence and whether the ingredients of offence alleged against are accused are satisfied. The question of limitation should also be considered before taking cognizance in a Complaint Case.

7. In the case of Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, , their Lordships observed that summoning of accused in a criminal case is a serious matter and there fore Criminal Law cannot be set into motion as a matter of course. The order of Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. It is not that the Magistrate is silent spectator at the time of recording preliminary evidences and issuing summons.

8. Admittedly transportation took place in 1996-97 and Complaint Case was filed after 7 years i.e. in 2004. This aspect has not been considered by the Magistrate while taking cognizance. Merely because the petitioner-accused failed to refund the amount, the learned Magistrate has erroneously held that the accused-petitioner has cheated the complainant and misappropriated his dues.

9. Recently in the case of Suresh Vs. Mahadevappa Shivappa Danannava and Another, , the Supreme Court was considering similar case where the complainant alleging offence of cheating against accused-vendor for not executing sale deed and not accepting balance consideration. The complaint case was filed after seven and halt years of alleged agreement. Accused filing reply denying agreement and acceptance of advance consideration. Their Lordships held that the order of cognizance passed by the Magistrate without considering the case that the complaint itself was time barred shows total non-application of mind and, therefore, the order of cognizance was set aside. Their Lordships observed.

"12. As already noticed, the complaint was filed on 17-05-1999 after a lapse of 11-1/2 years and, therefore, the very private complaint filed by the respondent No. 1 is not at all maintainable at this distance of time. It is the specific case of accused No. 1 that he has not executed any agreement to sell or received any advance payment. In our view, the complaint does not disclose the ingredients of Section 415 of Cr. P.C. and, therefore, we have no hesitation to set aside the order passed by the Magistrate taking cognizance of the offence alleged. It is also not clearly proved that 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. The order of the Magistrate and of the High Court requiring the accused No. 1 appellant herein to face trial would not be in the interest of justice. On the other hand, in our considered opinion, this is a fit case of setting aside the order of the Magistrate as confirmed by the High Court of issuance of process and the proceedings itself."

10. Taking into consideration the entire facts of the case and also in my considered opinion, the allegation made in the complaint does not make out a case u/s 406 or 420 I.P.C. and further that Complaint Case was hopelessly time barred. The impugned order of cognizance, therefore, cannot be sustained in law.

11. For the aforesaid reason, this application is allowed and the order of cognizance passed by the Magistrate in Complaint Case being C.P. Case No. 283/2004 is set aside.