(2015) 02 JH CK 0156

In the Jharkhand High Court

Case No : Criminal M.P. No. 1749 of 2013

Hi-Tech Chemicals Private Ltd. APPELLANT

Vs

The State of Jharkhand and Others RESPONDENT

Date of Decision : 04-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 482
Penal Code, 1860 (IPC) — Section 405, 406, 415, 418, 420

Citation : (2015) 3 AJR 499

Hon'ble Judges : Rongon Mukhopadhyay, J

Bench : Single Bench

Advocate : Rajiv Ranjan, for the Appellant

Final Decision : Allowed

Judgement

Rongon Mukhopadhyay, J.—Heard Mr. Rajiv Ranjan, learned counsel for the petitioner and Mr. Navnit Sahay, learned counsel for O.P. No. 2.

2. In this application, the petitioner has prayed for quashing the entire criminal proceeding in connection with Bistupur P.S. Case No. 45 of 2013, corresponding to G.R. No. 430 of 2013 registered for the offence punishable under sections 406, 420, 418, 504 and 506 of the Indian penal Code.

3. A complaint case was lodged on 29.1.2013 by the complainant-opposite party No. 2, which was numbered as Complaint Case No. 254 of 2013 and which was subsequently sent to the police by invoking the provisions under sections 156(3) of the Code of Criminal Procedure and pursuant thereto, Bistupur P.S. Case No. 45 of 2013 was instituted.

4. The prosecution story, as would appear from the First Information Report, is that the informant had entered into an agreement with the petitioner company on 26.11.2009 and it was agreed that 5% of the whole value from each bill would be retained which will be paid after one year from the date of completion of the award. It has been alleged that the informant started doing the work as

per the work order and completed the same within the stipulated period. It was further alleged therein that the value of the work was said to be Rs. 2.5 crores and therefore only a sum of Rs. 20 lacs could have been retained as per the agreement. It was also alleged therein that extra work to the tune of Rs. 10 lacs approximately was done and despite demands being made by the informant regarding payment of amount of Rs. 30 lacs, no heed was paid to the same and on 20.01.2013, the accused had threatened the informant resulting into filing of initially a complaint case but subsequently on reference under section 156(3) Cr.P.C. registration and institution of a First Information Report.

5. Learned counsel for the petitioner has submitted that the claim of the informant that he was to receive Rs. 30 lacs towards his dues from the petitioner company is completely baseless and unfounded. Infact, materials worth Rs. 97,68,312/- had been provided to the informant company, which had also been duly acknowledged and the total amount towards materials running bills and other payments paid to the informant company is approximately Rs. 2,21,89,913/-. Learned counsel for the petitioner has further submitted that on account of delay in completing the work, a sum of Rs. 6,63,130/- has been retained and subsequently forfeited by the petitioner company. Learned counsel has also submitted that the complaint petition/written report does not disclose the commission of a criminal offence and at best the dispute can be said to be on account of business transactions, for which no criminal liability can be fastened upon the petitioner company.

6. Learned counsel for the opposite party No. 2 on the other hand has submitted that the allegations made in the complaint petition do disclose a criminal intent on the part of the petitioner company inasmuch as in spite of completion of work within the stipulated period the commission as agreed upon was retained by the petitioner company and the same was never released. He has further submitted that over and above the commission amount, the amount of Rs. 10 lacs which was incurred by the complainant company in completion of some extra work has also been retained and the entire acts/actions on the part of the petitioner company do suggest an element of cheating from the very inception as well as a criminal breach of trust. He, thus, submits that as such it is best left to the trial court to decide the issues at hand as a prima facie case has apparently been made out from the written report.

7. After hearing learned counsel for the parties and after going through the records, I find that a careful perusal of the complaint, which was initially filed by the informant company deals in its entirety with non payment of a certain amount, which arose out of a business transaction, in which as per the allegation, the informant was to complete the work within the stipulated period, which according to him, was done but in spite of the said fact as also the fact that the informant company had also undertaken and completed some extra work, the entire amount of Rs. 30 lakhs was withheld by the petitioner company. The petitioner on the other hand has disputed the aforesaid claim of the

informant company and has categorically submitted that since the work was completed beyond the period stipulated in the work order, as such Rs. 6,63,130/- was retained and subsequently forfeited by the petitioner company. Thus, it appears that there is a clear cut dispute with respect to the payment of money, which arose out of a business transactions and it is to be seen as to whether there was an element of cheating from the very inception in order to continue with the criminal proceedings.

8. In this context reference may be made to the case of Dalip Kaur and Others Vs. Jagnar Singh and Another, AIR 2009 SC 3191 : (2009) 9 JT 184 : (2009) 9 SCALE 255 : (2009) 14 SCC 696 : (2009) 10 SCR 264 : (2009) 7 UJ 3292 : (2009) AIRSCW 5117 : (2009) 5 Supreme 368 , in which it was held therein as follows:-

"8. Sections 405 and 415 of the Penal Code defining "criminal breach of trust" and "cheating" respectively read as under:

"405. Criminal breach of trust.--Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits ''criminal breach of trust''.

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''."

An offence of cheating would be constituted when the accused has fraudulent or dishonest intention at the time of making promise or representation. A pure and simple breach of contract does not constitute an offence of cheating.

9. The ingredients of Section 420 of the Penal Code are:

"(i) Deception of any persons;

(ii) Fraudulently or dishonestly inducing any person to deliver any property; or

(iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit."

10. The High Court, therefore, should have posed a question as to whether any act of inducement on the part of the appellant has been raised by the second respondent and whether the appellant had an intention to cheat him from the very inception. If the dispute between the parties was essentially a civil dispute

resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance the same would not constitute an offence of cheating. Similar is the legal position in respect of an offence of criminal breach of trust having regard to its definition contained in Section 405 of the Penal Code. (See Ajay Mitra v. State of M.P.)"

9. It is not in dispute that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may also be available to the informant/complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose a criminal offence or not. This proposition of law has time and again been reiterated by the Hon''ble Supreme Court, most notably in the case of Ravindra Kumar Madhanlal Goenka and Another Vs. Rugmini Ram Raghav Spinners P. Ltd., AIR 2009 SC 2383 : (2009) CriLJ 2852 : (2009) 13 JT 203 : (2009) 6 SCALE 162 : (2009) 11 SCC 529 : (2009) 6 SCR 27 and recently in the case of Vijayander Kumar and Others Vs. State of Rajasthan and Another, (2014) AIRSCW 1197 : (2014) 2 SCALE 217 : (2014) 3 SCC 389 . The allegations made by the opposite party No. 2 from the face of it does not suggest that there was an element of cheating from the very inception because if that was the case the informant could never have agreed to complete some more works of the petitioner company. Moreover, the informant itself has specifically mentioned at paragraphs 12 of the complaint petition that there was a violation of terms and conditions of the agreement. The entire dispute seems to revolve around the non fulfillment of the contractual obligations be it by the petitioner or by the informant company.

10. In the case of Indian Oil Corporation Vs. NEPC India Ltd. and Others, AIR 2006 SC 2780 : (2006) 4 CTC 60 : (2006) 6 JT 474 : (2006) 7 SCALE 286 : (2006) 6 SCC 736 : (2006) 3 SCR 704 Supp : (2006) AIRSCW 3830 : (2006) 6 Supreme 66 , in the context of the increasing inclination towards criminal cases being filed, which is the subject matter of civil dispute, the Hon''ble Supreme Court held as follows:-

13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. 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. In G. Sagar Suri v. State of U.P. this Court observed: (SCC p. 643, para 8)

"It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

11. It is a trite law that while invoking the powers under section 482 of Cr.P.C., the Court cannot make a roving enquiry or enter into a meticulous examination of the records before it. The powers under section 482 of Cr.P.C. are to be exercised sparingly and with a great deal of circumspection. The prosecution should not be stifled or scuffled if some materials are available prima facie to indicate a criminal intent on the part of the accused.

12. At the cost of repetition, it can be said that the complaint petition/written report reflects purely a case arising out of breach of contractual obligations and the informant company cannot be allowed to choose a shortcut method when an appropriate civil remedy is available to it for redresssal of its grievances. Moreover, the ingredients of cheating and criminal breach of trust are conspicuously absent from the allegations levelled against the petitioner and in such circumstances, it would not be in the interest of justice if the criminal proceedings are allowed to stand.

13. Accordingly there being merit in this application, the same is allowed. The entire criminal proceeding in connection with Bistupur P.S. Case No. 45 of 2013, corresponding to G.R. No. 430 of 2013 registered for the offence punishable under sections 406, 420, 418, 504 and 506 of the Indian penal Code, is quashed.