(1975) 09 SHI CK 0006

In the High Court Of Himachal Pradesh

Case No : Criminal M. P. (Main) No. 67 of 1974

Jatinder Nath Kalie APPELLANT

Vs

Devinder Pal Arora and Another RESPONDENT

Date of Decision : 12-09-1975

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 397(2), 482, 561A
Penal Code, 1860 (IPC) — Section 420

Citation : (1975) 4 ILR HP 674

Hon'ble Judges : D.B. Lal, J

Bench : Single Bench

Advocate : K. Sharma and O.P. Thakur, for the Appellant; S.S. Ahuja, for the Respondent

Final Decision : Allowed

Judgement

D.B. Lal, J.—Jatinder Nath Kalie has applied u/s 482 of the Code of Criminal Procedure read with Article 227 of the Constitution and the prayer is to quash the criminal proceeding pending against him u/s 420 Indian Penal Code in the court of the Chief Judicial Magistrate, Dharamsala. The allegations contained in the application are: that the Petitioner is carrying on business of safety matches at Chandigarh and is the sole proprietor of the firm M/s Northern India Match Company. The Petitioner is engaged in this business for the last 25 years and holds a goodwill of certain trade mark of safety matches. According to the Petitioner he was allotted lands in the Industrial Focal Point at Rajpura, Punjab, and he wanted to set up a match factory at that place. Similarly the Petitioner is also allotted some land at Parwanu by the Himachal Pradesh Government and the said Government has also sanctioned a certain industrial unit in the name of the Petitioner. Before the match factory to be set up by the Petitioner starts functioning, the supply of match stick is obtained by the Petitioner from his own manufacturer at Tamil Nadu. Accordingly on 9th October, 1973, the Respondent Devinder Pal Arora who is stated to be proprietor of M/s Devinder Traders, School

Road, Kangra, entered into a contract with the Petitioner to function as his sole distributor for Kangra. He deposited Rs. 5,000 as security and he was to be supplied one wagon load of match boxes every month. In the said contract, it was also provided that in case the Respondent decided to stop the mutual business he will serve one month notice upon the Petitioner and the security money deposited by the Respondent will be refunded within six months after the settlement of the final account. Accordingly in pursuance of that contract, a wagon load of matches were supplied by the Petitioner. It appears there was some reluctance on the part of the Respondent to take delivery of that wagon load and on 20th December, 1973, a letter was drafted between the parties and it was agreed that the Respondent would take delivery of the wagon-load but the rate was fixed at Rs. 48 per bundle to be paid to the Petitioner. The Respondent could sell per bundle at the rate of Rs. 60 and his profit was to be confined to Rs. 5,000 for that one wagon-load of match sticks. If the Respondent was to earn in excess to that profit the said was refundable to the Petitioner.

2. Subsequently a dispute arose between the parties. The Petitioner submitted that the Respondent sold match sticks at much higher rate and earned excess profit which was refundable to him. The Respondent intimated that he did not earn even Rs. 5,000 and that nothing was payable to the Petitioner. Finally on 21st March, 1974, a notice was served by the Petitioner for rendition of accounts and according to his statement a sum of Rs. 12,000 was due from the Respondent to the Petitioner. On 25th March, 1974 the Respondent replied that no excess profit was earned by him and that the Petitioner was liable to pay him to the tune of Rs. 22,800. The Respondent also repudiated the contents of the subsequent contract dated 20th December, 1973, and said that he could sell the goods at any rate convenient to him and that no excess profit was refundable. He claimed rather that he was full owner of the articles supplied and could charge any profit he wanted. With this dispute between the parties, the Petitioner filed a suit in the Court of Senior Subordinate Judge, Chandigarh, on 2nd April, 1974. The suit was obviously for rendition of accounts. Thereafter on 11th June, 1974, a complaint was filed by the Respondent against the Petitioner in the court of the Chief Judicial Magistrate, Kangra. It was stated that the Petitioner committed the offence u/s 420 of the Indian Penal Code.

3. The learned Magistrate recorded the statements of Respondent Devinder Pal Arora and his one witness Gopi Chand. He ordered on 22nd June, 1974, that summons be issued for the offence u/s 420 Indian Penal Code. As the summons were not received back after service, the learned Magistrate did not wait for the return of the summons but issued bailable warrants against the Petitioner. This order was made on 3rd of October, 1974. The Petitioner thereafter applied for exemption of personal attendance but on 11th November, 1974, the learned Magistrate dismissed the prayer and issued non-bailable warrants against him. In the meantime the Petitioner filed the present application u/s 482 of the Code of Criminal Procedure read with Article 227 of the Constitution.

4. At the very out set, a preliminary objection was taken by the learned Counsel for the Respondent that the High Court cannot avail of its jurisdiction u/s 482 of the Code of Criminal Procedure because in Section 397(2) of the said Code a revision against interlocutory order is prohibited. It is true the High Court can exercise jurisdiction u/s 482 in accordance with the provisions of the Code and it has been repeatedly laid down, that if specific remedy is provided for elsewhere in the Code, the inherent power of the High Court should not be exercised to grant that relief. It is manifest no relief is provided for elsewhere in the Code against the order summoning the Petitioner for an offence, as that will be interlocutory order and no revision is maintainable u/s 397(2) of the Code. Therefore, initially there should be no difficulty in exercising the inherent power u/s 482. As provided for in the section itself, nothing in the Code is deemed to limit or affect the inherent power of the High Court. An argument was advanced that what is prohibitive in the Code should not be considered permissive so as to exercise inherent power of High Court u/s 482. This proposition in its abstract form is no doubt correct. But there may be a case where, in the language of their Lordships in R.P. Kapur Vs. The State of Punjab, it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged or where the allegations in the first information report or the complaint even if they are taken at their face value and accepted in their entirety do not constitute the offence alleged, or where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge or is clearly inconsistent with the accusation made, then in such cases inherent power of the High Court u/s 561A of the Code may be exercised to prevent the abuse of the process of the Court or otherwise to secure the ends of justice. Therefore, one has to see if the present case falls in any one of the above noted categories. That apart, the Petitioner has also invoked Article 227 of the Constitution. That Article no doubt provides for superintendence of the High Court over all Courts and Tribunals in relation to which it exercises jurisdiction. It is then to be enquired if this power of superintendence should be exercised and the criminal proceeding be quashed for the reasons stated.

5. In the complaint u/s 420 of the Indian Penal Code, Devinder Pal Arora stated that on 2-9-1973 the accused met him at Dharamsala and made representations, that he was likely to start a new match factory with automatic plant at Rajpura, Punjab, which fact proved to be untrue, because no such factory or plant were established. The complainant further averred that a contract dated 9th of October, 1973, was enteted into at Chandigarh and a sum of Rs. 5,000 was obtained from him as security amount. As the complainant believed the representations to be true, he parted with that money and because -the same was not returnable, he suffered a loss. On these grounds, according to the complainant the offence u/s 420 Indian Penal Code was made out. It is significant that the complainant did not make a mention of the subsequent

contract of 20th December, 1973. It is also abundantly clear that the contract took place at Chandigarh, The payment of Rs. 5,000 was made at Chandigarh. It is also not disputed that the wagon-load of match sticks was received at Pathankot. All this happened outside the jurisdiction of the Magistrate Court at Dharamsala. According to the Petitioner the Chief Judicial Magistrate, Dharamsala, had no jurisdiction to proceed under the complaint filed before him.

6. To hold a person guilty of the offence of cheating, it has to be shown that his intention was dishonest at the time of making the promise. Such a dishonest intention cannot be inferred from the mere fact that he could not subsequently fulfil the promise, (see: State of Kerala Vs. A. Pareed Pillai and Another, . The complaint itself is confined, on the alleged representation, made by the Petitioner, that he was starting the new match factory with automatic plant, and that he would supply one wagon-load of matchboxes every month, and because he could not fulfil that promise, he committed the offence u/s 420 Indian Penal Code. It was further stated that the Respondent would not have parted with Rs. 5,000 had he not been made the sale representative. In fact the entire reasoning seems to be incorrect. The Respondent did not advance Rs. 5,000 because of a match factory with automatic plant to be located at Rajpura but because of a specific contract dated 9th of October, 1973, brought into existence at Chandigarh. It is on the basis of that contract that the amount of Rs. 5,000 was advanced. There is a provision in the contract itself for the refund of that amount. If the Petitioner had committed breach of contract it was for civil court to decide the rights and liabilities between the parties. The jurisdiction of the criminal court hardly comes into play. Every breach of contract cannot be considered to culminate in a criminal offence. It is, of course, correct that there is a thin line of difference between a case of breach of contract and in a case of cheating. But every case of breach of contract cannot be cheating. The concept of deception should exist in the mind of the accused from the very start of the transaction. If that is wanting there will not be any criminal offence of cheating, even though there may not be fulfilment of promise made in the contract.- In the instant case, where was the evidence even prima facie, that from the very start of the transaction the Petitioner never intended to make the supply of match boxes. In fact he did make a supply by sending a wagon-load of match boxes to the Respondent. It may be that he intended to start a new match factory and might have taken steps to procure an automatic plant. If he could not do so, where was the ingredient made out for cheating. Subsequently he may even have thought of giving up the project. As long as he intended to supply match boxes to the Respondent may be after obtaining from Tamil Nadu, the Respondent was safe and no offence can be stated to be committed. Thus there was no legal evidence to substantiate the charge of cheating. On the very allegation made in the complaint no offence of cheating was made out. There might be a breach of a contract. The Petitioner has filed a civil suit and as a counter-blast to that suit the present complaint has been filed.

7. The correspondence between the parties does indicate that there was dispute

as to rendition of accounts. The Petitioner was saying that the Respondent has earned profit in contravention of the subsequent contract dated 20th of December, 1973. The Respondent repudiated and stated that he was entitled to damages from the Petitioner because he would have earned more profits had the supply of match boxes being continued. The entire dispute was of a civil nature. The inducement to part with Rs. 5,000 within the meaning of Section 420 of the Indian Penal Code actually came from the contract dated 9th of October, 1973, and not from the representation made by the Petitioner as to the opening of a new match factory with automatic plant. It could not be stated that the Petitioner fraudulently or dishonestly induced the Respondent to deliver Rs. 5,000 to the Petitioner. In fact no deception was practised. The offence of cheating was not even prima facie made out. It is also abundantly clear that the learned Magistrate had no territorial jurisdiction-the offence being committed at Chandigarh or outside his jurisdiction. The mere fact that the Petitioner came to Dharamsala on one date and had some talk with him will not confer the jurisdiction.

8. The allegations made in the complaint are not improved by the oral depositions of Devinder Pal Arora (PW1) or Gopi Nath (PW 2). Both of them stated about the talk which the accused had with Devinder Pal Arora at Dharamsala and the representation made by him as to the opening of new match factory with automatic plant. As I have stated before the said representation was not even false what to say of being irrelevant as the amount of Rs. 5,000 was not paid because of that representation alone. It was the contract of 9th October, 1973, which prompted the Respondent to part with that money. He could get a refund of that amount under the very terms of the contract.

9. In this circumstance, it would lead to an abuse of the process of the Court, if the Petitioner is harassed and the criminal complaint is permitted to thrive in the court of the Magistrate. Practice of rushing to criminal courts for expeditious settlement of dispute which should properly be decided by civil court has already been deprecated. Criminal courts should act with gross amount of care and caution because unless they are very careful, process of criminal courts is likely to be abused and many respectable persons may thus become the victim of harassment by complainant who imagine that it is easier to recover dues through criminal courts than through civil courts. In a case u/s 420 as referred to in Amir Chand v. Lok Nath AIR 1952 J&K 26 where a complaint was filed for the offence of cheating but it was disclosed that the case merely proved a case of breach of contract which could be redressed in a civil court, the High Court exercised jurisdiction u/s 561A of the Code of Criminal Procedure. Similarly the Division Bench of Punjab High Court in K.S. Saini and Another Vs. Union of India (UOI) and Others, held that inherent power of High Court can be exercised u/s 561A if the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged. That is all the more so if the High Court exercises its power of superintendence under Article 227 because no abuse of the process of the Court

should be continued and unnecessary harassment should not be caused to any party. It is rather necessary to secure the ends of justice that un-called for criminal proceedings are put to an end.

10. In this view of the matter, the criminal complaint u/s 420 Indian Penal Code filed by the Respondent against the Petitioner in the court of the Chief Judicial Magistrate, Dharamsala, along with the criminal proceedings arising therefrom, are quashed.