(2009) 04 JH CK 0089

In the Jharkhand High Court

Jogesh Gambhir APPELLANT

Vs

State of Jharkhand and Others RESPONDENT

Date of Decision : 15-04-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 202, 203

Citation : (2009) CriLJ 4504 : (2010) 7 RCR(Criminal) 387

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.R. Prasad, J.—This application is directed against the order dated 25.1.2006 passed by Additional Judicial Commissioner, FTC VII, Ranchi in Cr. Rev. No. 136 of 2002 affirming the order passed by learned Judicial Magistrate, Ranchi on 30.9.2002 dismissing the complaint u/s 203 of the Code of Criminal Procedure. The facts of the case giving rise this application are that petitioner-complainant, proprietor of a firm known as M/s.Kailash Investment lodged a complaint bearing complaint case No. 489 of 2001 stating therein that he having been in need of vehicles approached accused M.K.Somani, (accused No. 2) a dealer of Maruti Udyog Limited and enquired about the availability of the vehicles, viz. cars and vans and also about the delivery time of the said vehicles. Upon which, accused M.K.Somani told him that there is a scheme whereby if the person books more vehicles, he will be getting good rebate and also gift at the time of delivery of the vehicles which would take 3-4 months'' time. Thereupon on his insistence, the complainant booked 9 vehicles of different models on different dates and also made payment for that but the vehicles when were not delivered in due time, the complainant approached the Dealer and other accused persons, who assured him to make delivery of the vehicles but the same were never delivered, though in the meantime, the complainant brought the matter of non2 delivery of the vehicles to the knowledge of Maruti Udyog Limitied (Respondent No. 2) but that also bore no fruit.

2. Further case is that the dealer neither did deliver the vehicle nor did refund the money to this petitioner and in the similar manner, the complainant had cheated many persons. Thus, it has been alleged that the dealer (Accused No. 2) and other accused persons in conspiracy with Maruti Udyog Limited (Respondent No. 2) cheated the complainant.

3. Thereupon, the statement of the complainant on solemn affirmation was recorded and in course of enquiry u/s 202 of the Code of Criminal Procedure, two witnesses were examined However, the complaint was dismissed by the learned Magistrate holding therein that allegations though make out a case of breach of contract but do not make out a case of criminal breach of contract.

4. Being aggrieved with that order, revision was preferred, vide Cr. Rev. No. 136 of 2002 which was also dismissed by the learned Additional Judicial Commissioner.

5. On dismissal of the revision application, this application has been filed under Article 226 of the Constitution of India. Learned Counsel appearing for the petitioner submits that on the assurance given by the dealer (Accused No. 2) that on booking of more number of vehicles, he will be getting rebate and would be provided with gift, the complainant on being induced booked the vehicles on making payment but accused person neither did supply the vehicles nor did refund the money and as such, there was a fraudulent intention on the part of the accused persons to cheat the complainant right from the beginning and in that situation, dismissal of the complaint on the ground that the matter relates to breach of contract is quite illegal and hence, both the orders passed by the courts below are fit to be quashed.

6. Accordingly, learned Counsel by referring a case of Maruti Udyog Limited and Anr. v. State and Anr. Cr.W.J.C No. 118 of 2000 (R) disposed of on 23.4.2001 submits that in similar situation, a vehicle, which had not been earlier delivered to the person, was delivered when this Court intervened in the matter and as such, Maruti Udyog Limited (Respondent No. 2) be directed to deliver the vehicles as the dealer (Accused No. 2) must have deposited the money with Maruti Udyog Limited (Respondent No. 2).

7. Learned Counsel appearing for the Maruti Udyog Limited submits that the matter is purely of a civil nature and, therefore, learned Magistrate rightly dismissed the complaint which was affirmed by the revisional court and as such, it needs no interference by this Court.

8. It was further submitted that the Maruti Udyog Limited does not sell its products to the consumers directly, rather it sales its products to the concerned dealer from whom it receives payment against supply and the dealer in turn sales the cars to the consumers. Thus, there has been no direct relationship between the consumer and the Maruti Udyog Limited and under this situation, Maruti Udyog Limited is not responsible either for delivery or making payment to the complainant which was allegedly paid to the dealer. In that view of the

matter, the order passed by this Court, in the case referred to on behalf of the petitioner, does not have any bearing as in that case Maruti Udyog Limited had accepted about the payment of the money.

9. Having heard leaned counsel appearing for the parties, it does appear that even on payment of money to the dealer, vehicles were not supplied to the complainant by the dealer and, therefore, complaint was lodged alleging therein that the dealer as also other accused even the Maruti Udyog Limited cheated the complainant but learned Magistrate did find the case of mere breach of contract. It be stated that in determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is, at the time when the offence is said to have been committed. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.

10. However, in order to establish the offence of cheating following ingredients need to be established:

(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.

11. Learned Counsel appearing for the petitioner in his attempt to establish the factum of deception submitted that in the instant case, the complainant had booked several vehicles, on being induced fraudulently and dishonestly by the accused No. 2, as he had told the complainant that he would be getting rebate and gift at the time of delivery in case more number of vehicles are booked. But the statement made in the complaint and also in the statement made on solemn affirmation is otherwise wherein it has been stated that as he was in urgent need of the vehicles, he booked the vehicle and in that view of the matter, in absence of any other allegation, it cannot be said that on fraudulent inducement, the complainant booked the car. Thus, there does not appear anything on the record to show that accused had had intention right from the beginning to cheat the complainant. In that view of the mater, learned Magistrate seems to be absolutely justified in dismissing the complaint which order has rightly been upheld by the learned Additional Sessions Judge.

12. Hence, I do not find any merit in this application. Accordingly, this application

is dismissed.

