
(2012) 11 JH CK 0004
In the Jharkhand High Court
Case No : Criminal M.P. No. 1630 of 2012

Kallol Sarkar @ Kallon Sarkar

APPELLANT

Vs

The State of Jharkhand and Another

RESPONDENT

Date of Decision : 27-11-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 405, 406, 415, 420

Citation : (2013) 2 JLJR 63

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Ashutosh Anand, for the Appellant; Shashi Sekhar Sahay for the State and Mr. Indrajit Sinha for the Opp. Parties No. 2, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Ranjan Prasad, J.—Heard learned counsel appearing for the petitioner and learned counsel appearing for the State. This application has been filed for quashing of the entire criminal proceeding of Complaint bearing C/1 Case No. 3304 of 2011, including the order dated 13.3.2012, whereby and whereunder, the then learned Judicial Magistrate, 1st Class, Jamshedpur, took cognizance of the offences punishable under Sections 406 and 420 of the Indian Penal Code against the petitioner.

2. The case of the complainant as it appears from the complaint petition is that the vehicle of the complainant was insured with "Royal Sundaram Alliance Company Limited", to which the petitioner is the Manager. When the vehicle of the complainant got damaged, he led claim before the Insurance Company which was repudiated. Thereupon the instant complaint was lodged, alleging therein, that the petitioner has committed offence of cheating and misappropriation. On such complaint, when cognizance of the offences punishable under Sections 406 and 420 of the Indian Penal Code was taken vide order dated 13.3.2012, the same was challenged in this application.

3. Mr. Ashutosh Anand, learned counsel appearing for the petitioner submits that taking the entire allegation made in the complaint to be true, no offence is made out either u/s 420 or u/s 406 of the Indian Penal Code and as such, the order taking cognizance is fit to be quashed.

4. As against this, Mr. Indrajit Sinha, learned counsel appearing for the opposite party No. 2 submits that the petitioner fraudulently and intentionally repudiated the insurance claim and misappropriated the amount and as such, the order taking cognizance never warrants to be quashed.

5. It was further submitted that it is only on dishonest inducement the complainant got his vehicle insured with this Insurance Company.

6. Having heard learned counsel appearing for the petitioner and learned counsel appearing for the opposite party No. 2, I do not find any substance in the submission advanced on behalf of the opposite party.

7. The offence of cheating has been defined u/s 415 of the Indian Penal Code which reads as follows:--

Cheating.--Whoever, by deceiving any persons, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any persons 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".

8. From its reading it appears that following ingredients should necessarily be there for constituting offence of cheating:--

(1) there should be fraudulent or dishonest inducement of a person by deceiving him.

(2)(a) the person so deceived should be induced to deliver any property to any persons, or to consent that any person shall retain any property, or

(b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived.

(3) in cases covered by 2(b) the Act or omission should be one which causes or is likely to cause damage or harm to the person induced in bodily or reputation or property.

9. Thus, the first element necessary for constituting offence of cheating is a "deception" of the complainant by the accused. Unless there is deception, the offence of cheating never gets attracted.

10. In the instant case, nothing seems to be there with respect to deception as the complainant has never alleged that the petitioner dishonestly and fraudulently deceived the complainant.

11. Thus, no offence is made out u/s 420 of the Indian Penal Code.

12. Similar is the situation with respect to offence u/s 405 of the Indian Penal Code.

13. The criminal breach of trust has been defined u/s 405 of the Indian Penal Code which reads as follows:--

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."

14. On reading of the said provision, the following ingredients should be there for constituting offence u/s 405 of the Indian Penal Code:--

(a) a person should have been entrusted with property or entrusted with dominion over property;

(b) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or willfully suffer any other person to do so;

(c) that such misappropriation, conversion, use or disposal should be in violation of any direction of laws prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.

15. In the background of allegation made in the complaint, I do not find it a case of criminal breach of trust, rather it may be case of civil dispute or breach of agreement.

16. Under the circumstances, the entire criminal proceeding of Complaint bearing C/I Case No. 3304 of 2011, including the order dated 13.3.2012, is hereby, set aside, so far this petitioner is concerned. In the result, this application stands allowed.