
(1979) 08 P&H CK 0005

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 1864-11 of 1979

Kanwar Girendra Singh

APPELLANT

Vs

M/s Supreme Tractors, Delhi Road, Hissar

RESPONDENT

Date of Decision : 20-08-1979

Acts Referred:

Penal Code, 1860 (IPC) — Section 420

Citation : (1979) 08 P&H CK 0005

Hon'ble Judges : Ajit Singh Bains, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajit Singh Bains, J.—The petitioner is being prosecuted u/s 420 Indian Penal Code by the respondent in the Court of Judicial Magistrate Ist Class, Hissar. The respondent filed a complaint against the petitioner u/s 406 and 420 of the Indian Penal Code.

2. On the basis of the allegations in the complaint, the learned Magistrate issued process against the petitioner, which is as follows:--

Heard The allegations against the accused are that he got his tractor repaired from the complainant's firm and paid a cheque: that the said cheque was dishonored later on So the present complaint was made for an offence u/s 420 Indian Penal Code The facts alleged in the complaint are supported by the preliminary evidence and were the same in authority reported as 1-65 Current Law Journal 470 So, I find a prima facie case for for an offence u/s 420 Indian Penal Code against the accused. Accused is ordered to be summoned for the said offence on filing of process fee for 15th June, 1978.

It is against this order that the present petition has been filed.

3. A perusal of the allegations in the complaint slows that she dispute between the parties is of a civil nature. The petitioner approached the respondent

complainant for overhauling the engine of his tractor The complainant informed hire that it will cost him an expenditure of Rs. 4,000/-. The accused-petitioner assured the complainant that he will be in a position to bear the assured expenses and if the outliner tractor is overhauled the payment shall be made in cash. The tractor was overhauled and repaired and a bill of Rs. (sic) was submitted by the complain to the petitioner for payment. The petitioner issued a cheque to the complaint for the above side amount, which was dishonored Facts of the case reported in the 1965 Criminal Law Journal 470 relied upon by the learned Magistrate are distinguishable. It is settled law that mere dishonoring of the cheque will not bring the matter within the mischief of section 406 or section 40 of the Indian Penal Code. The complaint does not show that there was any misrepresentation. The element of cheating must be at the initial stage, which is missing in the present case when if the allegations in the complaint may be taken as correct. The petitioner approached the complainant to get his tractor repaired and overhauled for which the complainant issued a bill of R. 4122 40 Such a dispute is essentially of a civil nature and there has been no element of cheating or misrepresentation in the present case. Mr G.R. Majithia, learned counsel for the respondent complainant relied upon *Sita Ram v. The State* (1963) 67 P.L.R. 474, *Murari Lal v. Shiv Parkash etc.* 1971 Cur. L.J. 90 and *Randhir Singh v. The State of Punjab* 1978 P.L.J. Cr. 28. None of these authorities are relevant to the facts of the present case. There is no dispute regarding the proposition of law laid down in these authorities. In every authority, it is laid down that the element of cheating must be present from the very beginning, i.e. at the time when the parties enter into some bargain

4. Mr. Majithia also raised a preliminary objection that the application u/s 482 of the Criminal Procedure Code is not competent. This preliminary objection has also no merit. An application u/s 482 Code of Criminal Procedure, is competent to give effect to any order under the Code; or to prevent abuse of process of any Court or otherwise to secure the ends of justice. In the instant case, the allegations in the complaint, even if assumed to be correct, do not disclose any offence either u/s 406 or u/s 420 Indian Penal Code and thus the issue of process against the petitioner is an abuse of process of the Court.

5. In *Tarlok Singh and others v. Satya Deo Tripithi* (1979) 6 Cr. L.T. 117, the dispute between the parties related to the purchase of a truck on a hire purchase agreement, according to the agreement on default of any one instalment the financier had the right to terminate hire-purchase agreement even without notice and seize the truck. The complainant's case was that only a blank form was got signed by him. His further case was that on default of the third instalment the truck was forcibly seized and removed by the appellants. The respondent filed a complaint against the appellant in this connection for certain offences After enquiry the Magistrate directed the issue of summons. In this authority the Supreme Court held as under :--

The proceeding initiated was clearly an abuse of the process of the Court. It was

not a case where any process ought to have been directed to be issued against the accused (appellants). On the well settled principles of law it was a very suitable case where the criminal proceedings ought to have been quashed by the High Court in exercise of its inherent power. The dispute raised by the respondent was purely of a civil nature even assuming the facts stated by him to be substantially correct.

For the reasons stated, this petition is allowed and the proceedings against the petitioner are quashed.