

(1998) 10 BOM CK 0006

In the Bombay High Court

Case No : Criminal Writ Petition No. 30 of 1992

Kiran Desai

APPELLANT

Vs

Napolean Chemicals (I) Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 14-10-1998

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 415, 420

Citation : (1999) 101 BOMLR 541 : (1999) 1 MhLj 575

Hon'ble Judges : T.K. Chandrashekhara Das, J

Bench : Single Bench

Final Decision : Allowed

Judgement

T.K. Chandrashekhara Das, J.—This Writ Petition arises out of a Complaint filed by the 1st Respondent before the Judicial Magistrate, First Class, Court No. 1, Thane in Criminal Case No. 366 of 1990. In the complaint the Complainant alleged that he placed Order for supply of Engineering Articles manufactured at the Petitioner's Company. It is alleged that as per the contract between the parties the time was stipulated to be the essence of the contract and any delay in the delivery will entail the petitioner to pay a fine of Rs. 3000/- per day with effect from 2.12.1989. Accordingly, the articles were delivered on 12.12.1989 admittedly with the delay of 10 days. On delivery, certain defects were noticed in the articles. The Complainant also informed the Petitioner that he has spent about Rs. 35,000/- for the rectification of the articles, and he also paid the fine for the consequent delay in supplying the goods for his customers. Accordingly an amount of Rs. 68,000/- was claimed by the 1st Respondent from the Petitioner as compensation for supply of defective machinery and also for delayed supply. Incidentally, it may be noted that for a due performance of the contract the Complainant had obtained a cheque in advance for Rs. 2,40,000/- drawn on Indian Bank, Andheri West Branch, Bombay dated 6.12.1989 as a precaution that in case the Petitioner failed to perform his part of contract, the Complainant can encash the cheque for realisation of the loss sustained by him.

The cheque issued by the Petitioner was also dishonoured but no notice has been sent in compliance of the Section 138 of the Negotiable Instrument Act. It is alleged in the complaint in para 8 as under:

The complainant says that before placing the order the accused in personal discussion fraudulently and dishonestly induced them by false representation filed about their reputation and efficiency in manufacturing such reactors with accuracy and prevailed upon them to place order of reactors and other articles with the accused Company on 28.3.1990. The Complainant says that now they have revealed that the accused had full knowledge while accepting their order that the accused would not be able to manufacture the reactors and its accessories with perfect accuracies, neither the accused would be able to supply these articles on Schedule date of delivery and actually these accused supplied the order with number of defect as well as delivery was made 11 days late. The complainant says that they made full and final payment of the ordered articles, before the delivery of the articles on account of the dishonest, false, fraudulent inducement. The complainant paid full payment, thus the accused dishonestly with an intention of causing wrongful gain to them and made wrongful loss to the complainant acted as above.

With this and other allegations the above complaint has been filed and the Magistrate after verification of the complaint issued notice against the Petitioner. I have closely perused the complaint. I do not think any offence u/s 420 has been disclosed against the Petitioner. Merely because the allegations made in paragraph 8 of the complaint that the accused has fraudulently and dishonestly induced them by a false representation to enter into a contract by the complainant will not be sufficient to constitute ipso facto an offence u/s 420 of I.P.C. particularly in a commercial contract like this. It must be discernible or inferable from the circumstances pleaded and the materials placed before the Court along with the complaint that even at the initial stage of the contract one of the party had an evil design to defraud the other party. Such circumstances are not demonstrably disclosed in the complaint and the Magistrate was therefore not justified to issue process. Every breach of contract will not result in an offence u/s 420. At this juncture it is profitable to refer to a latest decision of the Supreme Court on the subject which is in the case of Nageshwar Prasad Singh alias Sinha Vs. Narayan Singh and Another, , which reads as under:

Section 415 of the Indian Penal Code which defines the offence of cheating, illustrates it well in providing statutory illustrations. Illustration (g) is relevant for our purpose which reads as follows :

(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery, A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

The latter part thereof illustrates that at the time when agreement for sale was executed, it could have in no event been termed dishonest so as to hold that the complainants were cheated of the earnest money, which they passed to the appellant as part-consideration, when possession of the total land involved in the bargain was passed over to the complainant respondents, and which remains in their possession. Now, it is left to imagine who would be interested in delaying the matter in completing the bargain when admittedly the complainants have not performed their part in making full payment. The matter is therefore before the Civil Court in this respect. The liability, if any, arising by the breach thereof is civil in nature and not criminal....

In view of this decision it is clear that unless an evil design at the very initial stage of contract is demonstrated it is very difficult to spell out an offence u/s 420 in view of the allegations made in the complaint.

In the result Writ Petition is allowed. Rule made absolute in terms of prayer Clause (a).

No order as to costs.