

(2007) 10 AHC CK 0009
In the Allahabad High Court
Case No : Criminal M.A. No. 2252 of 2005

Kuljeet Singh alias Mintoo and Others	APPELLANT
Vs	
Kailash Chand Agrawal and Another	RESPONDENT

Date of Decision : 29-10-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 482
Penal Code, 1860 (IPC) — Section 403, 405, 415, 420, 504

Citation : (2008) 2 ACR 1468

Hon'ble Judges : M.K. Mittal, J

Bench : Single Bench

Advocate : M.D. Singh "Shekhar" and R.D. Tiwari, for the Appellant; Aditya Kumar Yadav, D.N. Yadav and A.G.A., for the Respondent

Judgement

M.K. Mittal, J.—Application has been filed u/s 482, Cr. P.C. for quashing the proceedings in Criminal Complaint Case No. 157 of 2005, Kailash Chand Agrawal v. Kuljeet Singh alias Mintoo and Ors. under Sections 504, 506, 420 and 403, I.P.C., P. S. Rath, District Hamirpur, pending in the Court of Civil Judge (Jr. Division)/Magistrate Ist Class, Rath District Hamirpur.

2. Heard Sri M. D. Singh Shekhar, learned Counsel for the applicants, Sri Aditya Kumar Yadav, learned Counsel for the opposite party No. 2, learned A.G.A. and perused the material on record.

3. Brief facts of the case are that opposite party No. 1 filed the complaint against the applicants alleging that on 13.6.2003 accused persons came to him and demanded Rs. 2.50 lacs as loan on interest and also assured to return the same within a year with interest. The complainant was not possessed of that money but the accused persons insisted and prayed him and he having mercy on the accused gave Rs. 1.70 lacs from his account and Rs. 38,600 after taking loan from one Ram Naresh Gupta. When one year was completed and the accused did not return the money he demanded but they abused him and stated that they would not return the money and he may do whatever he liked. According to the

complainant accused committed breach of trust and also cheated him of his money. In this matter the learned Magistrate examined the complainant and his witnesses under Sections 200 and 202, Cr. P.C., and after finding a prima facie case against the accused persons summoned them by order dated 24.2.2005. Feeling aggrieved accused have filed this application.

4. Contention of learned Counsel for the applicants is that the complaint has been filed with false allegations and no money was ever advanced as loan by the complainant to the accused persons. They have also taken the plea that in any case it is matter of civil dispute and there is no criminal liability and the complaint is liable to be dismissed. There is also no documentary evidence to suggest that any loan was given by the complainant to the accused persons.

5. The complainant has contended in his counter-affidavit that accused had taken the loan and had promised to return the same but they did not return and when demand was made they threatened and abused him and that the complaint has been filed with correct allegations and that the learned Magistrate has rightly summoned the accused persons. Applicants filed rejoinder-affidavit and reiterated their contentions.

6. Learned Counsel for the applicants has contended that allegations as made in the complaint show that loan was advanced by the complainant and the accused were also required to repay the loan alongwith interest, but they failed to do so and therefore, it was a civil transaction and no criminal liability can be fastened on the accused persons. He has also contended that since the loan was given there was no entrustment u/s 405, I.P.C. This contention is correct. Perusal of the complaint also shows that complainant has nowhere mentioned in the complaint that the accused induced him to part with his money and they had intention to cheat the complainant from the very inception. In absence of these allegations in the complaint showing the ingredients of the Section 420, I.P.C. no offence u/s 420, I.P.C. is also made out against the accused persons. Learned Counsel for the complainant could not show anything to the contrary.

7. In a recent case of *Vir Prakash Sharma v. Anil Kumar Agarwal and Anr.* (2007) 7 SCC 373, it has been held by Hon'ble Apex Court in para 7 of the judgment that the principle underlying exercise of jurisdiction by the High Court u/s 482, Cr. P.C. is now well settled viz., that the allegations contained in the complaint petition even if given face value and taken to be correct in its entirety do not disclose an offence or not is the question.

8. Section 415, I.P.C. provides that:

415. Cheating.-Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person 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 caused or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to

cheat.

9. On a reading of the aforesaid provision, it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.

10. 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 subsequently 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 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.

11. In the instant case, there is no averment that the accused had any intention to deceive the complainant from very beginning and therefore, no offence u/s 420, I.P.C. is made out.

12. Considering the facts and circumstances of the case, I come to the conclusion that complaint as filed by opposite party No. 2 does not disclose any offence to have been committed by the accused persons and therefore, same is liable to be quashed.

13. Application is allowed. The proceedings in the Complaint Case No. 157 of 2005, above mentioned are hereby quashed.