
(2006) 04 RAJ CK 0036

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 8 of 2006

Lok Housing and Constructions Ltd. and Others

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 17-04-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 173(2), 190(1), 397, 401
Penal Code, 1860 (IPC) — Section 120B, 405, 406, 420

Citation : (2006) 2 RLW 1710 : (2006) 3 WLC 199

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Advocate : O.P. Khadaria and Manish Kumawat, for the Appellant; R.P Kuldeep, Public Prosecutor and Alok Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Kumar Sharma, J.—This petition has been u/s 397/401 of the Code of Criminal Procedure for setting aside the order dated July 30, 2005 of the learned Judicial Magistrate No. 11 Jaipur City whereby the cognizance for the offences under Sections 420, 406 and 120B IPC was taken against the petitioners.

2. In the complaint filed against the petitioners it was stated that they had committed criminal breach of trust intentionally in withholding sum of Rs. 4,63,000/-. The complaint was forwarded u/s 156(3) CrPC to the local police station for investigation. The Investigating Officer concluded the investigation and submitted Final Report to the effect that the complaint did not disclose any criminal offence since non payment of balance amount was purely a commercial transaction between the parties. Being dissatisfied with the Final Report, the complainant filed protest petition. Learned Trial Court on the basis of material on record found prima facie case under Sections 420, 406 and 120B IPC against the petitioners and took cognizance under the said sections.

3. It is contended by learned Counsel for the petitioners that offence of cheating and criminal breach of trust cannot co-exist in view of single transaction, either it

can be cheating or criminal breach of trust. Since two basic elements of Section 405 IPC (i.e. (i) entrusting any person with property or with any dominion over the property, and (ii) the person entrusted dishonestly, misappropriates or converts to his own use that property) are missing, offence u/s 406 IPC is not made out. Expression "entrustment" carries with it the implication that the person handing over any property, continues to be its owner. Whereas the complainant was never the owner of property in dispute. Non payment of balance amount received from the sale of the property in dispute which belonged to the petitioners does not amount to any offence since right to sell is an incident of the ownership. Mere failure to keep up the promise cannot be presumed as leading to cheating. According to the learned Counsel even if all the allegations made in the complaint are taken at their face value and accepted in their entirety, it does not prima facie constitute any offence. It is also urged that the Magistrate did not have territorial jurisdiction to try the case. Learned Counsel in support of these contentions took me through various judicial pronouncements.

4. In considering the question whether the order taking cognizance deserves to be quashed on the grounds raised by the petitioners, the first point to be looked into is whether the Court is required to see the adequacy of evidence for supporting the conviction or it has to be satisfied whether there is sufficient ground for proceeding. Indicating the legal position, the Apex Court in Jagdish Ram Vs. State of Rajasthan and Another, , held that the taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.

5. Hemant Dhasmane Vs. Central Bureau of Investigation and Another, was the case wherein their Lordships of the Supreme Court after scanning Sections 173(2) and 190(1)(b) CrPC observed as under: -

When the report is filed under Sub-section (2) of Section 173 the Magistrate has to deal with it by bestowing his judicial consideration. If the report is to the effect that the allegations in the original complaint were found true in the investigation, or that some other accused and/or some other offences were also detected, the Court has to decide whether cognizance of the offences should be taken or not on the strength of that report. But when the report is against the allegations contained in the complaint and concluded that no offence has been committed by any person, it is open to the court to accept the report after hearing the complainant at whose behest the investigation had commenced. If the court feels on a perusal of such report that the alleged offences have in fact been committed by some persons the court has the power to ignore the contrary conclusions made by the investigating officer in the final report. Then it is open to the court to independently apply its mind to the facts emerging therefrom and it can even

take cognizance of the offences which appear to it have been committed, in exercise of its power u/s 190(1)(b).

6. In *Ajay Mehra and Anr. v. Durgesh Babu and Ors.*, 2001 (3) Crimes 155 (SC) the Apex Court indicated that at the stage of taking the cognizance of offence the material on record is examined on its face value. Question of consideration of other materials does not arise at that stage. It would however open to the accused while framing charge to argue as to whether material do permit framing of charge or not.

7. In *Trisuns Chemical Industry Vs. Rajesh Agarwal and others*, the Supreme Court held that it is an erroneous view that the Magistrate taking cognizance of an offence must necessarily have territorial jurisdiction to try the case as well. The jurisdictional aspect becomes relevant only when the question of inquiry or trial arises. After taking cognizance the Magistrate may have to decide as to the court which has jurisdiction to inquire into or try the offence and that situation would reach only during the post cognizance stage and not earlier.

8. Applying the ratio indicated by their Lordships of the Supreme Court in the aforequoted case law, I am of the considered opinion that learned court below has not committed any error in taking cognizance of the offences. Having closely scanned the material on record, I do not find that judicial process in the instant case was an instrument of oppression or needless harassments. The court blow was circumspect and judicious in exercising discretion and took all relevant facts and circumstances into consideration before issuing process.

9. For these reasons, I find no merit in the instant petition and the same accordingly stands dismissed. I however make it clear that it would be open to the accused petitioners to argue at the time of framing charge as to whether the materials do permit framing of charge in the instant case. It will also be open for the accused petitioners to move the Magistrate for exempting appearance under the relevant provisions of CrPC. Record of the case be sent back forthwith. The counsel for parties shall appear before the court below on April 28, 2006 for seeking further instructions.