
(2012) 04 JH CK 0088
In the Jharkhand High Court
Case No : Criminal M.P. No. 409 of 2012

Mahadeo Sharma

APPELLANT

Vs

The State of Jharkhand and Shivjee Sharma

RESPONDENT

Date of Decision : 10-04-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 34, 405, 406, 415

Citation : (2012) 04 JH CK 0088

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : K. P. Deo, Mukesh Kr, for the Appellant; A. Sen, Nagmani Tiwari, Advocates and A.P.P For the State, for the Respondent

Final Decision : Allowed

Judgement

R. R. Prasad, J.—Heard learned counsel appearing for the petitioner, learned counsel for the State and also learned counsel for the O.P. No. 2. This application has been filed for quashing the entire criminal case including the order dated 19.08.2011, passed in C.P. No. 116 of 2009, whereby and whereunder cognizance of the offences punishable under Sections 406, 420, 323 of the Indian Penal Code has been taken against the petitioner.

2. It is the case of the complainant that the complainant entered into an agreement with this petitioner, who is the owner of the land, whereby, a sum of Rs. 33,18,750/- was paid to the petitioner, on giving assurance that the complainant would sell the land and thereby, if he receives less amount than Rs. 33,18,750/-, the petitioner would be returning that much of the amount which would be less of Rs. 33,18,750/-. On such assurance, the complainant sold the land, but he could fetch a sum of Rs. 24,89,750/- only and thereby he was under loss of Rs. 8,29,750/- which amount was demanded by the complainant from the petitioner, but the petitioner refused to make payment of the said amount and thereby it was alleged that the petitioner has committed offence under Sections 420 and 406 of the Indian Penal Code. On such complaint, cognizance of

offences punishable under Sections 420, 406 and 323 of the Indian Penal Code has been taken against the petitioner. That order is under-challenge.

3. Mr. K. P. Deo, learned counsel appearing for the petitioner submits that even if, the entire allegations made in the complaint petition are taken to be true in its entirety, no offence of cheating or mis-appropriation is made out rather it would be a case of civil liability as it is the case of the complainant that when the complainant sold the land at the rate fixed by the petitioner, he suffered a loss of Rs. 8,29,750/-. Thus, no allegation seems to be there that the petitioner made any mis-representation fraudulently or dishonestly to induce the complainant to part with the money and as such, question of committing offence of cheating and mis-appropriation does not arise.

4. Learned counsel further submits that in fact, the instant prosecution is actuated with malice as the petitioner had earlier lodged a case against the complainant which was registered as Chas P.S. Case No. 16 of 2009 under Sections 420, 406, 323 /34 of the Indian Penal Code alleging therein that at the instance of one Mritunjay Sharma, the petitioner had executed Power of attorney, in favour of complainant Shivji Sharma and Vinod Sharma who executed a registered sale-deed in favour of Mritunjay Sharma and his family members and thereby, they had received a sum of Rs. 35,55,000/-though they had never been given power under the Power of attorney to receive the money. Since that transaction was quite illegal, petitioner as usual in exercise of his right came over the land in question, but it was objected by Mritunjay Sharma. When the petitioner raised protest, he got him boarded on a car forcibly. However, he anyhow got himself released from the clutches of the accused persons.

5. Upon investigation, the allegations were found to be true and, therefore, the charge-sheet was submitted. Thereupon the complainant in order to save his skin has lodged the case on 5.3.2009, with all false allegations in order to wreak vengeance on him.

6. Mr. A. Sen, learned counsel appearing for the O.P. No. 2 submits that as per the allegation made in the complaint petition the petitioner received a sum of Rs. 33,18,750/-giving power to the complainant to sell the land, at the rate fixed by him and there was understanding in between the parties that if, the amount fetched from selling the land would be lesser than a sum of Rs. 33,18,750/-, the same would be returned to the complainant, but the petitioner did not return the money to the complainant though the complainant had suffered a loss of Rs. 8,29,750/-.

7. It was also stated that allegation is also there constituting offence u/s 323 and hence, if the allegation made in the complaint do constitute offences, it never warrants to be quashed.

8. Under the facts and circumstances, the question does arise as to whether the allegations made in the complaint does constitute offence either under Sections 406 or 420 of the Indian Penal Code?

9. 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.

10. 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.

11. Thus, the first element necessary for constituting the offence of cheating is deception of the complainant by the accused. Unless there is deception, the offence of cheating never gets attracted. After deception has been practiced the persons deceived should get induced to do or omit to do something. Then, the question arises as to what is the deception ?

12. In the ordinary sense deception has in it the element of misleading or making a person believe something that is false or inculcating one so that he takes the false as true, the unreal as existent, the spurious as genuine and it is also necessary that deception should be right from the beginning of the contract. Applying the principle constituting a criminal offence of cheating in context of the allegation it does appear that the very first element of deception constituting an offence of cheating is lacking as nowhere the allegations made in the complaint do indicate about the complainant being deceived by the petitioners in any manner. The petitioner has never been alleged to have induced the complainant fraudulently or dishonestly to part with the money.

13. Here it would be apt to take notice of a case of Iridium India Telecom Ltd. Vs. Motorola Incorporated and Others, where the Hon"ble Supreme Court taking notice of the provision as contained in Section 415 of the Indian Penal Code has been pleased to hold that deception is a necessary ingredient for the offence of cheating under both parts of the Section.

14. It be recorded that there has been no doubt that if the facts constitute civil liability as well as criminal liability, then the remedy available for civil law cannot be a ground for quashing of the criminal proceeding which proposition of law has also been laid down by the Hon''ble Supreme Court in a case of Indian Oil Corporation Vs. NEPC India Ltd. and Others, but at the same time, it has also been observed by the Hon''ble Supreme Court that there is a growing tendency in business circle to convert purely civil dispute into criminal cases. This is obviously on account of the prevalent impression that civil law remedies are time consuming and to do not adequately protect the interest of lenders/ creditors. Such tendency is seen in several family dispute also leading to irretrievable brake down of marriages/ families. There is also an impression that if a person could somehow be entangled into a criminal prosecution, there is likelihood in imminent settlement. It has emphatically been said by the Hon''ble Supreme Court in the said decision that any effort to settle civil dispute and claims which di not involve any criminal offence by applying pressure through criminal prosecution should be deprecated and discouraged.

15. Similar is the situation with respect to offence punishable u/s 406 of the Indian Penal Code as on the face of allegation made in the complaint the said offence also never gets attracted.

16. The provision of criminal breach of trust has been defined in Section 405 of the Indian Penal Code which reads as under :

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 wilfully suffers any other person so to do, commits "criminal breach of trust.

17. Here in the instant case, even if it is accepted that the petitioner has retained a sum of Rs. 8,29,750/-, he may not be said to have dishonestly misappropriated as there was no intention right from the beginning to cheat or to misappropriate the amount, rather at best it does appear to be a case of civil dispute.

18. Furthermore, as has been noted earlier this petitioner had lodged a case against the complainant on 23.09.2009, which had been registered as Chas P.S. Case No. 16 of 2009, in which cognizance of the offence punishable under Sections 420, 406 and 323 /34 of the Indian Penal Code has been taken.

19. Keeping in view the fact upon which the case has been lodged by the petitioner against the complainant, the case lodged by the complainant certainly appears to be actuated with malice and on this ground also entire criminal prosecution including the order taking cognizance is fit to be quashed.

20. Accordingly, the entire criminal prosecution including the order dated

19.08.2011, under which cognizance was taken against the petitioner in connection with C.P. No. 116 of 2009, is hereby, quashed. In the result, this application stands allowed.