
(1991) 06 BOM CK 0027

In the Bombay High Court

Case No : Criminal Revision Application No. 25 of 1991

Maj. Gen. Harkisan and others

APPELLANT

Vs

Shri Durga Prasad and another

RESPONDENT

Date of Decision : 20-06-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202
Penal Code, 1860 (IPC) — Section 415, 416, 420

Citation : (1992) CriLJ 1944 : (1991) 1 MhLj 1454 : (1991) MhLj 1454

Hon'ble Judges : B.U. Wahane, J

Bench : Single Bench

Advocate : Shri S.P. Dharmadhikari, for the Appellant; Shri N.H. Shams, Advocate and Shri Kishore Pande, Public Prosecutor, for the Respondent

Judgement

1. It is a common experience that there is a tendency on the part of the litigants to start circuit civil suits or proceedings by instituting complaints, which should be vigilantly checked by the Criminal Courts and they should not lend aid to such short cuts. The parties should not be allowed to give vent to their anger or express their vengeance by starting proceedings in Criminal Courts when proper remedy is to resort to Civil Courts. Hasty resort to criminal courts to invoke aid against persons inflicting civil injuries should not be encouraged.

2. The perusal of the complaint instituted by the non-applicant No. 1 Shri Durgaprasad Agarwal on behalf of his brother Shri Sham Sundar in the Court of Chief Judicial Magistrate, Bhandara, the averments made in the instant petition and documents annexed with the petition, the instant case appears to be one of such type of short cuts by moving the Criminal Court rather than to redress their grievances in the Civil Court. The facts which prompted the non-applicant Shri Durgaprasad Agarwal to institute the complaint in the Court of Chief Judicial Magistrate, Bhandara, are as follows :-

The complainant is the brother of Shri Shamsundar who does the business of exhibiting films at Tumsar in the name and style as "Balaram Video Cinema". A

video projector was purchased from the company "Fusebase Eltoro Limited" of which the petitioner No. 1 (accused No. 1) is the Chief Executive. It is alleged that at the time of purchase of the machine, the literature of the machine along with the photographs were sent to the complainant. An assurance was extended by the accused Nos. 9 and 10 to the complainant. The complainant decided to purchase the said machine. The learned Chief Judicial Magistrate, Bhandara, took no cognizance against the accused Nos. 9 and 10 and therefore, no process was issued against those persons. Hence they are not before me. It is further alleged that at the time of purchase, the accused Nos. 1, 9 and 10 also assured the complainant that this new Hotline Machine will be brought to Tumsar and will be installed in the cinema hall constructed by the complainant. Besides, the warranty period of one year was assured and during warranty period if there occurs any fault, repairs will be carried out as per the agreement. If the machine is not working satisfactorily the same would be replaced without charging anything for the same. According to the complainant, the machine was not working properly and, therefore, letters were issued to the accused to send their Engineers. However, it is contended that they demanded Rupees 10,000/- from the complainant for future repairs even during the period of guarantee. It is further submitted in the complaint that though assurance was extended to supply new working machine, the accused supplied an old one. On these averments, the complainant alleged that the accused committed the offences punishable u/Ss. 415, 416 and 420 of the Indian Penal Code.

3. The learned C.J.M., Bhandara, called report of the Police u/S. 202 of the Criminal Procedure Code and after receiving the report from the Police, ordered to issue process u/Ss. 415, 416 and 420 of the Indian Penal Code against the accused Nos. 1 to 3 i.e. the present petitioners before me, vide order dated 10-1-1991.

4. Mr. Dharmadhikari, the learned counsel for the petitioners/accused, rightly submitted that even considering the contents of the complaint as it is and even the perusal of the report submitted by the Police u/S. 202, Cr.P.C. the contents do not disclose even the prima facie offence alleged to be committed u/Ss. 415, 416 and 420 of IPC.

5. Mr. Shams, the learned counsel for the non-applicant No. 1-complainant, strenuously submitted that the accused persons fraudulently or dishonestly induced the complainant by extending the assurance that the machine which is going to be supplied to the complainant, is a new one. However, mere reading of the complaint itself, demonstrates that at the time of negotiations the complainant Shri Durgaprasad Agarwal was not present. There is no whisper in the complaint that he was party to the negotiations. Mr. Shamsundar, the brother of the complainant, runs Video Cinema. The complainant merely stated that he works on behalf of Shamsundar with regard to legal and business matters. However, before me there is no document as such which speaks about the powers given by Shri Shamsundar to look after his legal and business matters, to

the complainant. No Court shall take cognizance of an offence falling under certain specified sections of the Indian Penal Code, except upon a complaint made by some person aggrieved by such offence, the object being to limit the right of the complaint to the individual who has suffered legal injury, e.g. in a case of defamation, the person aggrieved is the person defamed; in the case of bigamy committed by a wife, the husband is the person aggrieved; in the case of infringement of copy-right, the owner of the book or publication; in Bankruptcy Law, the creditor is person "aggrieved" by an order of discharge or scheme of arrangement. Thus, considering the facts referred to above, by no stretch of imagination, the complainant can be said to be an aggrieved party. The complainant, therefore, had no locus standi even to institute the complaint case on behalf of the other.

6. Even on merits, I do not find that there is any fraudulent or dishonest intention on the part of the accused persons. S. 415 reads as under :

"Whoever, by deceiving any person fraudulently or dishonestly induces the person so deceived to deliver 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 causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"."

Considering the averments made in the complaint, no ingredient of S. 415 has been complied with. Similarly, there is no personating and, therefore, S. 416 of the Indian Penal Code cannot come into play. S. 416 reads as under :

"A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is."

It is not the case of the complainant that he was cheated by personation. In spite of that, learned C.J.M., Bhandara, acted blindly and mechanically took cognizance and passed the order regarding issuance of process u/Ss. 415 and 416 of IPC. If the ingredients of Ss. 415 and 416 are not attracted, S. 420 does not come into play because S. 420 specifies the punishment.

7. It is a dispute relating to property. It is not the function of the Criminal Courts to have anything to do with disputes relating to property. It is the function of the Civil Court to decide the rival claims. It is true that the litigants are always eager to cut the Gordian knot of protracted litigation by launching out prosecution. But the Courts should be slow to entertain matters which are properly within the jurisdiction of the Civil Courts.

8. Considering the facts and circumstances of the case and the submissions made by the learned counsel of parties, according to me, it is a hasty resort to the Criminal Court to invoke aid against the applicants and, therefore, such

action should not be encouraged. The impugned order dated 10-1-1991 passed by the learned Chief Judicial Magistrate, Bhandara, taking cognizance and issuing process against the accused persons u/Ss. 415 and 416, ipso facto is illegal and, therefore, it is set aside. The petition is allowed.

9. Petition allowed.