

(2025) 04 SC CK 0320

In the Supreme Court Of India

Case No : Criminal Appeal No. 1742 Of 2025 (Arising Out Of Special Leave
Petition (Criminal) No. 10931 Of 2022)

Manish

APPELLANT

Vs

State Of Maharashtra And Anr

RESPONDENT

Date of Decision : 02-04-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 155(2), 156(1), 156(3)
Indian Penal Code, 1860 — Section 415, 420

Citation : (2025) 04 SC CK 0320

Hon'ble Judges : Pamidighantam Sri Narasimha, J;Joymalya Bagchi, J

Bench : Division Bench

Advocate : Rajat Joseph, Sailesh Sitani, Hrishikesh Chitaley, Kaustubh Kadasne, Yatin M.jagtap, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Venkita Subramoniam T.R

Final Decision : Allowed

Judgement

Joymalya Bagchi, J

1. Leave granted.

2. The appeal is directed against judgment and order dated 27th September, 2022, passed by the High Court of Judicature at Bombay at Nagpur in Criminal Application (APL) No. 506 of 2022, whereby the appellant's prayer for quashing of FIR No. 80/2022, dated 11th February, 2022, registered under Section 420 of the Indian Penal Code, 1860, (for short the 'IPC') at Police Station Lakadganj, Nagpur, was refused.

Genesis of the case:

3. The 2nd non-applicant (respondent no.2 herein) – Nitin, S/o Murlidhar Agrawal, took out an application under Section 156(3) of the Code of Criminal Procedure, 1973, before the Judicial Magistrate First Class (Nagpur) alleging as follows:-

a) The appellant/accused approached the 2nd non-applicant and represented himself as a 'reputed, trustworthy and creditworthy' businessman. On such representation, between 20th November, 2015 and 02nd June, 2017, the 2nd non-applicant sold coal to the appellant and raised invoices, which carried a credit period of 15 days. In respect of the few initial invoices, the appellant made payments. Subsequently, he failed to make payments and a large amount became due.

b) On 06th March, 2019, the 2nd non-applicant issued notice to the appellant claiming a sum of Rs.76,82,883/- along with interest payable within 15 days of notice. Appellant failed to pay and pursuant to negotiations, on 23rd July, 2020, a notarized agreement was executed, by and between the parties, wherein it was agreed between 01st August, 2020 and 31st January, 2021, the appellant would repay the sum of Rs.80,00,000/- in five installments to the 2nd non-applicant, failing which the latter would be at liberty to initiate civil and criminal proceedings.

c) The appellant paid Rs.5,00,000/- as per the agreement, but failed to pay the remaining sum.

d) Under such circumstances, the 2nd non-applicant approached Lakadganj Police Station on 28th June, 2021 for registration of a criminal case. Police did not take action, which constrained the 2nd non-applicant to approach the Magistrate concerned for direction to register FIR.

4. After considering the averments in the application and report from the Police Station, the Magistrate directed registration of FIR.

5. In course of investigation, police recorded further statement of the 2nd non-applicant. Other witnesses were also examined. Notarized agreement, invoices and bank statements were seized. In his further statement, the 2nd non-applicant reiterated the allegations. He further disclosed he had lodged a prior complaint at Lakadganj Police Station and the Crime Branch had started investigation thereon. At that stage, the appellant had met him in his office and the notarized agreement came to be signed, which has not been honoured by the appellant.

6. In conclusion of investigation, a charge-sheet came to be filed against the appellant alleging commission of offence punishable under Section 420 IPC.

Proceeding before the High Court:

7. The appellant assailed the charge-sheet before the High Court in Criminal Application (APL) No. 506 of 2022. The High Court refused to quash the proceeding inter alia holding the allegations prima facie divulging ingredients of offence under Section 415 IPC.

8. The High Court held the case did not divulge a purely commercial dispute and the 2nd non-applicant had not given the dispute a cloak of criminality. What

primarily persuaded the High Court to come to such conclusion are the averments in the notarized agreement, wherein the appellant admitted that he had induced the 2nd non-applicant to sell coal by projecting himself as a reputed, trustworthy and creditworthy party. It is trite, the High Court would sparingly exercise its inherent powers to interdict a criminal proceeding.

Relevant Law:

9. The principles circumscribing the power of the High Court to quash a criminal proceeding are succinctly laid down in State of Haryana vs. Bhajan Lal 1992 Supp (1) SCC 335 :-

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

Analysis and Findings:

10. The trajectory of events narrated earlier would reveal a continuing business transaction between 2015 and 2017 between parties. During this period, the 2nd non-applicant supplied coal in tranches under various invoices with a credit limit

of 15 days. Though the appellant had breached the credit limit and failed to pay the 2nd non-applicant, the latter continued to supply coal irrespective of such breach. A sum of Rs.76,82,883/- became due and payable.

11. On 23rd July, 2020, a notarized agreement was executed wherein the appellant agreed to liquidate the dues between 1st August, 2020 and 31st January, 2021 in five installments. The schedule was not adhered to. The High Court referring to the recitals in the subsequent agreement held the appellant had acknowledged that he had induced the 2nd non-applicant to supply coal on the false representation and thereby had cheated the latter.

12. It is strenuously argued at the inception of the transaction the appellant had dishonestly portrayed himself as a 'reputed, trustworthy and creditworthy' businessman and thereby induced the 2nd non-applicant to supply coal which the appellant had no intention to pay.

13. In support of his argument, Mr. Subramoniam refers to illustration (f) of Section 415 of IPC which reads as follows:

"(f) A Intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intend-ing to repay it. A cheats."

14. There is no cavil that in some cases a commercial dispute may give rise to a criminal offence in addition to a civil cause of action. The test to determine whether a case would attract penal consequences is as follows:-

"Did the offending party make dishonest representation at the inception of the transaction and induce the other party to part with property, or act in a manner which but for such representation, the latter would not have done[Hridaya Ranjan Prasad Verma and Ors vs State of Bihar and Anr, (2000) 4 SCC 168 (Para 13-15); Satishchandra Ratanlal Shah vs State of Gujarat and Anr., (2019) 9 SCC 148 (Para 13); Delhi Race Club (1940) Ltd and Ors vs State of Uttar Pradesh and Anr, (2024) 10 SCC 690 (Para 41)]."

15. This fine distinction is brought out in illustration (g) of Section 415 of IPC 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 in-duces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, in-tends 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."

16. Materials collected during investigation do not show the present case falls in the category of commercial disputes which would attract penal consequences. Investigating officer had recorded statements of two bankers and a builder. The bankers disclosed the appellant and his relations had substantial landed

properties which had been mortgaged to them in 2014. The appellant had repaid the loan regularly till 2016 thereafter defaulted. Notwithstanding default, in 2018 an additional loan was also sanctioned to him.

17. These materials support the appellant's representation that he was a businessman of substance and as late as on 2018, his bankers reposed confidence in his financial liquidity to extend additional loans. Nothing is placed on record to disclose utter insolvency or bankruptcy of the appellant, which he had knowingly suppressed and persuaded the 2nd non-applicant to enter into the commercial arrangement. The High Court erred in not taking into consideration these relevant aspects, which shows the representation of the appellant that he was a creditworthy businessman cannot be labelled as 'deception' merely on the ground that the appellant had failed to honour the terms of the subsequent agreement. The High Court came to the conclusion that the appellant had intention to deceive from the inception of the transaction. This reasoning is wholly fallacious. Mere breach of promise to repay per se does not infer dishonest intention 'Hari Prasad Chamaria vs Bishun Kumar Surekha and others, (1973) 2 SCC 823 (Para 4)'.

18. In order to attract the penal provision, the uncontroverted allegations including material collected during investigation must disclose that pursuant to the assurance in the subsequent agreement, the 2nd non applicant had parted with property, that is to say made further supplies and suffered wrongful loss. It is nobody's case after the subsequent agreement further supplies had been made or the 2nd non-applicant had been subjected to wrongful loss.

19. On the contrary, appellant had clarified he had suffered continuous business setbacks. Due to losses, he was unable to pay the 2nd non-applicant. He had sold the coal to a brick manufacturer and suffered losses thereto. Vicissitudes in the commercial market are well known. Failure to pay due to unfortunate business losses cannot be clothed with culpability and the process of criminal law utilized to recover outstanding dues 'Sarabjit Kaur vs State of Punjab & Anr., (2023) 5 SCC 360 (Para 13)'.

20. The proposition of law declared in Mohsinbhai Fateali vs Emperor 1931 SCC OnLine Bom 55 does not help the 2nd non applicant. In the said case, the Bench held merely because the accused had subsequently filed for insolvency, it cannot be held that he had no reasonable expectation to pay for the goods on the date of contract.

21. Beaumont J. opined to prove the offence of cheating, the prosecution must establish:-

".....at the date of the contract the circumstances of the accused were such that he must have known that it was practically impossible that he would be able to pay for the goods"

Nothing has been placed on record to demonstrate the appellant was in dire

financial straits at the time when the 2nd non-applicant had supplied coal.

22. In Khoda Bakhsh vs Bakeya Mundari 1905 SCC OnLine Cal 170, the accused had deceived the complainant to part with money on the assurance to liquidate a mortgage debt and utilized the money to repay another debt which he had suppressed. No such divergence of funds/ goods is made out in the factual matrix to show 'deception' by the appellant.

23. For the aforesaid reasons, the impugned order is set aside and the proceeding arising out of FIR No. 80/2022, dated 11th February, 2022, registered under Section 420 IPC, at the Police Station Lakadganj, Nagpur is hereby quashed.

24. The appeal is allowed. Pending applications, if any, shall stand disposed of.