
(2006) 06 CAL CK 0006
In the Calcutta High Court
Case No : C.R.R. No. 2403 of 2003

Md. Zobair Hossain

APPELLANT

Vs

State of West Bengal and Another

RESPONDENT

Date of Decision : 16-06-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 420, 504, 506

Citation : (2007) 4 CHN 274

Hon'ble Judges : Arun Kumar Bhattacharya, J

Bench : Single Bench

Advocate : Sumanta Chakraborty, for the Appellant; Swapan Kumar Mallick, for the Respondent

Final Decision : Dismissed

Judgement

Arun Kumar Bhattacharya, J.—The hearing stems from an application u/s 482 Cr.PC filed by the petitioner praying for quashing the proceeding being G.R. Case No. 1526/2000 arising out of Sankrail P.S. Case No. 159/2000 u/s 420 / 504 / 506 IPC pending in the Court of learned Chief Judicial Magistrate, Howrah.

2. The circumstances leading to the above application are that at the fag end of construction of house by the petitioner at Bakultala, Howrah, O.P.No.2 contractor along with one Priyabrata Roy of D.P. Construction approached the petitioner to complete the remaining portion of the house. As per verbal agreement, the petitioner would supply all materials and the said contractors would engage their labourers for construction of remaining portion of the house, and the petitioner paid Rs. 1,65,000/- by instalments to them. As the work done by the contractors was of poor quality, the petitioners stopped the construction work. The contractors claimed that the work done by them was to the tune of Rs. 5,00,000/-. It was agreed that a civil engineer would be engaged to assess the work done by the contractors. The civil engineer assessed the work done by the contractors to the tune of Rs. 1,98,498.41. The contractors agreed to the said

assessment and final payment of Rs. 15,000/- was made by the petitioner by cash/cheque on 10.12.1991 when both the contractors received the amount by duly signing on their official pad. After nine years the petitioner came to learn that a complaint was filed against him alleging that he abused and threatened the contractors with dire consequences when they went to the petitioner's house on 24.05.2000 to claim the due amount of Rs. 3,00,000/-. The above complaint is bad in law as it does not constitute the offence alleged.

3. Being aggrieved by continuation of the said proceeding, the petitioner has come up before this Court.

4. Mr. Chakraborty, learned Counsel for the petitioner, on referring the cases of *Murari Lal Gupta v. Gopi Singh* reported in 2005(13) SCC 699; *Kunstocom Electronics (I) Pvt. Ltd. Vs. Gilt Pack Ltd. and Another*, and *State of Orissa and Another Vs. Saroj Kumar Sahoo*, , advanced argument contending that the facts aforesaid do not constitute any offence u/s 420 IPC and that a proceeding can be quashed even after framing of charge. Relying upon the cases of *Bal Kishan Das Vs. P.C. Nayar*, ; *State of Karnataka Vs. L. Muniswamy and Others*, and *Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandojirao Angre and Others*, Mr. Chakraborty further contended that the allegations are of civil nature which cannot be fought in Criminal Court and continuation of the proceeding after lapse of so many years is an abuse of the process of the Court, Mr. Mallick, learned Counsel for the State, on the other hand, submitted that though the offence u/s 420 IPC does not prima facie lie, there are other two offences viz under Sections 504 / 506 IPC and so the question of quashing the proceeding does not arise.

5. Quashing of proceeding to prevent abuse of the process of the Court or otherwise to secure the ends of justice may be done where: (1) it appears that there is a legal bar against the institution or continuance of criminal proceeding in respect of the offence alleged e.g. absence of requisite sanction, or (2) the allegations in the FIR or the complaint even if they are taken at their face value and accepted in their entirety do not constitute the offence alleged, or (3) the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. In this connection, reference may be made to the case of *R.P. Kapur Vs. The State of Punjab*, and *State of Haryana and others Vs. Ch. Bhajan Lal and others*, . It is to be borne in mind that the power to quash an FIR by this Court can be exercised very sparingly and with circumspection and that too in the rarest of the rare cases. At this stage the Court cannot inquire about reliability or genuineness or otherwise of the allegations made in the FIR nor it can inquire whether the allegations are likely to be established or not, as was held in the case of *M. Narayandas v. State of Karnataka* reported in 2004 SCC (Cri) 118 at 123.

6. So far as the alleged offence u/s 420 IPC is concerned, 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 the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to the 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 the promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed, as was held in the case of *Hridaya Ranjan Pd. Verma v. State of Bihar* reported in 2000 C Cr.LR (SC) 293. Here, the petitioner made payment to the tune of Rs. 1,65,000/-, and there is nothing to indicate in the materials placed before the Court that the petitioner had fraudulent and dishonest intention from the inception which is the touchstone to bring an act within the ambit of Section 420 IPC. Accordingly, the essential ingredients of this offence being absent, Section 420 IPC is not attracted. In this connection, the case of *K.K. Choudhury v. State of West Bengal* reported in 2000 C Cr. LR (Cal) 220, may also be referred to.

7. But there are other two offences being u/s 504 / 506 (II) IPC in respect of which there are prima facie material and so the question of quashing the entire proceeding is out of the way.

8. Incidentally, it may be mentioned that it is well-settled that facts may give rise to a civil claim and also may amount to an offence. Merely because a civil claim is maintainable it does not mean that a criminal complaint cannot be maintained, as was held in the case of *Lalmuni Devi v. State of Bihar* reported in 2001 SCC (Cri) 275. Similar is the holding of this Court in the case of *Monoranjan Mondal v. Union of India* reported in 2004 (4) CHN 234, that one action might give rise to different kinds of liabilities. It might envisage a civil liability as well as a criminal liability. There can be no embargo in pursuing both the remedies simultaneously. The case of *Medchl. Chemicals and Pharma Pvt. Ltd. v. Biological E. Ltd.* reported in AIR 2000 SC 1869, may also well be referred to.

9. Nevertheless, in view of the above discussion, the application be dismissed.

10. Interim order of stay passed on 23.12.2003 stands vacated. Let a copy of this order be sent down at once to the learned Court below with a direction to dispose of the case as expeditiously as possible preferably within a period of six months from the date of communication of the order. Urgent xerox certified copy of this order, if applied for, be supplied to the parties as expeditiously as possible.