
(1999) 09 AHC CK 0139

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 267 of 1999

Metropofitan Leather Goods (Pvt.) Ltd.

APPELLANT

Vs

State of U.P.& Ann

RESPONDENT

Date of Decision : 24-09-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 204
Penal Code, 1860 (IPC) — Section 406, 415(2), 420, 427

Citation : (1999) 09 AHC CK 0139

Hon'ble Judges : S.K.Phaujdar, J

Final Decision : Allowed

Judgement

S. K. Phaujdar, J.—Through this application under Section 482, Cr PC the petitioner desired that the complaint in CrI. Case No. 16 of 1999, IqbalLeathers v. Mis. Metropofitan Leathers, pending before the 1st Additional Chief Judicial Magistrate, Unnao be quashed as, according to the petitioner, no criminal case was made out in the complaint.

2. On presentation of the petition on 2041999 notices were issued to the opposite parties and an interim order was passed staying the further proceedings in the case before the Court betow. The parties exchanged counteraffidavit and rejoinder and the matter was finally heard in this Court this afternoon.

3. The complaint in question was presented before the 1st Additional Chief Judicial Magistrate, Unnao by the present opposite party No. 2 on 4th January, 1999 alleging therein that the complaintwas a registered company and one A.N. Dwivedi was the person authorised to make at the complaint on behalf of the company. The complaintcompany used to deal with lather and had old business transaction and relations with the accused and had implicit faith on the accused and Sri P.L. Mahatani, the Direcfor and competent officer of the accused company. It was stated that on 2051997 the accused company ordered production and supply of 10000 sq. ft. of leather on promise thatpayment would be made very soon. There was a rider in the contract that the quality of the

material would be tested by the representative of the accused company. Accordingly, the complaint company made the leather ready for supply and made demands of price. The accused company insisted that its representative would make an inspection. Such inspections went on but payment was not made. Finally the material was ready for delivery and a representative of the "accused company came to make a last inspection and again promised early payment of the price. The quality was approved and signature of the representative was put so that the final product could be identified as approved product. The complaint company insisted for early payment and early delivery but the accused company demanded that the material be sent first and only then the payment would be made. Correspondences went on between the parties but no payment was made although the demand to the tune of 8 lakhs and more was made. It was alleged that the accused had knowingly and with an intention to cause a loss to the complaint company had booked the order and had refused to take delivery.

4. On behalf of the complaint A.N. Dwivedi and Ishak Ali Khan were examined and upon their statements the Court had recorded an order dated 6/2/1999 summoning the accused M/s. Metropolitan Leather Goods Private Ltd. under Sections 420/406 and 427, Indian Penal Code.

5. It was contended by the learned Counsel for the present petitioner that it was out and out a case of breach of contract for which a civil remedy might lie but a criminal case was not at all competent. The learned Counsel for the complaint relied on a decision of the Supreme Court reported in AIR 1999 SC 1216. It was a case where Rajesh Bajaj had lodged an FIR for an offence under Section 420, IPC and a Division Bench of the Delhi High Court quashed the FIR on the premise that the complaint did not disclose an offence. In the complaint before police it was averred that the complaint was a manufacturer of ready made garments. The accused had approached the complaint for purchase of ready made garments and induced the complaint that on delivery he would pay the price of the goods, on receiving the invoice. Payment was promised within 15 days therefrom. The complaint believed such representation and despatched the goods worth about four and half deutsch marks. The goods were delivered to the accused. They sold them away but they had not paid beyond one lakh and odd (sic), it was argued before the Supreme Court that all the ingredients for an offence under Section 420 were not indicated and the Supreme Court had observed that the complaint was not required to reproduce verbatim all the ingredients for offence alleged in the body of the complaint. The case at our hands stands on a separate footing. Here was only a contract for supply of goods. No payment was caused nor there was any delivery of goods. It is in the complaint itself that old business transactions were there between the parties. It is also indicated that quality of the materials to be supplied was tested again and again. All the facts with the knowledge of the complaint appeared to have been indicated in the complaint and nothing more appears left to be brought on record. The learned Counsel for the complaint, however, submits that it was a fake placement of order, only to cause injury and in that light it was a case of

cheating as the finished materials would not have been ready had that order been not there. There is nothing in the complaint to indicate that there was mala fide intention of the petitioner from the very beginning. In business transactions it always happens that one party or the other fails to comply with a contract. If that failure leads to any monetary loss to the other party certainly the loss could be recovered by a civil action for compensation but the necessities of Section 415, IPC require that there should be deception and fraudulent inducement to deliver any property or to do or omit to do anything, which a person deceived would not do or omit if he was not so deceived. There is no allegation what was the deception or fraudulent inducement. The parties were in business terms earlier also and mere resiling from the contract as has been alleged may not lead to an inference of deception on the date of making the contract.

6. Moreover, the complaint has been filed against the company and not against any individual. It is the company which has been made the accused although through a particular person. Allegations are not there as to what that particular person (Mr. Mahatani) has done except in booking the order. The Court below had taken cognizance against company not only for an offence under Section 420, IPC, but for also offence under Sections 406 and 427, IPC for reasons best known to the Court below. There was no finding as to how there has been a breach of trust or there has been a mischief under Section 427, IPC.

7. For all these reasons the application stands allowed. The complaint in question stands quashed. No further proceedings on the complaint need be taken before the Courts below.

Application allowed.