
(1981) 03 P&H CK 0008
In the Punjab And Haryana At Chandigarh

Mohinder Kumar	Vs	APPELLANT
State of Punjab		RESPONDENT

Date of Decision : 09-03-1981

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 405, 406, 420

Citation : (1982) CriLJ 524

Hon'ble Judges : M.M. Punchhi, J

Bench : Single Bench

Judgement

M.M. Punchhi, J.—This is a petition u/s 482 of the Code of Criminal Procedure preferred by Mohinder Kumar who stands arrayed as an accused in a criminal trial u/s 406 of the Indian Penal Code before the Judicial Magistrate, 1st Class, Gidderbaha.

2. The undisputed facts which emerge from the petition are that the petitioner is one of the partners of the firm styled as M/s. Bagh Rai Lal Chand, Malout Mandi. The firm entered into an agreement with the Punjab Saltpetre Refinery Limited, Ferozepur City, copy of which is annexure P-1 to the petition. In terms therewith the said firm (hereinafter referred to as the petitioner's firm) became a preferred dealer. The petitioner's firm undertook to reach certain targets in the matter of sale of pesticides and insecticides. A cash discount was also allowed to the petitioner's firm on the gross bill value of the goods of all trade sales. Supplies of the goods were expected to be made by documents and through Bank deals. In course of time the petitioner's firm was supplied pesticides/insecticides. Running payments were made by the petitioner's firm of amounts and in particular through three cheques of Rs. 5,000 each dated 10-11-1977, 25-11-1977 and 23-5-1978. These cheques were dishonoured. The balance struck disclosed that the petitioner's firm own owed Rupees 45,564/4 to the Refinery.

3. The Refinery through its Chief Executive gave letter, copy of which is Annexure P-2 to the petition, to the Senior Superintendent of Police, Faridkot complaining

against the petitioner's firm in the following language:?

Last year we have executed an agreement with M/s. Bagh Rai Lal Chand Mandi Malout, in May 1977 for the supply of pesticides/insecticides. We have supplied goods to them. He has made some of the payments to us. Regret to say that after his assurance for the payment of bills he gave us the following cheques bearing Nos. 632796 dated 10-11-77 for Rs. 5,000, 6322798 dated 25-11-1977 for Rs. 5,000 and 363951 dated 23-5-1978 for Rs. 5,000 which were dishonoured by the concerned bankers saying that the party has not any balance amount with them. He had played dishonesty with us. The balance due to him is Rs. 45,564.00. Now on several visits/personal requests he did not turn up.

* * *

At the time of issue of cheques, M/s. Mohinder Kumar and Om Parkash assured us that sufficient amount is lying in banks and payment will be immediately made. The cheques have been dishonoured for want of credit in the name of firm. The firm has misrepresented and cheated us."

4. A case came to be registered against the petitioner u/s 406/420, Indian Penal Code. The prosecution filed the police report. The trial Magistrate framed a charge u/s 406, Indian Penal Code and not u/s 420, Indian Penal Code, against the petitioner. It is against the framing of the charge that the petitioner has approached this Court. The sheet-anchor of the case of the petitioner is the agreement Annexure P. 1 and the allegations contained in the letter Annexure P. 2. It is contended on his behalf that in the absence of the creation of the trust or placement of the goods in the dominion of the petitioner, Section 406, Indian Penal Code would not be attracted.

5. While the petition remained pending in this Court, the learned Counsel for the State on February 4, 1981, conveyed that the prosecution had moved an application before the trial Magistrate seeking alteration of the charge from Section 406, Indian Penal Code to Section 420, Indian Penal Code. On March 2, 1981", certified copy of the order of the trial Magistrate dated February 23, 1981 was placed on record to convey that the Magistrate had declined the prayer. The learned trial Magistrate took the view that the property had been delivered by the Refinery to the accused voluntarily and not on any inducement and if the cheques were later on dishonoured, the element of cheating was not in existence at the time of the delivery of the property. The State apparently is not keen to challenge the view of the trial Magistrate and is rest content with asserting that the trial u/s 406, Indian Penal Code, should be allowed to go on and if material comes on the record the learned trial Magistrate may convict the accused u/s 406, Indian Penal Code, or 420, Indian Penal Code as the case may be or under both sections.

6. It is note-worthy that the agreement between the parties was to conduct business in the terms and conditions specified in Annexure P. 1. The transactions have been termed therein as "trade sales." And if trade sale had to be conducted

between the parties, it is difficult to conceive what entrustment was contemplated or dominion assumed over any property. It is well settled that the property which becomes the subject matter of the criminal breach of trust remains in the ownership of the owner but is placed in the hands of an other who becomes its trustee. And on his dishonest misappropriation thereof or conversion to his own use or disposal in violation of any direction of law prescribing the mode in which the trust was to be discharged, or of any legal contract express or implied, made touching the discharge of such trust, the provisions of Sections 405 and 406 of the Indian Penal Code would be attracted. The element of entrustment in the instant case is altogether lacking. For in such like trade transactions, the property in goods passes to the buyer and the mere fact that he fails to pay the price promised to be paid, no criminality can be imputed to the buyer. The property becomes his and ceases to be that of the seller. It stands undisputed that a civil suit has been filed for the recovery of the amount against the petitioner and the parties are at grips in that venue. There is thus no cause for the petitioner to suffer a trial in the situation.

7. For the foregoing reasons, this petition is allowed, the charge against the petitioner is quashed and the proceedings dropped.