
(2009) 02 P&H CK 0176
In the Punjab And Haryana At Chandigarh

M.R. Tiwari

APPELLANT

Vs

Aster Drugs and Pharmaceuticals Limited and Others

RESPONDENT

Date of Decision : 06-02-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 120B, 413, 415, 417, 420

Citation : (2009) 154 PLR 588

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hemant Gupta, J.—The present petition u/s 482 Cr.P.C. is for quashing of the complaint (Annexure P-1) for an offence under Sections 420, 415 and Section 120-B IPC, as also the summoning order dated 14.10.2000 (Annexure P.2).

2. It is the case of the respondent-complainant that the accused (the present petitioner) placed an order for supply of bulk drugs of Diclofenac Sodium IPA, being manufactured by the complainant. The accused received material against seven different orders and issued the cheques for an amount totaling Rs. 20,38,450/-. But when the cheques were presented for encashment, the same were dishonoured. It is, thus, alleged that the petitioner has dishonestly and fraudulently induced the complainant to deliver the material to the accused by assuring the payment within a period of 90 days and thus, the accused cheated the complainant. On the said complaint, the learned Magistrate passed an order dated 14.10.2000, summoning the present petitioner for an offence under Sections 415 read with Section 120-B IPC.

3. The relevant extracts from the complaint reads as under:

7. That accordingly the accused placed various orders for supplying the Diclofenac Sodium to the accused within a span of 75 days whereby fixing the

payment terms of 90 days credit. Not only this the accused always showed his urgency everyday to lift the material from the complainant. By having trust on the accused the complainant supplied the material to the accused as per order received from time to time on priority basis.

8. That the accused issued different cheques on order basis against the material received as per the orders placed from time to time.

9. That the accused received the material against different seven orders and issued the cheques totaling amounting to Rs. 20,38,450/- as detailed below:

Invoice	Date	Ch.	No.	Amount	Order No.	Date No.
15.04.98	13		20.04.98	29392	103/98-99	295000
22094 75225					1191/97-98	
03.02.98	158		04.03.98	22095		75225
09.03.98	163		12.03.98	22098	1192/97-98	295000
19.03.98		20.03.98		29359	1194/97-98	147500
2001/97-98	03.03.98	181	21.03.98	29377	168	29360
03.03.98	171		20.03.98	29378		118000
06.04.98	5		10.04.98	29383	2001/97-98	295000
					101/98-99	295000
					Total	2038450

10. That when the complainant presented the said cheques from time to time the complainant got shocked to receive even the first cheque. Thereafter the complainant stopped to supply the material of which the accused had placed the order and issued the cheques amounting to Rs. 5,90,000/- in advance and withhold the cheques also. However, the complainant presented the cheques against which the material was already dispatched but all the cheques got dishonoured for the reason "INSUFFICIENT FUNDS."

4. It is pleaded case of the petitioner in the present petition that the respondent-complainant has initiated proceedings in respect of cheques in question u/s 138 of the Negotiable Instruments Act, 1881 (for short "the Act"). The complainant has not disclosed in the present complaint that he has already filed a complaint u/s 138 of the Act against the petitioner and that the petitioner-accused stands summoned therein and is facing the trial.

5. Notice in the present petition was issued on 27.8.2001 and further

proceedings before the trial Court were stayed. However, no-one put in appearance on behalf of the respondent. The proceedings in the present case were adjourned sine-die vide order dated 25.10.2002, when a statement was made that the order has already been communicated to the complainant, who has been appearing in the trial Court and is aware of the proceedings. Subsequently on 1.3.2006, when the matter came up for hearing before this Court, an argument raised by learned Counsel for the respondent was noticed that since the proceedings u/s 138 of the Act are pending, therefore, subsequent proceedings u/s 413, 120-B IPC, are maintainable. The stand of the respondent was that the judgment in G. Sagar Suri and Another Vs. State of U.P. and Others, is not applicable, as it only bars initiation of a fresh complaint u/s 420-IPC, when the complaint is pending u/s 138 of the Act. The argument was that since the petitioner has been summoned u/s 415 and 120-B IPC, therefore, the said judgment is not applicable.

6. In view of the argument raised on 1.3.2006, it is beyond doubt that the respondent has initiated proceedings against the petitioner after lodging a complaint on account of dishonour of the cheques u/s 138 of the Act.

7. In Hridaya Ranjan Prasad Verma v. State of Bihar (2006) 4 S.C.C. 168, while drawing a distinction between the breach of contract and the offence of cheating, it was held by the Hon'ble Supreme Court as under:

15. In determining the question it has to be kept in mind that 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 for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to 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 promise subsequently such a culpable intention right at the beginning that is, when he made the promise cannot be presumed.

8. Still later, in Vir Parkash Sharma v. Anil Kumar Agarwal (2007) 7 Scc 373, while relying upon Hridaya Ranjan Prasad Verma's case (supra), it was held to the following effect:

7. The principle underlying exercise of jurisdiction by the High Court u/s 482 of the Code of Criminal Procedure is now well settled viz. that the allegations contained in the complaint petition even if given face value and taken to be correct in its entirety do not disclose an offence or not is the question.

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15. In law, only because he had issued cheques which were dishonoured, the

same by itself would not mean that he had cheated the complainant. Assuming that such a statement had been made, the same, in our opinion, does not exhibit that there had been any intention on the part of the appellant herein to commit an offence u/s 417 of the Penal Code.

9. The extracts from the complaint reproduced earlier, would show that the complainant has not alleged dishonest intention at the time of placing the order. The complainant has pleaded that he trusted accused and supplied the material. Such trust in the mind of the complainant is not sufficient to infer dishonest intention on the part of the petitioner to purchase the material for which the petitioner has no intention to make payment. The argument raised by the learned Counsel for the respondent on 1.3.2006 that the judgment in G. Sagar Suri's case (*supra*), is not applicable, is not tenable. The distinction sought to be raised by the respondents is illusory. Section 415 IPC defines cheating, whereas the imprisonment for such cheating is provided u/s 420 IPC.

10. Once, the petitioner is being prosecuted for an offence u/s 138 of the Act, the complaint to prosecute the petitioner u/s 415 read with Section 120-B IPC, is an abuse of process of law. The complainant has not disclosed such facts in the complaint nor has alleged that the accused has the intention to cheat the complainant when the material was supplied by the complainant. Initiation of the proceedings, in these circumstances, for an offence u/s 415 and 120-B IPC is nothing but an abuse of process of law. Consequently, the present petition is allowed and the complaint (Annexure P.1) and the summoning order dated 14.10.2000 are quashed.