
(2013) 12 AP CK 0010

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 3242 of 2013

M/s. Basai Steels and Power Pvt. Ltd. and Another

APPELLANT

Vs

State of A.P. and Another

RESPONDENT

Date of Decision : 09-12-2013

Acts Referred:

Citation : (2014) 1 ALD(Cri) 311

Final Decision : Dismissed

Judgement

C. Praveen Kumar, J.—The petitioners, who are accused 1 and 2 filed the present criminal petition u/s 482 Cr.P.C. seeking quashing of investigation in Cr. No. 37 of 2013 of Central Crime Station P.S., Hyderabad District, which was registered for the offences punishable under Sections 406 and 420 I.P.C. Originally, the case was registered as Cr. No. 81 of 2013 of Panjagutta Police Station, Hyderabad District, which was subsequently transferred to the Central Crime Station, Hyderabad. The allegations in the private complaint which was referred to police u/s 156(3) Cr.P.C. are as under:

The 1st accused is a company represented by A-2, who is the Managing Director of the said company. In the first week of July 2012 the accused went to the office of the complainant and placed an order for supply of 500 metric tones of Indonesian Steam coal vide purchase Order No. BSPPI/ISP/PO/49/2012 dated 07.07.2012. The said stock was to be delivered at their Bellary division. After receiving the purchase order from the accused company, the 2nd respondent/informant, started delivery of Indonesian Steam coal. It is alleged that on 12.07.2012 the respondent/informant delivered 143.570 mts. of Indonesian Steam Coal and raised an invoice in favour of the accused for an amount of Rs. 5,27,189/-. Again on 16.07.2012 the informant delivered 284.130 mts. of Indonesian Steam coal to the accused company and raised an invoice of Rs. 10,43,325/-. The same was informed to the accused. When asked about the payment of the money, the accused is alleged to have informed that the money will be paid as early as possible and not to worry about the same. He requested

the respondent/informant to continue with the supply of material. On 20.07.2012 the respondent supplied 103.520 mts. of Indonesian steam coal to accused company and raised an invoice of Rs. 3,90,327/-. From 21.07.2012 to 30.07.2012 the respondent supplied 810 mts. of Indonesian steam coal to accused company and raised a sale invoice of Rs. 28,13,321/-. Further from 06.08.2012 to 16.08.2012 the complainant supplied 545 mts. of Indonesian steam coal to accused and on 17.08.2012, the complainant delivered 124.60 mts, of Indonesian steam coal and raised an invoice for Rs. 8,50,990/-. On 18.08.2012 he delivered 75 MT of Indonesian steam coal to accused company and raised an invoice for Rs. 5,13,159/-. The complainant requested the accused to pay the outstanding due amount of 185,52,819/-. On a promise to pay the entire amount, the informant supplied 191.120 mts. of Indonesian steam coal to accused company on 27.07.2012 and raised the sale invoice of Rs. 13,10,988/-. When the informant/respondent asked the accused to clear the due amount of Rs. 98,63,807/- the accused procrastinated the payment of money on one pretext or the other. Keeping in view the future prospects of his business and believing the representations made by the accused, the informant/respondent accepted to deliver the material placed in 2nd purchase order. The total quantity of coal supplied by the accused under the two purchase orders was around 2300 metric tones valued at Rs. 98,63,807/-. The supply of entire material took place from 12.07.2012 to 27.08.2012. In spite of repeated requests made by the respondent, the accused was delaying the payment on one reason or the other. In the month of January 2012 when the respondent met the accused at Bellary and demanded for payment of the due amount, the accused cautioned the respondent with dire consequences if he comes over again for the dues. As the accused failed to pay the amount for the goods received and since the said act was done with a intention to cheat the respondent, the present report came to be lodged against the accused.

2. The learned senior Counsel D. Prakash Reddy appearing for the petitioners vehemently argues that even accepting the allegations in the report to be true, no offence is made out against any of the petitioners. According to him, failure to pay the balance of sale consideration for the goods received would not amount to cheating within the meaning of Section 420 I.P.C. He submits that in view of the payment of a part of the due amount the dishonest intention to cheat cannot be inferred to have been present from inception. In any event he submits that the matter is purely civil in nature and continuation of investigation would be an abuse of process of law.

3. On the other hand, Sri B. Nalin Kumar, the learned counsel for the 2nd respondent opposed the petition contending that nonpayment of money for the goods received will definitely amount to a civil liability but the issue involved in the present case is not as simple as projected by the petitioners. According to him no amount is paid till date and the reasons given for postponing the payment of money changed each time the demand is made. In view of the inconsistent stand taken by the petitioners he submits that the matter requires

to be investigated by the police.

4. Before proceeding further, it would be relevant to refer to Section 415 of the Indian Penal Code, which is as under:--

Section 415 reads as under:

Cheating--Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:

- (i) Deception of a person either by making a false or misleading representation or by other action or omission;
- (ii) Fraudulently or dishonestly inducing any person to deliver any property; or
- (iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

Section 405 I.P.C. defines a criminal breach of trust which is as under:

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express, or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust".

5. Section 406 I.P.C. deals with punishment for criminal breach of trust and it reads under:

Whoever commits criminal breach of trust, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both.

6. One of the main ingredients required for establishing an offence u/s 406 is that there should be entrustment. Section 405 gets attracted when the property which has been entrusted has been dishonestly misappropriated or converted to his own use or dishonestly uses or disposes of the said property in violation of any direction of law prescribing the mode in which such trust is to be discharged.

7. Section 482 Cr.P.C. itself envisages three circumstances under which the inherent jurisdiction may be exercised by the High Court namely:

- (i) to give effect to an order under the Code;
- (ii) to prevent the abuse of process of court; and
- (iii) to otherwise secure the ends of justice.

8. These inherent powers of the High Court are meant to act *ex debito justitiae* to do real and substantial justice, for the administration of which alone it exists, or to prevent the abuse of process of the court. The exercise of inherent power would normally depend on facts and circumstances of each case, but as held in *Sushil Suri Vs. C.B.I. and Another*, the common thread which runs through all the decisions on the subject is that the court would be justified in involving its jurisdiction where the allegations made in the complaint or charge-sheet as the case may be, taken at their face value and accepted in their entirety do not constitute the offences alleged. The plenitude of the power u/s 482 Cr.P.C. by itself, makes it obligatory for the High Court to exercise the same with utmost care and caution. The width and nature of power itself demands that its exercise is sparing and only in cases where the High Court, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of process of law. The said exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in the abuse of process of the law. The High Court have to consider the facts and circumstances of each case to determine whether it is a fit case in which inherent power may be invoked. (*Shiji @ Pappu and Others Vs. Radhika and Another*,).

9. The inherent power is to be exercised *ex debito justitiae*, to do real and substantial justice, for administration of which alone courts exist. Wherever any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent the abuse. (Vide *Dhanalakshmi Vs. R. Prasanna Kumar and Others*, ; *Ganesh Narayan Hegde Vs. S. Bangarappa and Others*, and *Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others*, .)

10. In *Indian Oil Corporation Vs. NEPC India Ltd. and Others*, a petition u/s 482 was filed to quash two criminal complaints. The High Court by a common judgment allowed the petition and quashed both the complaints. The order was challenged by way of an appeal before the Apex Court. While deciding the appeal, the Apex Court laid down the following principles:

1. The High Courts should not exercise their inherent powers to repress a legitimate prosecution. The power to quash criminal complaints should be used sparingly and with abundant caution.
2. The criminal complaint is not required to verbatim reproduce the legal ingredients of the alleged offence. If the necessary factual foundation is laid in the criminal complaint, merely on the ground that a few ingredients have not been stated in detail, the criminal proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is bereft of even the basic facts which are absolutely necessary for making out the alleged offence.

3. It was held that a given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence.

11. Keeping in view the scope and power of the High Court u/s 482 Cr.P.C. I shall proceed to deal with the case on hand. Had it been a case of lodging the report for nor receipt of balance of sale consideration in respect of goods delivered by the respondent, the issue would have been different. A reading of the report does not anywhere indicate payment of any money for the entire goods received by the accused. The report clearly discloses that entire stock of 2300 metric of tones Indonesian coal was supplied from 12.(sic).2012 to 27.08.2012 and the total amount due was Rs. 98,63,807/-. The Judgment of the Apex Court in V.Y. Jose and Another Vs. State of Gujarat and Another, which was relied upon by the learned counsel for the petitioner may not be any help to him. It was a case where the complainant therein placed an order for manufacture and installing a machine to purify and desalt the dyes of a particular quality and quantity. The total manufacturing cost of the said machine worked out to be Rs. 17,96,488/- including excise duty and other incidental charges. Second respondent paid a sum of Rs. 3,00,000/- to the firm as advance. There had been a change in the specifications of the said machine purported to have been made on the request of the second respondent, wherein two extra modules thereto were to be provided. A revised offer was made. The said machine, although was to be manufactured and supplied within a period of three months, the same was not done. The partner of the second respondent along with a technical engineer visited the site and found that the said machine did not conform to the specifications contained in the order placed with the firm. As such respondent refused to take delivery thereof and sought for return of the advance paid. The firm which manufactured the machine gave reply reminding the respondents to take delivery of the system as that material worth Rs. 14,00,000/- got blocked. Basing on these allegations a complaint came to be filed against the accused therein. One of the contention advanced before the Apex Court was that it is a case of breach of contract simplicitor and as such ingredients constituting the offence u/s 420 I.P.C. are not made out. The Apex Court quashed the proceeding holding that the ingredients constituting the said offence are not made out.

12. The decision referred to above was dealing with the situation where the terms of the conditions were not fulfilled and the machinery was not made to the changed specifications. In view of the above, the Apex Court held that it is only a breach of contract for which the remedy lies in a civil Court. The case on hand is totally different. Though the learned counsel for the petitioner tried to impress upon the Court that the material supplied by the respondent was not up to the mark and that 20% to 30% of the Indonesian coal was mixed with south African coal, but I am of the view that the said issue needs to be investigated by the police. At this stage, the statement of the petitioner cannot be taken into consideration to hold that the money could not be paid due to supply of inferior

quality of coal. It is a disputed fact which has to be investigated by the police.

13. The learned counsel for the petitioners further submits that the conduct of the respondent in supplying the material inspite of non-receipt of payment throws any amount of doubt on the version set out in the report. A reading of the report would indicate that the entire material was supplied within a period of 1 1/2 month from the date of the first purchase order. The said material which was purchased in Indonesian was delivered at the work site of the accused pursuant to an order placed as the said material cannot be stored or kept else where. The assurance given by the accused with regard to the payment of money and keeping in view the business future, the respondent was lured to continue with the supply of material.

14. Further, a reading of report shows various versions are given by the accused explaining the delay in payment of money. The said versions appear to be inconsistent with each other. The first version given with regard to non-payment of money for the goods received was that the accused were facing the problems with the Bank in getting the Bank guarantee and as such they were in search of another financial institutions. The second version set out in the complaint was that the accused are going to get financial assistance from Karnataka Government as well as from other financial non-banking sector. The third version in the complaint would disclose that the accused got a call from Government Department and they were asked to collect a cheque for Rs. 2 Crores. In view of the various versions given in the complaint as to the mode of getting money for repayment of the amount due, the argument of the learned counsel for the respondent as to the intention of the accused with regard to the part payment of money for the goods received cannot be brushed aside at this stage of the case.

15. It cannot be said that every money transaction between the parties would be a civil in nature or that it would be a breach of a contract or an agreement. The Apex Court in *Rajesh Bajaj Vs. State NCT of Delhi and Others*, held that the facts narrated would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, the Apex Court categorically held that many a cheatings were committed in the course of commercial and also money transactions. It is not a simple case of delay in part payment of money for the goods received. The accused received goods worth about Rs. 98 Lakhs and did not pay a single pie inspite of repeated requests. By deception and inducement the respondent was lured to deliver the entire coal imported from Indonesia and thereafter no amount was paid to the respondent. The respondent used to place an order and as soon as the consignment was received, he had no other go except to deliver the consignment at the business premises of the accused. Believing the representation made by the accused, the respondent was induced to deliver the goods: As stated earlier, things would have been otherwise had the accused paid some amount. The issue as to whether the accused had any intention to cheat from inception or whether the said intention developed later

would come out only when all the facts are on record. The said aspect varies from case to case. For instance the depositor who deposits his money in a non-banking finance company may not be knowing the intention of the finance company at the time of collecting the deposits. Every finance company would certainly induce persons to part with the money by promising attractive rate of interest as well as gifts. Their subsequent conduct in refusing to pay the money will definitely furnish some indication of his original intention. In those circumstances, the intention of the accused at the time of inducement can always be inferred by subsequent conduct associated with other factors (Pothani Chandrasekher v. State of A.P. (9) CrI.P. No. 5573 of 2002). Taking into consideration the nature of allegations made and as the entire facts are not available on record/at this stage, it cannot be said that the report is bereft of basic facts constituting the offences punishable u/s 420 I.P.C.

16. As held by the Apex Court, in a given set of facts, a dispute can be purely civil wrong or purely a criminal offence or a civil wrong as well as a criminal offence. In Indian Oil Corpn. v. N.E.P.C. India Ltd. (supra) the Apex Court held that a commercial transaction or a contractual dispute apart from furnishing a cause of action for seeking remedy in civil law may also involved a criminal offence. In view of the averments made in the report, at this stage, it cannot be said that the dispute between the parties is purely a civil dispute, warranting interference u/s 482 Cr.P.C. Therefore, this court is of the view that there are no merits in the petition and the same is liable to be dismissed.

17. Accordingly, the criminal petition is dismissed. As a sequel to it, miscellaneous petitions pending if any, shall stand dismissed.