(2015) 11 JH CK 0037

In the Jharkhand High Court

Case No : W.P. (Cr.) No. 300 of 2015

Pankaj Lohariwal APPELLANT

Vs

State of Jharkhand and Others RESPONDENT

Date of Decision : 04-11-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 178(b), 202
Penal Code, 1860 (IPC) — Section 406, 415, 420

Citation : (2015) 4 AJR 766 : (2016) 1 JLJR 134

Hon'ble Judges : Prashant Kumar, J.

Bench : Single Bench

Advocate : Sumeet Gadodia, for the Appellant; J. Rehman, for the Respondent

Final Decision : Dismissed

Judgement

Prashant Kumar, J.—This writ application has been filed for quashing the entire criminal proceeding arising out of Complaint Case No. 442 of 2014, including the order dated 07.06.2014 passed by learned Chief Judicial Magistrate, Giridih in the aforesaid case, whereby and where under he took cognizance of the offence under sections 406 and 420 of the Indian Penal Code against the petitioner.

2. It is alleged in the complaint petition that petitioner visited in the office of the Complainant (who was working as Manager Finance in M/s. Carbon Resources Private Limited) and stated that he is owner of M/s. S.R.C. Udyog Limited, Ranipur. It is further alleged that the petitioner stated that his company is in need of Carbon Paste for manufacturing purpose. He further stated that since the petitioner resides in Kolkata, therefore, as and when carbon paste will be required, he will place order on telephone and on delivery of goods, payments would be made within a week. It is alleged that on the basis of the aforesaid assurance given by the petitioner, the complainant''s company supplied 100 MT of carbon electro paste on 04.07.2009 to the petitioner''s company. It is stated that with an intention to gain confidence of the complainant''s company,

petitioner paid the price of the aforesaid 100 MT of carbon electro paste. It is then alleged that thereafter on various occasions, petitioner placed order for supply of carbon electro paste. It is alleged that against the aforesaid supply, an amount of Rs. 61.27 lacs is due with the petitioner''s company. Thereafter, complainant''s company made several request to the petitioner''s company for payment of the aforesaid amount, but the payment has not been made. It is alleged that the petitioner received supply of carbon electro paste from the complainant''s company with an intention to cheat the complainant and illegally mis-appropriated the amount i.e. Rs. 61.27 lacs, which was due and payable by the petitioner''s company. Accordingly, present complaint filed in the court of Chief Judicial Magistrate, Giridih.

3. It is appears that the learned Chief Judicial Magistrate, Giridih recorded the statement of complainant on SA and also examined one witness in course of enquiry under section 202 of the Cr.P.C. After completion of the inquiry, learned Chief Judicial Magistrate, Giridih vide order dated 07.06.2014 came to the conclusion that prima facie offence under section 420 and 406 of the Indian Penal Code made out against the petitioner. Accordingly, he directed to issue summon against the petitioner.

4. Sri Sumeet Gadodia, learned counsel for the petitioner submitted that from perusal of averments made in the complaint petition, statement of complainant on oath and also statement of witness examined during enquiry, no offence under section 406 and 420 of the Indian Penal Code made out against the petitioner. It is further submitted that from perusal of impugned order, it is clear that the dispute between the parties has a flavour of civil nature. Therefore, the entire criminal proceeding initiated against the petitioner is an abuse of the process of court, thus, the entire criminal proceeding is liable to be quashed. It is further submitted that the allegations made in the F.I.R. is against the Company and the concept of vicarious liability is unknown to criminal law. Under the said circumstance, petitioner cannot punished for the wrong committed by the Company. Thus, on that ground also criminal proceeding initiated against the petitioner is bad in law. It is further submitted that in the instant case, Giridih Court has no jurisdiction to try the offence, because the complainant''s company has raised bill from its Durgapur office, which situates in the State of West Bengal, therefore, the Giridih Court, which situates in the State of Jharkhand has no territorial jurisdiction to try the case. Therefore, initiation of present proceeding by the learned Chief Judicial Magistrate, Giridih is without jurisdiction.

5. On the other hand, Sri Rajendra Krishna, appearing for the respondent submitted that it is well settled that a dispute of civil nature may also contain the ingredients of criminal offence and if so it will have to be tried as criminal offence, even if they also amount to civil dispute. He further submitted that in many cases, cheating committed in course of commercial and money transaction. Thus, all such cases cannot be quashed in exercise of writ jurisdiction under Article 226 of the Constitution of India, because the same have flavour of civil

dispute. He further submitted that from the averments made in the complaint petition, it is clear that on the inducement of the petitioner, complainant had supplied carbon electro paste to the petitioner''s company worth Rs. 61.27 lacs but the petitioner neither paid the aforesaid amount, nor returned the carbon electro paste to the complainant. Thus, petitioner had misappropriated the carbon electro paste and cheated the complainant. He further submitted that at paragraph No. 3 of the complaint petition, the complainant had specifically made averments that the petitioner with a view to deceive the complainant gain his in confidence by paying Rs. 3,85,000/- towards price of 100 MT of carbon electro paste, which the complainant had supplied against the first order placed by the petitioner and after gaining confidence of the complainant, petitioner placed orders on different dates for supply of carbon electro paste worth Rs. 61.27 lacs. But he refused to pay the aforesaid amount. Thus, the petitioner has intention to cheat the Complaint from before. It is further submitted that in the instant case, there are specific averments in the complaint petition that petitioner visited office of complainant''s company at Giridih and induced the complainant that he is owner of M/s. S.R.C. Udyog Limited and his company is in need of carbon electro paste. It is further submitted that inducement was made by the petitioner, therefore, question of vicarious liability does not arise. Sri Krishna submitted that since inducement made at Giridih, therefore, part of the occurrence took place at Giridih. In that view of the matter, Giridih Court has territorial jurisdiction to try the case. Accordingly, it is submitted that there is no illegality and/or irregularity in the impugned order, which require any interference by this Court.

6. It is now well settled that a case may looked to be of civil nature or may involve a commercial transaction, such civil dispute or commercial dispute in some circumstances may also contain ingredients of criminal offences. Thus, substance of the complaint is required to be seen and if from the averments made in the complaint petition, it appears that apart from the civil dispute, criminal offence is also made out, then the criminal proceeding can be initiated against the accused. The Hon''ble Supreme Court in Rajesh Bajaj Vs. State NCT of Delhi and Others, held that "In fact, many a cheating were committed in the course of commercial and also money transaction. One of the illustrations set out under Section 415 of the Indian Penal Code [Illustration f] is worthy of notice now :

"(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats."

7. The Hon''ble Supreme Court in " Mohammed Ibrahim and others. v. State of Bihar and another, reported in (2009)8 SCC-751 held as follows :

"This court has time and again drawn attention to the growing tendency of the complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes. But at the same time, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes. (See G. Sagar Suri V State of U.P. and Indian Oil Corpn. v. NEPC India Ltd.) Let us examine the matter keeping the said principles in mind."

8. Thus, whether offence of cheating and criminal breach of trust in a commercial transaction is made out or not can be determined after going through the averments made in the complaint petition.

9. In the instant case, complainant stated that petitioner visited in his office and offered that if complainant''s company supply carbon electro paste to the petitioner''s company then the petitioner''s company will make payment and if the carbon electro paste will not be used, the same will be returned back to the complainant''s company. It is further stated that on the aforesaid assurance of the petitioner, complainant''s company supplied 100 MT of carbon electro paste and the petitioner''s company paid the price of the aforesaid carbon electro paste. It is further alleged that the petitioner''s company paid above amount with a view to induce complainant to believe that the petitioner is a genuine customer, but actually petitioner''s intention was not good, because later on when the complainant''s company supplied carbon electro paste to the petitioner''s company worth Rs. 61.27 lacs, petitioner''s company did not pay the said amount and cheated the complainant''s company. Thus, the facts of the case appears to be similar to the fact of Rajesh Bajaj case (Supra). In that case also, some of the amount paid by the accused with a view to induce complainant to believe that accused is a genuine customer, but later on accused refused to pay the amount of the goods supplied. On considering the above facts, the Hon''ble Supreme Court held that the offence of cheating made out against the petitioner, though said cheating committed in course of commercial transaction.

10. In view of the aforesaid fact and circumstance, I find that ingredients of cheating are mentioned in the complaint petition, therefore, prima facie offence under sections 420 of the Indian Penal Code is made out against the petitioner. It further appears that as per agreement, if the petitioner''s company will not use the carbon electro paste, then it promised to return back the same, but in the instant case, petitioner''s company had not returned the carbon electro paste to the complainant''s company and used all the carbon electro paste without paying its price. Under the aforesaid circumstance, I find that the offence of criminal breach of trust is also made out against the petitioner.

11. Learned counsel for the petitioner submitted that in the instant case, allegation of non-payment of amount is against the company "namely, M/s. S.R.C. Udyog Limited and at the relevant time the petitioner was Managing Director of the said company. Under the said circumstance, petitioner cannot be held guilty and/or prosecuted for the offence committed by the company, as the

concept of vicarious liability is unknown to criminal law. Learned counsel relied upon the judgment of Hon''ble Supreme Court in Thermax Ltd. and Others Vs. K.M. Johny and Others, . From perusal of aforesaid judgment of the Hon''ble Supreme Court, it is clear that there is no allegation against appellant Nos. 2 to 8 that they have played any role for cheating the complainant, therefore, Hon''ble Supreme Court has held that in absence of basic liability imposed on the company, no person other than the company can be prosecuted.

12. In the instant case, as noticed above, there is specific allegation against the petitioner that petitioner visited office of the complainant at Giridih and induced him to supply carbon electro paste. Under the said circumstance, the law laid down in Thermax Limited and others(Supra) has no application in the facts of this case.

13. The contention of learned counsel for the petitioner that Giridih court has no territorial jurisdiction to try the case has no leg to stand. It is specifically mentioned in the complaint petition that petitioner visited the complainant''s company situated at Giridih and induced the complainant to supply carbon electro paste to his company. Thus, part of the transaction took place at Giridih, therefore, as per the provisions contained under section 178(b) of the Cr.P.C., Giridih court has jurisdiction to try the present case.

14. In view of the discussions made above, I find no merit in this writ application. Accordingly, the same is dismissed.