
(2013) 01 JH CK 0002
In the Jharkhand High Court
Case No : Criminal Rev. No. 505 of 2001

Pradip Kumar Roy and Ashok Kumar Mandal	APPELLANT
Vs	
The State of Jharkhand and Arun Prasad Agarwal	RESPONDENT

Date of Decision : 10-01-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 236
Penal Code, 1860 (IPC) — Section 120B, 406, 420

Citation : (2013) 4 JLJR 622

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : Anil Kumar, for the Appellant; S.S. Sahay, Assistant Public Prosecutor for the State and None for the Opposite Party No. 2, for the Respondent

Final Decision : Allowed

Judgement

H.C. Mishra, J.—Both these applications arise of the same case and as such both these applications were heard together and are being disposed of by this common order. Heard learned counsel for the petitioners and the learned counsel for the State. No one has appeared for the complainant opposite party No. 2 in spite of repeated calls and in spite of giving sufficient opportunity to the learned counsel for opposite party No. 2, even by making an adjournment in the case for giving an opportunity to him.

2. The petitioners are aggrieved by the order dated 31.08.2001 passed by Sri A.K. Jaiswal, learned Judicial Magistrate, 1st Class, Ranchi, in Complaint Case No. 94 of 1996, whereby the application filed on behalf of the accused persons u/s 236 of the Cr.P.C., for discharge, was rejected by the Court below asking the petitioners to appear for framing of charge under sections 406, 420 and 120B of the Indian Penal Code.

3. The petitioners have been made accused in Complaint Case No. 94 of 1996, which was filed in the Court of the Chief Judicial Magistrate, Ranchi, by the

complainant Arun Prasad Agrawal, in which all the three petitioners were made accused. The complainant alleged that the accused Jasdeo Chaudhary had approached him and had informed him that he had entered into an agreement for sale with the other two accused persons, who were the Directors of M/s. Great Bengal Properties and Constructions (P) Ltd., relating to 4 acres of land along with the building standing thereon, known as "Nilanchal Kothi", bearing R.S. Plot No. 5, Khata No. 108 under Khewat No. 3, situated in village Madhukam, P.S. Sadar, Ranchi. One of the conditions of the said agreement between the accused persons inter se, was that the transfer of the land would be done either directly to the accused Jasdeo Chaudhary, or in favour of his nominees. It is alleged that on being so represented, the complainant agreed to purchase the land and building @ Rs. 9500/- per Katha and he also made the advance of Rs. 1,50,000/- in all, to the accused Jasdeo Chaudhary. It is alleged in the complaint petition that before making the payment of the advance to the accused Jasdeo Chaudhary, the complainant had contacted the other accused petitioners also, who affirmed the representation made by the accused Jasdeo Chaudhary. Thereafter, it is alleged that the land was not sold to the complainant in spite of the legal notice given to them and the complainant learnt that the portions of the land had been sold to other persons at higher prices. It is stated in the complaint petition that the complainant had already filed a suit for specific performance of the contract, but the same did not affect the right of the complainant to file the complaint. Alleging that the accused persons were having the intention to cheat from the very beginning, the complaint case was filed.

4. The statement of the complainant was recorded on solemn affirmation in which he supported his case and in enquiry stage he examined two witnesses who supported the case of the complainant and accordingly, prima facie offences were found against the accused petitioners and the processes were issued against them. The complainant examined three witnesses before charge including himself, and thereafter the petitioners filed their application for discharge, which was rejected by the Court below by the impugned order.

5. Learned counsel for the petitioners has submitted that the impugned order passed by the Court below is absolutely illegal, in as much as, from the complaint petition it would be apparent that there was no written agreement between the parties. It has also been submitted on behalf of the petitioners Pradip Kumar Roy and Ashok Kumar Mandal, that there was not even the oral agreement between these petitioners and the complainant and even though it is alleged in the complaint petition that draft of Rs. 1,40,000/- and cash of Rs. 10,000/- were given to the accused Jasdeo Chaudhary, but the said draft has not been encashed by the company.

6. Learned counsel further submitted that admittedly the petitioners Pradip Kumar Roy and Ashok Kumar Mandal have been made accused being the Directors of M/s. Great Bengal Properties and Constructions (P) Ltd., but there is nothing in the complaint petition so as to make the petitioners vicariously liable

for the offences if any, committed by the company and the company has not been made accused in the present case. Learned counsel accordingly, submitted that no offence can be said to be made out against the petitioners Pradip Kumar Roy and Ashok Kumar Mandal, even if the entire allegations in the complaint petition are accepted. It is further submitted by the learned counsel for the petitioners that in any event the case relates to an oral agreement for sale with the only allegation of merely a breach of contract between the parties, for which no offence can be said to be made out under sections 406 or 420 of the Indian Penal Code. It is submitted that admittedly, the Civil Suit between the parties is pending for specific performance of contract and the law is well settled that the agreement for sale does not create any interest in the immovable property unless a decree of specific performance of contract is passed in favour of the complainant by the Court of competent jurisdiction.

7. In support of his contention, learned counsel has placed reliance upon the decision of the Supreme Court of India in *All Cargo Movers (I) Pvt. Ltd. and Others Vs. Dhanesh Badarmal Jain and Another*, wherein it has been held that a breach of contract simpliciter does not constitute an offence. Reliance has also been placed upon the decision of the Supreme Court of India in *Thermax Ltd. and Others Vs. K.M. Johny and Others*, wherein also it was held that merely a breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction. In the said case it was also held that the concept of vicarious liability is unknown to criminal law and in absence of any specific allegation against any person, the members of the Board and Senior Executive of the company cannot be held vicariously liable. Placing reliance on these decisions learned counsel has submitted that no offence can be said to be made out under either of the sections 406, 420 or 120B of the Indian Penal Code against the petitions, and it is a fit case for discharge of the petitioners.

8. Learned counsel for the State on the other hand has submitted that there is no illegality in the impugned order, in as much as, the impugned order is based on the materials on record and there is allegation in the complaint petition that the accused persons were having the intention to cheat the complainant from the very beginning. Learned counsel accordingly, submitted that there is no illegality and / or irregularity in the impugned order, worth interference in the revisional jurisdiction.

9. After having heard learned counsels for both the sides and upon going through the record, I find that this is a case of agreement for sale of the immovable property and that too, it is a case of only oral contract between the parties. Admittedly, there is no direct dealing between the complainant and the petitioners Pradip Kumar Roy and Ashok Kumar Mandal, who have been arrayed as accused persons being the Directors of M/s. Great Bengal Properties and Constructions (P) Ltd. There is no specific allegation against them except that before entering into the alleged oral agreement with the accused Jasdeo

Chaudhary, the complainant contacted these petitioners also who affirmed the representation made by the accused Jasdeo Chaudhary. This apart, I find from the record that though it is alleged in the complaint petition that the accused persons were having the intention to cheat the complainant from the very beginning, but no evidence whatsoever has been brought on record to support this allegation. The complainant's statement was recorded under solemn affirmation and he had examined two more witnesses at the enquiry stage, but neither the complainant nor his witnesses have deposed that the accused persons were having any intention to cheat the complainant from the very beginning. Thereafter, three witnesses were examined before charge including the complainant himself, but even at that stage neither the complainant nor any witness examined by him stated that the accused petitioners were having any intention to cheat the complainant from the very beginning.

10. Thus, there is no material on record to show that there was any intention on behalf of the accused persons to cheat the complainant from the very beginning and sans this allegation in the complaint petition, there is allegation of merely of the breach of oral contract between the parties. I find force in the submission of the learned counsel for the petitioners that the mere allegation of breach of contract between the parties cannot give rise to criminal prosecution for cheating and the facts of this case are fully covered by the decisions of the Supreme Court of India in the cases of All Cargo Movers (India) Private Limited (Supra) and M/s. Thermax Ltd. (Supra). I am of the considered view that even if the entire allegations made in the complaint petition and the material brought on record are accepted in their entirety, coupled with the fact that it finds mentioned in the complaint petition itself that the complainant had filed a Civil Suit for specific performance of contract, which is still pending, I am of the considered view that no offence can be said to be made out against the petitioners under either of the Sections 406, 420 or 120B of the Indian Penal Code, and the present prosecution has been lodged by the complainant only with an oblique motive. In fact, a dispute which is purely civil in nature has been given a cloak of criminal offence. As such, the impugned order cannot be sustained in the eyes of law.

11. In view of the aforementioned discussions, the impugned order dated 31.08.2001 passed by Sri A.K. Jaiswal, learned Judicial Magistrate, 1st Class, Ranchi in Complaint Case No. 94 of 1996, is hereby, set aside. Consequently the petitioners stands discharged. These application are accordingly, allowed. Let the Lower Court Record be sent back forthwith.