

(1978) 01 AHC CK 0016
In the Allahabad High Court
Case No : Criminal Misc. No. 173 of 1977

Prestolite of India Ltd. and Another

APPELLANT

Vs

The Munsif Magistrate and Another

RESPONDENT

Date of Decision : 09-01-1978

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 397(2), 415, 482
Penal Code, 1860 (IPC) — Section 415, 420

Citation : (1978) AWC 159

Hon'ble Judges : P.N. Goel, J

Bench : Single Bench

Advocate : V.K. Barman, for the Appellant; Tapan Ghosh, for the Respondent

Final Decision : Allowed

Judgement

P.N. Goel, J.—This is an application u/s 482 Code of Criminal Procedure.

2. Sri V.K. Burman, counsel for the Petitioners and Sri Tapan Ghosh, Counsel for the Respondent No. 2, have been heard at length.

3. Sri Genda Lal Sharma, Respondent No. 2, is a partner in . Yogesh Metal Industries, Aligarh. A complaint (copy Annexure CA-2 to the counter affidavit of Sri Genda Lal Sharma, Respondent No. 2) was filed by the Respondent No. 2 in the court of Munsif Magistrate u/s 420 IPC. The Munsif Magistrate recorded statements of the witnesses u/s 202 of the Code of Criminal Procedure and then passed order on 4-6-1976 summoning the accused.

4. Sri Tapan Ghosh has raised a preliminary objection that the order passed by the Munsif Magistrate is interlocutory in nature, that no revision is permissible against application u/s 397(2) Code of Criminal Procedure and as such this application u/s 482 Code of Criminal Procedure was not maintainable. Section 482 Code of Criminal Procedure reserves the inherent power of the High Courts. This power is to be exercised if it is necessary to prevent abuse of the process of any court or otherwise to secure the ends of justice. In view of this the bare

question is whether the allegations of the complaint make out, prima facie, an offence of cheating. Section 415 Code of Criminal Procedure defines cheating as-

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 explanation is attached to this section which provides that dishonest concealment of facts is a deception within the meaning of this section. The position that follows is that the main ingredient of the offence of cheating is either a dishonest misrepresentation or a dishonest concealment of facts on the basis of which the person deceived delivers any property to the offender or to consent that the offender shall retain the property already delivered,

5. Turning to the allegations of the complaint filed by the Respondent No. 2 para 2 of the complaint mentions that accused No. 2 being Manager or Managing Director of accused No. 1 placed an order of supply of locks with the complainant saying that payment of their price would be immediately made and that accepting the words of accused No. 2 locks were supplied. It is pertinent to remark here that this paragraph does not mention on which date the order was placed and on which date the locks were supplied. Then paragraph 3 mentions that a cheque No. FDV 130942, New Bank of India, Faridabad dated 22-3-1975 for Rs. 3776,30 was given by the accused saying that it was risky to bring cash money, that there was enough money of the accused in the Bank and that the cheque would be immediately cashed. Paragraph 4 says that the cheque was not cashed by the Bank on the ground that it exceeded arrangement, that the complainant wrote letters and personally met accused No. 2 who told him that the cheque be sent again to the Bank and it would be cashed and that again the cheque was not cashed/honoured on 3-6-1975 for the same reason. In paragraph 5 the complainant mentioned that he was surprised on account of the non-payment of the cheque that he again wrote letter to the accused and personally met but the accused paid no heed, in para 6 it was stated that accused No. 2 evaded payment and in para 7 it was stated that on 16-9-1975 accused No. 2 told the complainant that he was given notice, that the accused had no money and that he could do whatever he liked. It was then added that the intention of the accused was deceitful from the very beginning. Lastly it was said that if the accused has not assured that the cheque would be immediately honoured, he would not have supplied the locks.

6. It has been mentioned above that in para 2, the complainant did not mention the date of placing the order by the accused and did not also mention the date of the supply of the locks. It means that the complainant does not connect the giving of cheque with the placing of the order and the supply of goods there under. In view of this the other allegations in the complaint merely show that a

cheque was given by the accused to the complainant which was not honoured by the Bank. This fact alone is not sufficient to make out a case of cheating as defined in Section 415 IPC.

7. Giving of cheque is nothing but to promise to pay. If the promise is not fulfilled, the right of the aggrieved party is to sue and to seek civil remedy. It does not give rise to any criminal action. Subsequent refusal to pay the price of the goods already delivered also does not, per se, give rise to a criminal action.

8. The result is that the complaint as framed did not make out an offence of cheating.

9. The order of the Magistrate summoning the accused is no doubt an interlocutory one, but in this case it is not such an order which prohibits this Court from passing an appropriate order u/s 482 Code of Criminal Procedure for the ends of justice or for preventing abuse of the process of the criminal court. This view is in accordance with the view taken by the Supreme Court in the case of Amar Nath and Others Vs. State of Haryana and Another, .

10. The application is therefore, allowed and the proceedings in Criminal Case No. 543/9 of 1976, Genda Lal Sharma v. Prestolite of Indta Ltd. Are quashed.