

(1999) 03 SC CK 0071

In the Supreme Court Of India

Case No : Criminal Appeal No. 295 of 1999

Rajesh Bajaj

APPELLANT

Vs

State NCT of Delhi and Others

RESPONDENT

Date of Decision : 12-03-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 415, 420

Citation : (1999) 1 ACR 710 : AIR 1999 SC 1216 : (1999) AIRSCW 881 : (1999) 1 ALD(Cri) 760 : (1999) 1 ALT(Cri) 301 : (1999) CriLJ 1833 : (1999) 1 Crimes 136 : (1999) 2 CTC 243 : (1999) 2 JT 112 : (1999) 2 LW(Cri) 649 : (1999) 1 OLR 668 : (2000) 1 PLJR 79 : (1999) 3

Hon'ble Judges : S. S. M. Quadri, J;K. T. Thomas, J

Bench : Division Bench

Advocate : R.K. Jain, Aseem Mehrotra and A.P. Medh, for the Appellant; K.N. Rawal, A.S.G., Anil Katiyar, S.W.A. Quadri and Sushma Suri for the Respondent Nos. 2, for the Respondent

Final Decision : Allowed

Judgement

Thomas, J.—Leave granted.

2. Appellant lodged an FIR with the police for the offence u/s 420, Indian Penal Code. A Division Bench of the Delhi High Court quashed the FIR on the premise that the complaint did not disclose the offence. The Division Bench reminded themselves that jurisdiction under Article 226 of the Constitution or Section 482 of the CrPC "should be exercised sparingly and with circumspection" for quashing criminal proceedings. Nevertheless, learned judges found that the case on hand could not pass the test laid down by this Court in *State of Haryana v. Bhajan Lal* [1992] Suppl. 1 SCC 335. The appellant is obviously aggrieved by the aforesaid course of action adopted by the High Court and hence he filed the special leave petition.

3. In the complaint filed by the appellant before the police, on the strength of which the FIR was prepared, the following averments, inter alia, were made. Appellant belongs to a company (M/s Passion Apparel Private Limited) which manufactures and exports Readymade garments. On 15.11.1994 fifth respondent (Gagan Kishore Srivastava) Managing Director of M/s Avren Junge Mode Gumbh Haus Der Model approached the complainant for purchase of Readymade garments of various kinds and induced the appellant to believe that 5th respondent would pay the price of the said goods on receiving the invoice. Such payment was promised to be made within fifteen days from the date of invoice of the goods which complainant would despatch to Germany. Appellant believed the aforesaid representation as true and on that belief he despatched goods worth 4,46,597.25 D.M. (Deutsch Marks). In March/April 1995 respondent on receipt of 37 different invoices got the goods released and sold them to others. But the respondent paid only a sum of 1,15,194 D.M. Appellant further alleged in the complaint that respondent induced him to believe that he is a genuine dealer, but actually his intentions were not clear.

4. Appellant also mentioned in the complaint that one of the representatives of appellant's company went to Germany in October 1995 for realising the amount on the strength of an understanding reached between them that respondent would pay 2,00,000 D.M. in lieu of the remaining part of the price. However, the respondent did not honour even that subsequent understanding.

5. Appellant further mentioned in the complaint that he came to know later about the modus operandi which respondent adopted in regard to certain other manufacturers who too were duped by the respondent to the tune of rupees ten crores.

6. Learned Judges of the High Court have put forward three premises for quashing the FIR. First is that the complaint did not disclose commission of any offence of cheating punishable u/s 420 of the Indian penal Code. Second is that there is nothing in the complaint to suggest that the petitioner had dishonest or fraudulent intention at the time the respondent exported goods worth 4,46,597.25 D.M. by 37 different invoices. There is also nothing to indicate that the respondent, by deceiving the complainant, induced him to export goods worth 4,48,597.25 D.M. The third is that on the face of the allegations contained in the complaint "it is purely a commercial transaction which in a nut- shell is that the seller did not pay the balance amount of the goods received by him as per his assurance."

7. After quoting Section 415 of IPC learned judges proceeded to consider the main elements of the offence in the following lines:

A bare reading of the definition of cheating would suggest that there are two elements thereof, namely, deception and dishonest intention to do or omit to do something. In order to bring a case within the first part of Section 415, it is essential, in the first place, that the person, who delivers the property should

have been deceived before he makes the delivery; and in the second place that he should have been induced to do so fraudulently or dishonestly. Where property is fraudulently or dishonestly obtained, Section 415 would bring the said act within the ambit of cheating provided the property is to be obtained by deception.

8. It was thereafter that the High Court scanned the complaint and found out that "there is nothing in the complaint to suggest that the accused had dishonest or fraudulent intention at the time of export of goods."

9. It is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent. Splitting up of the definition into different components of the offence to make a meticulous scrutiny, whether all the ingredients have been precisely spelled out in the complaint, is not the need at this stage. If factual foundation for the offence has been laid in the complaint the court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details. For quashing an FIR (a step which is permitted only in extremely rare cases) the information in the complaint must be so bereft of even the basic facts which are absolutely necessary for making out the offence. In *State of Haryana v. Bhajan Lal* (supra) this Court laid down the premise on which the FIR can be quashed in rare cases. The following observations made in the aforesaid decisions are a sound reminder:

We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.

10. It may be that the facts narrated in the present complaint 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, many a cheatings were committed in the course of commercial and also money transactions. One of the illustrations set out u/s 415 of the Indian Penal Code (illustrations "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.

11. The crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not.

The complainant has stated in the body of the complaint that he was induced to believe that respondent would honour payment on receipt of invoices, and that the complainant realised later that the intentions of the respondent were not clear. He also mentioned that respondent after receiving the goods have sold them to others and still he did not pay the money. Such averments would prima facie make out a case for investigation by the authorities.

12. The High Court seems to have adopted a strictly hyper-technical approach and sieved the complaint through a calendar of finest gauzes for testing the ingredients u/s 415, IPC. Such an endeavour may be justified during trial, but certainly not during the stage of investigation. At any rate, it is too premature a stage for the High Court to step in and stall the investigation by declaring that it is a commercial transaction simplicitor wherein no semblance of criminal offence is involved.

13. The appellant is, therefore, right in contending that the FIR should not have been quashed in this case and the investigation should have been allowed to proceed.

14. We, therefore, allow this appeal and set aside the impugned order.