
(1973) 05 PAT CK 0012

In the Patna High Court

Case No : Criminal Miscellaneous No. 673 of 1970

Rajesh Pal and Md. Haneef Quraiani

APPELLANT

Vs

Md. Ali

RESPONDENT

Date of Decision : 10-05-1973

Acts Referred:

Penal Code, 1860 (IPC) — Section 405, 406, 420

Citation : (1973) 6 PLJR 504

Hon'ble Judges : C.P. Sinha, J

Bench : Single Bench

Advocate : Brajkishore Prasad No. 2, Fanish Singh and Yogesh Chandra Verma, for the Appellant; Brajeshwar Prasad Sinha and Vishwanath Sahay, for the Respondent

Final Decision : Allowed

Judgement

C.P. Sinha, J.—This application u/s 561A of the Code of Criminal Procedure has been filed by Rajesh Pal and Md. Haneef Quraiani of Bombay for quashing the criminal proceedings under Sections 420 and 406, Indian Penal Code in Suit No. 169 (C) 70 against these petitioners pending in the court of Mr. N. K. Prasad, Munsif Magistrate, first Class, Patna. In the complaint petition, the complainant Md. Ali, which he filed before the Subdivisional Magistrate on 16.4.1970 (Annexure "1" to the present application) he alleged as follows: On 8.3.1970 the complainant, who is the proprietor of "Shamiana and Decorators" situated at S. P. Verma Road within Patna town, was approached by the two accused persons, who belonged to the company ""Wrestling World". In course of that they requested the complainant to contract and provide steel chairs, etc. indicating their number at Rajendranagar Stadium, Patna where they were going to bold wrestling bouts on 11.3.1970 and thereafter. The complainant agreed to their request in this behalf and a contract between the two was drafted on 9.3.1970 and finally signed by the parties on 10.3.1970 in presence of the witnesses. A copy of this agreement was annexed to the complainant, and this document at

present forms Annexure I to the present application. In the morning of 11.3.1970 the accused persons again orally placed orders with the complainant to supply 50 daris for the Stadium to which he also agreed. In pursuance to these agreements the complainant supplied all the stipulated materials and also completed the contracted constructions in the Stadium by 2 p.m. on 11.3.1970. In the advertisements that the accused persons had made in this connection, they had given out that wrestlers from both India and outside, particularly Dara Singh and his brother Randhwa as also the African champion Black Panther would be participating in these wrestling bouts apart from other wrestlers. Consequent to these advertisements a very large number of audience numbering not less than a lac assembled in the Rajendranagar Stadium on 11.3.1970 to witness the bouts. They had all assembled inside the Stadium before 6.30 p.m. when the bout was to begin. No wrestler, however, arrived at the stadium by that time. Nor these accused persons as its organisers made any announcement in the matter till about 7 p.m. That made the large crowd restive and they began demanding the management to have the bout done. But when even up to 8 p.m. neither the wrestlers came nor any announcement was made the crowd became seriously agitated and getting no response from the management the matter ended in pandemonium and confusion in which the materials as supplied by the complainant were looted away by those angry spectators without any step from the side of the organisers to stop, When the complainant's efforts to meet these accused failed, he went and filed a written complaint (Annexure II to present petition) about this matter to the Senior Superintendent of police, Patna. In that petition the complainant requested for the arrest of these accused persons because they were reported to be trying to escape with the sale proceeds which they had collected from the spectators. The police superintendent on that petition directed the officer-in-charge, Kadamkuan Police Station to take immediate action in the matter. The complainant then came to Kadam Kuan police station and filed another petition to its officer-in-charge (Annexure III). While the complainant was still at the police station the accused persons appeared and gave a petition to the officer-in-charge undertaking to clear all the dues including the damages due to loot of the complainant's articles after due consultation with the complainant. From the next day, i. e. 12.3.1970, right upto 15.3.1970, the complainant tried to get the matter settled regarding those dues but the accused persons went on putting off the matter on some pretext or other to delay it so that they could get away from Patna without doing so.

2. Upon the above statements in the complaint petition the complainant alleged that the accused persons by such false representations had cheated him as also the people of Patna. It was also averred that the complainant was misled by false representations by the accused persons that the wrestling bouts as mentioned by them would duly take place and relying on that he had made those constructions and supplied the materials. He was also misled by their false promises to make payment according to the terms of the agreement entered between the two sides. He has farther learnt that neither Dara Singh nor the African champion

Black Panther had been brought to Patna in connection with this boat. It was also alleged that they had never intended to have any such performance made and wilfully cheated those who had purchased tickets for this show as well as the complainant in that manner. They had also committed the offence of criminal breach of trust by not paying the necessary dues and damages concerning those articles. In the end he submitted that since the police had failed to submit the charge sheet in the case so far and his apprehension was that justice would be denied to him on account of the delay in the matter he was advised to file this complaint so that the accused persons could be made to face trial for the offence so committed by them.

3. Learned Subdivisional Magistrate on receiving the above complaint, examined the complainant on solemn affirmation and recorded the following order:

"Examined the complainant on S.A. Cognizance taken under Sections 405 and 420 Indian Penal Code. To the court of Shri N. K. Prasad, M. M. 1st Class for disposal. Let the complainant appear there on 30.4.1970".

There is no difference between the parties that after this order of the Subdivisional Magistrate the case went to the court of this Magistrate for trial where it is still pending.

4. Mr. Brajkishore Prasad (no. 2) appearing for the accused persons has argued that on the allegations made in the complaint petition no prima facie offence is made out for their prosecution. According to him there is nothing on the record to show that at the time the accused persons entered into the agreement with the complainant regarding these articles and constructions they had any dishonest intention of cheating the complainant. On the other hand, it was manifest that at that time their intention was honest and bona fide and if due to certain unavoidable circumstances beyond their control the bout could not take place and his articles were damaged and looted away, as alleged, they could not be held responsible for the same and run down in a criminal court for the offences of cheating and criminal breach of trust vis-a-vis this transaction. Against this the contention addressed by Mr. Brajeshwar Prasad Sinha, Learned Counsel for the complainant-opposite party, is that as the allegations made against them will prima facie show these accused persons had no intention whatsoever to have these bouts and had falsely represented so to the complainant just to make him do those constructions and supply the materials on the basis of that representation. According to him, the contention of the other side that representation was honest and bona fide and not false is a matter to be decided on evidence during trial but not at this preliminary stage where the only concern of the court is to see if on the allegations made any prima facie case is made out to put the accused persons on trial for the same,

5. In the case of (1) R.P. Kapur Vs. The State of Punjab, their Lordships have held that the inherent power of High Court u/s 561-A, Criminal Procedure Code cannot be exercised in regard to matters specifically covered by the other

provisions of the Code; the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice; ordinarily criminal proceedings instituted against an accused person must be tried under the provisions at the Code, and the High Court would in reluctant(sic) to interfere with the said proceedings at as interlocutory Stage; it is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. While holding so, they have tried to lay down, by way of example, some instances where the inherent jurisdiction to quash the proceeding can and should be exercised. Of the three instances formulated the one relevant for the present purpose is to the effect :

"....where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged) in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not".

6. On the point of presence of dishonest Intention at the time of making the promise, their Lordships of the Supreme Court in the case of (2) State of Kerala Vs. A. Pareed Pillai and Another, have observed that to hold a person guilty of the offence of cheating, it has to be shown that his intention was dishonest at the time of making the promise; such dishonest intention cannot be inferred from the mere fact that he could not subsequently fulfill the promise.

7. In the above deed of agreement, admittedly entered between these accused persons and the complainant, it was given out that the first party, namely, accused persons were arranging wrestling bouts by celebrated wrestlers of India at the Rajendranagar Stadium, Patna in all four contests on the 11th 15th, 18th and 22nd March, 1970 and to that end they wanted the second party, namely complainant, to construct stage platform and make the supply of chairs, etc. in that stadium, Under the agreement the complainant undertook to perform those acts and supply those materials for which charges were fixed in this deed, the total of which came to Rs. 14,764. This amount was stated to be hire and construction charges for those works including transport charges. Their mode of payment by the accused was also fixed in this agreement and as they stood, Rs. 2000/- was to be paid on 8.3.1970, another Rs. 2000/- on 10.3.1970 and soon. The entire payments were to be completed by 2.3.1970. As urged by the petitioner, and not disputed by the other side, the scheduled payments of Rs. 4000/- on 8.3.1970 and 10.3.1970 had been duly made and received by the complainant. In paragraph 5 of this agreement the first party (present petitioners) contracted to pay to the complainant (second party) the reasonable charges for damages etc. caused to the articles of the second party in case of unnatural calamities, e. g. break out of fire etc. breakage or tearing of any of the articles or loss due to misdeeds of the visitors or spectators or any member of the audience. From the contents of this agreement it is clear that both parties

entered into a contract in this connection under which the obligation of the complainant was to supply those materials and raise those constructions in the Stadium for which fixed charges were payable by the accused persons and that in case of damage to his articles resulting from their breakage etc. the complainant was to be compensated by the accused persons by payment of reasonable charges from them (accused persons). So, under this bilateral agreement a liability was created on the accused persons for the loss or damage, if any, to those articles. Moreover, as already mentioned, the accused persons had made timely payment of Rs. 4000/- to the complainant out of the total charges of hire etc. of Rs. 14,764/- as per the agreement terms.

8. Reading the above petitions dated 11.3.1970 (Annexures II and III) which this complainant had filed to the Senior Superintendent of police and the Officer-in-charge it is clear that at least two of the advertised wrestlers, namely Dhanraj and Randhwa were at Patna on 11.3.1970 when the first bout was to be held.

9. The contention that though in the advertisements made by these accused persons they had given out that they were having Dara Singh and the African champion Black Panther to participate in these bouts cannot be said to be very material for the present purpose because while entering into the above contract with the complainant regarding supply of furniture etc. all that they had given out to him in that behalf was that they required him to do those things in connection with wrestling bouts by celebrated wrestlers of India which they were arranging to hold at Rajendranagar Stadium on the aforesaid four dates i. e., 11th, 15th, 18th and 22nd March, 1970 (vide contents of the agreement). There was no mention of the name of any of these wrestlers (Dara Singh or Black Panther), therein so that their absence from the scene subsequently, if true, could be used by him as an instance of their false representation to him at the very inception of this deal between the two. While filing this complaint to the Subdivisional Magistrate, he had enclosed therewith a copy of his above agreement as also the letters to the Senior Superintendent of police and the officer-in-charge. In the letter he clarified that they had on 11.3.1970 undertaken to clear all the dues in this connection and thereafter he had tried to have them settled and paid for 3 days; but they had anyhow put off the matter to escape the liability. On the materials so presented, they could not, perhaps, be said to constitute offences of cheating and criminal breach of trust against them even if they were taken on their face value and accepted in its entirety. At best they could be read as creating a civil liability on the accused person in that behalf. As shown above, in the agreement itself there was a clear and specific stipulation providing for payment of reasonable charges for the loss and damage, if any, occurring to his those articles. On the obtaining allegations it is difficult to treat them as making out any prima facie offence of cheating or criminal breach of trust as to require their being hauled up in a criminal prosecution.

10. In conclusion, as the facts of the case stand I am constrained to think that whatever liability the accused persons had incurred in this behalf to the

complainant it was civil to be enforced in a Civil Court as per terms stipulated in the above contract, and their prosecution in a Criminal Court for the offences of cheating and criminal breach of trust in this connection does not appear to be proper and justified. In that situation if they are made to face a criminal trial for them, that would to my mind amount to be an abuse of the process of court. In the interest of justice it seems necessary to leave them to have this matter settled in a civil proceeding on merits in accordance with law. Their present prosecution must not however be continued and should be ended to serve in the interest of justice. For the above reasons, this application deserves to be allowed. It is, accordingly, allowed and the proceeding in suit No. 169 (C) 70 in the court below is set aside.