(2012) 07 JH CK 0078

In the Jharkhand High Court

Case No : Criminal M.P. No. 1210 of 2009

Ramesh Kantilal Nanavati @ Ramesh Kumar Nanavati and Another — APPELLANT

Vs

State of Jharkhand and Another — RESPONDENT

Date of Decision : 30-07-2012

Acts Referred:
Penal Code, 1860 (IPC) — Section 2(b), 415, 420

Citation : (2012) 3 JCR 561

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Indrajit Sinha, for the Appellant; A.K. Sahani, for the opp. party (No. 2), for the Respondent

Final Decision : Allowed

Judgement

R.R. Prasad, J.—Heard Learned Counsel appearing for the petitioners and Learned Counsel appearing for the opposite party No. 2. This application has been filed for quashing of the entire criminal proceeding of complaint case bearing No. C/1-1611 of 2008 including the order dated 22.12.2008 passed by the Judicial Magistrate, Jamshedpur whereby and whereunder cognizance of the offence punishable u/s 420 of the Indian Penal Code has been taken against the petitioners.

2. It is the case of the complainant that the complainant had purchased 1000 shares of Himadri Chemicals & Industries Limited on 5.2.1997 from M/s. D.P. Consultancy, Jamshedpur. After purchasing all the shares, the complainant could not lodge such shares with the Company for transferring the same for quite long time as the share certificates had been lost. However, when share certificates were traced, the same were lodged for transfer with M/s. S.K. Computer, Kolkata. The said S.K. Computer informed to the complainant that those shares had already been transferred in the name of these petitioners.

3. Having come to all about it, the complainant through his Advocate made request to the petitioners to transfer the said shares along with relevant documents, to which the petitioners did respond whereby the petitioners by writing letter to the complainant expressed their desire to transfer those shares to the complainant on furnishing proper proof of his identity and other relevant documents showing purchase of those shares by him. In spite his admission of having shares with him it were not transferred to the complainant. On such allegation, the complaint was lodged which was registered as Complaint Case No. C/1-1611 of 2008. After holding enquiry cognizance of the offence was taken u/s 420, vide order dated 22.12.2008 which order is under challenge.

4. Mr. Indrajit Sinha, Learned Counsel appearing for the petitioners submits that the order taking cognizance is being challenged on the ground that no offence is made out u/s 420 of the Indian Penal Code, even if the allegations made in the complaint are taken to be true. At the same time, it also suffers from illegality. However, the order taking cognizance is being challenged on the ground that cause of action never accrued at Jamshedpur where the complaint was lodged and hence, the order taking cognizance is fit to be quashed.

5. Mr. A.K. Sahani, Learned Counsel appearing for the complainant submits that when the complainant came to know that the shares which he had purchased had illegally been transferred in the name of the petitioners, he made contact, legal notice was sent to the petitioners requesting therein to get those shares transferred in the name of the complainant to which the petitioners did respond but asked the complainant to furnish relevant documents in proof of his identity and also other documents with respect to those shares. In spite of relevant documents being furnished to the petitioners, they did not transfer those shares in the name of the complainant and thereby cause of action accrued at Jamshedpur where the case was lodged and hence, the order taking cognizance never warrants to be quashed.

6. Having heard Learned Counsel appearing for the parties, it does appear that it is the case of the petitioners that even if it is accepted that the shares, which the complainant claimed to have been holding, were transferred to the petitioners which the petitioners did hold it, no offence of cheating is made out.

7. In the context of the principle laid down one needs to consider as to whether allegation made in the complaint does constitute offence of cheating or not?

8. The offence of cheating has been defined u/s 415 of the Indian Penal Code which reads as follows:

Cheating.--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 persons 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",

9. From its reading it appears that following ingredients should necessarily be there for constituting offence of cheating.

(1) there should be fraudulent or dishonest inducement of a person by deceiving him

(2) (a) the person so deceived should be induced to deliver any property to any persons, or to consent that any person shall retain any property or

(b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived.

(3) in cases covered by Section 2(b) the act or omission should be one which causes or is likely to cause damage or harm to the person induced in bodily or reputation or property.

10. Thus, the first element necessary for constituting the offence of cheating is a deception of the complainant by the accused. Unless there is deception, the offence of cheating never gets attracted. After deception has been practiced the persons deceived should get induced to do or omit to do something. Then, the question arises as to what is the deception?

11. Applying the principle constituting a criminal offence of cheating in context of the allegation it does appear that first element of deception constituting an offence of cheating is lacking as nowhere the allegations made in the complaint do indicate about the complainant being deceived by the petitioners in any manner.

12. It be stated that when the shares came to the hand of the petitioners, there was no communication in between the complainant and the petitioners and in such situation, question of deception does not arise.

13. Further it does appear that, according to the case of the petitioners, though the complainant had purchased thousand shares at Jamshedpur, but those shares came to the hand of the petitioners at Bombay. According to the complainant, the petitioners are holding the shares at Bombay, Thus, accept the fact that the complainant purchased the shares at Jamshedpur, no cause of action constituting offence u/s 420 fell at Jamshedpur and therefore, the Court at Jamshedpur had no jurisdiction at all to take cognizance of the offence u/s 420 of the Indian Penal Code.

14. In such situation, entire criminal proceeding of Complaint Case No. C/1-1611 of 2008 including the order dated 22.12.2008 taking cognizance is hereby quashed. In the result, this application is allowed. Application allowed.

