
(2008) 02 GAU CK 0089
In the Gauhati High Court

Ramesh Kumar Jain and Another	Vs	APPELLANT
State of Tripura and Another		RESPONDENT

Date of Decision : 29-02-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 200, 482
Penal Code, 1860 (IPC) — Section 420, 463, 464, 465, 468

Citation : (2008) 2 GLT 131

Hon'ble Judges : P.K. Musahary, J

Bench : Single Bench

Final Decision : Allowed

Judgement

P.K. Musahary, J.—Heard Mr. B.N. Majumder, learned Counsel for the petitioners and Mr. B. Das, learned Senior Counsel for the respondent No. 2. Also heard Mr. R.C. Debnath, learned P.P. In-charge appearing for the respondent No. 1.

2. This application u/s 482 Cr.P.C. read with Article 227 of the Constitution of India has been filed by the petitioners for setting aside the judgment dated 12.09.2002 passed by the learned Sessions Judge, West Tripura, Agartala in Criminal Revision No. 51(3)/2000 wherein and whereby the order dated 16.09.2000 passed by the Judicial Magistrate, 1st Class, Court No. 1, Agartala in Cr. Case No. 3142 of 2000 was upheld.

3. The petitioner No. 1 is the proprietor of M/s Jain Udyog, Agartala dealing in as an authorized dealer of Maruti Udyog Limited having their Sales Office-cum-workshop at Arundhutinagar, Agartala and the petitioner No. 2 is a worker under the petitioner No. 1. The respondent No. 2 filed a complaint petition before the Chief Judicial Magistrate, West Tripura, Agartala against the present petitioners alleging commission of offence under Sections 420/465/468/471 IPC. The case of the complainant respondent No. 2 was that he owned a Maruti-800 car having registration No. TR-01-A-0755, which got damaged due to an accident and the said car was given to the petitioners' firm for replacement of damaged door by a

new one. The car was placed at the petitioner's workshop at Arundhutinagar on 17.5.2000 and the petitioners assured replacement of the door by a new one within ten days, but it could not be done so even after twenty-five days. Thereafter, the car was delivered to the complainant respondent No. 2 only on 13.6.2000 and he paid Rs. 16,412/-, but it was detected that there was no replacement of the damaged door by a new one as assured and in fact, no new part was also used. On the basis of the said complaint, the Judicial Magistrate, as assigned by the Chief Judicial Magistrate, examined the complainant respondent No. 2 u/s 200 Cr.P.C. and took cognizance of the offence under the aforesaid Sections of the IPC and issued summons upon the petitioners by an order dated 16.9.2000.

4. Being aggrieved by the aforesaid order, dated 16.9.2000, the petitioners preferred a revision petition being Criminal Revision No. 51 (3)/2000 before the Sessions Judge, West Tripura, Agartala for quashing the proceeding of C.R. Case No. 3142 of 2000 and the learned Sessions Judge after hearing the parties, passed the impugned judgment, dated 12.9.2000, holding that the materials available with the learned Judicial Magistrate, were sufficient to take cognizance and there was no reason to interfere with the order of the learned Judicial Magistrate, and rejected the Criminal revision. The petitioners being further aggrieved by the impugned judgment dated 12.9.2002 preferred the present criminal M.C. praying for quashing of the proceedings in C.R. Case No. 3142 of 2000 and also for setting aside the aforesaid impugned judgment dated 12.9.2002 passed in Criminal Revision No. 51(3)/2000.

5. Mr. Majumdar, learned Counsel for the petitioners submits that a complaint can be quashed when the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not, prima facie, constitute any offence or make out the case alleged against the accused. According to Mr. Majumdar, the complaint made by the complainant does not make out any case against the petitioners. In order to substantiate his submissions, he has taken me through the complaint petition filed by the respondent No. 2 and also provisions of law under Sections 420/465/468/471 IPC.

6. As regards offence u/s 420 IPC i.e. cheating, the essential ingredients are (i) deception of a person either by making a false or misleading representation or by other action or omission; (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person 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.

7. It is submitted by Mr. Majumdar that the petitioners' firm is a reputed firm and it is an authorized agent of Muruti Udyog Limited which is carrying on sales office-cum-work-shop as stated earlier. It is the complainant-respondent No. 2

who himself approached the petitioner firm for repairing his vehicle and, as such, there was no question of fraudulent or dishonest inducement to hand over the vehicle by making false or misleading representation. The complainant brought his vehicle of his own for getting it repaired or getting the damaged door replaced by a new one. This being the position, the ingredients of offence u/s 420 IPC i.e. the cheating are absent.

8. Section 465 IPC provides for punishment of forgery and forgery has been defined u/s 463 IPC. According to this section, whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery. Punishment of forgery has been provided u/s 465 IPC.

Section 471 IPC provides for punishment for using a genuine forged document or electronic record. Under this section, it is provided that whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record shall be punished in the same manner as if he had forged such documents or electronic record.

9. Referring to the provisions under the aforesaid sections of the IPC, it is submitted by Mr. B.N. Majumdar, learned Counsel for the petitioners that a person may be punished under the said sections if it is found that a person has made a false document/electronic record. The petitioners have laid bare in the bill/challan etc. the charges made for purchase of parts, repairing etc.

10. Making of false documents has been defined u/s 464 IPC, which is quoted below:

464. Making a false document--A person is said to make a false document or false electronic record--

First--Who dishonestly or fraudulently--

- (a) Makes, signs, seals or executes a document or part of a document;
- (b) Makes or transmits any electronic record or part of any electronic record;
- (c) Affixes any digital signature or any electronic record;
- (d) Makes any mark denoting the execution of a document or the authenticity of the digital signature, with the intention of causing it to be believed that such document or part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly--Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly--Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature or any electronic record knowing that such person by reason or unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

11. According to Mr. Majumder, since the complaint petition does not, prima facie, disclose any offence against the petitioners under the aforesaid sections, the learned Magistrate as well as the learned Sessions Judge committed a great error of law in pursuing the proceeding and the same must be interfered with by this Court.

12. Mr. B. Das, learned senior Counsel for the respondent No. 2 submits that the learned Magistrate took cognizance of offence on the basis of the allegations made in the complaint petition and the statements made u/s 200 Cr.P.C. and the proceeding initiated cannot be quashed merely on the asking of the petitioners because the disputed facts are required to be enquired/proved and adjudicated upon by the learned Trial Court. According to Mr. Das, this petition is premature and misconceived and liable to be dismissed. In support of his submission, he has cited the judgment rendered by the Apex Court in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, .

13. The case of Bhajanlal (supra) was basically for quashing the First Information Report (FIR) in exercise of extraordinary power under Article 226 of the Constitution of India or inherent power u/s 482 Cr.P.C. In the said case, the allegations in the FIR clearly constituted cognizable offence and the Hon''ble Supreme Court held that in such a case quashing of FIR was not justified. It was held that the Court should exercise power sparingly and that too in the rarest of rare cases and provided some guidelines which includes that where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

14. The Hon''ble Supreme Court in the case of Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, held that order of Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. It was further held that the Magistrate has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home against the accused.

15. Reading the order dated 16.9.2000 passed by the learned Judicial Magistrate it is manifestly clear that the learned Judicial Magistrate, although stated to have perused the complaint and examined the complainant u/s 200 Cr.P.C, did not record that the complaint petition and the statements of the complainant, prima facie, disclosed any offence and he was satisfied that the materials on record were sufficient to proceed with a complaint case by issuing summons to the petitioners

16. No discussion was made by the learned Magistrate as to the materials found against the petitioners for proceeding against them under the aforesaid sections of the IPC. The learned Magistrate failed to appreciate that summoning for an accused in a criminal case is a serious matter and that the criminal law cannot set into motion as a matter of course. It is held by the Hon'ble Supreme Court that the order of Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto and it is not that the Magistrate should remain as a silent spectator at the time of recording of preliminary evidence before summoning the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put question to the complainant and its witnesses to elicit answer to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

17. Coming to the present case, it is found that the complaint petition and the statements recorded u/s 200 Cr.P.C. do not, prima facie, make out any case for offence under Sections 420/465/468/471 IPC. The petitioners disclosed that they failed to replace the damaged door by a new one, as the same was not available at the time and they have not made a forged bill for a new door, but claimed only the repairing charge and price of some motor parts. It is not the case of the complainant that the petitioners made false charge/bill by giving false representation to the complainant that a new door has been replaced

18. There is no allegation whatsoever that the petitioners ever made inducement to the complainant for getting his damaged car repaired in their workshop by false representation. There is no allegation that the petitioners are not authorized agent of Maruti Udyog Limited and not having their sales office cum workshop at A.D. Nagar, Agartala.

19. Duty has been cast upon the Magistrate to see whether the allegations brought against an accused prima facie disclose any offence and warrants issuance of summons to accused. If the Magistrate fails to discharge his duties in this regard, in my considered opinion, there is no bar to the petitioners to approach the High Court u/s 482 Cr.P.C. or Article 227 of the Constitution of India, to have the proceedings quashed to protect him from facing protracted criminal trial. To continue a complaint proceeding under such circumstances would amount to abuse of process of the Court and in such case, the High Court has the power to interfere with such criminal proceeding.

20. The Court is concerned only with the question whether the averments made in the complaint spell out the ingredients of criminal offence or not. Once it is found that no ingredients of criminal offence is found in the complaint, the Court can quash the proceeding in exercising of its power u/s 482 Cr.P.C. and Article 227 of the Constitution of India.

21. Having considered the allegations made in the complaint and the statements recorded u/s 200 Cr.P.C. and applying the law and guidelines provided by the Apex Court, the invariable conclusion that comes in this case is that the allegations and materials placed on record, prima facie, do not disclose any offence against the petitioners under Sections 420/465/468/471 IPC and the learned Magistrate failed to apply his judicial mind to the facts of the case and the nature of the allegations made in the complaint and, as such, the impugned order dated 16.9.2000 passed in C.R. Case No. 3142 of 2000 by the learned Judicial Magistrate, 1st Class and the judgment dated 12.9.2002 passed by the learned Sessions Judge in Criminal Revision No. 51(3)/2000 are liable to be quashed and the same are quashed accordingly. Consequently, the criminal proceedings in C.R. Case No. 3142 of 2000 are also liable to be quashed. Accordingly, the same are also quashed.

This petition is allowed.

Send down the LCR.