(1987) 03 P&H CK 0116

In the Punjab And Haryana At Chandigarh

Case No : Criminal R. No. 1168 of 3985

Ravinder Pal Singh	APPELLANT
Vs	
Punjab Tractors Ltd.	RESPONDENT

Date of Decision : 18-03-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 177, 178, 179, 181, 182
Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2012) 2 Crimes 543 : (1987) 1 RCR(Criminal) 680

Hon'ble Judges : S.S. Sodhi, J

Bench : Single Bench

Advocate : A.K. Jaiswal, for the Appellant; N.K. Sodhi with Mr. Suresh Amba, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sodhi, J.—Messrs Punjab Tractors Limited, Sahibzada Ajit Singh Nagar, manufacture tractors and for their sale have a network of authorised dealers all over the country. Amongst their dealers were Messrs Gautam Enterprises, Fatehpur. The petitioner-Ravinder Pal Singh Gautam being its Managing Partner.

The matter here arises from a criminal complaint filed by Messrs Punjab Tractors against the petitioners alleging therein that a sum of Rs. 87,000/- was due from them when on December 10, 1982, Shri R.P. Singh Gautam came to the registered office of Messrs Punjab Tractors at Sahibzada Ajit Singh Nagar and met the head of the marketing zone ''B'' Mr. A.M. Sawhney, in the presence of the Accounts Officer Mr. P.C. Jain and represented to them that within 15 days the State Bank of India, Rai Bareli was going to hold a prestigious Loan Distribution Function to disburse loans to farmers for the purchase of six tractors. He told them that he had prevailed upon the bank authorities to disburse such loans to farmers for the purchase of tractors manufactured by their Company only. For this purpose, he required three Swaraj-737 and three Swaraj-Sartaj tractors, saying that the case with regard to the sale of these six tractors, through the bank had already prepared and was ready with bank authorities and assured that they would not be sold in any other manner except through the bank at this function. The said two officials of M/s Punjab Tractors, namely; Mr. A.M. Sawhney and Mr. P.C. Jain, however, expressed their inability to supply any tractors to the petitioner until he had paid the sum of Rs. 87,000/- due from him. The petitioner promised that he would clear the said amount of Rs. 87,000/- by the end of December 1982 and expressed surprise that Messrs Punjab Tractor were willing to lose this opportunity of enhancing its reputation by selling six of its tractors to farmers in a prestigious function organized by the bank, where not only loans were to be given to the farmers, but tractors too would be sold to them. He further pleaded his case by emphasising that he had already made a promise to the bank authorities with regard to these tractors and if his request for them was not accepted, his reputation as also that of Messrs Punjab Tractors would suffer. In this behalf, he also stressed that by the sale of these tractors, at this function, Messrs Punjab Tractors and their products could earn a big name in the area because many important dignitaries would be present there. The petitioner, in this behalf also agreed to hold six tractors in trust till the bank function and made a commitment that he would discharge this trust by making payment to Messrs Punjab Tractors for all their six tractors immediately on receipt of their payment without any deduction. He further assured that these six tractors would be sold only for the loans disbursed to the farmers at the bank function and would not be sold to any other person. Relying upon these assurances, the petitioner was given the six tractors as asked for by him. Three Swaraj-735 tractors were despatched on that very day, that is, December 10, 1982 and three Swaraj-Sartaj tractors on the next day, that is December 11, 1982. The petitioner received all these tractors within a week of their despatch. On December 28, 1932 however, when Mr. A.M. Sawhney the Head of the Marketing Division of the complainant-Company met the petitioner at Rai Bareli and asked for payment of out-standing dues, he learnt that only three out of the six tractors sent to the petitioner, for the bank function, were actually supplied by the petitioner to the bank. The three other tractors were sold by him to other persons and instead of discharging the trust which he had taken upon himself in respect of these six tractors, the petitioner had dishonestly misappropriated and converted to his own use all the sale proceeds in respect of six tractors and had utilized this amount for his own use. Specific mention was made here of a payment of Rs. two lakhs made by the petitioner to the Bank of Baroda, Rai Bareli in January 1983 in respect of the obligations or undertaking by him to that bank. Further, it was alleged that the petitioner had closed his business premises at Fatehpur and Rai Bareli in February 1983, without any intimation to Messrs Punjab Tractors. It was consequently the case of the complainant-Company that the petitioner had acted with the dishonest intention of causing wrongful loss to it and with that motive in mind had made a false and dishonest representation regarding the sale of the tractors only through the State Bank of India and to persons to whom loans were disbursed.

2. The trial magistrate, after recording the preliminary evidence of Messrs Punjab Tractors, summoned the petitioner u/s 420 of the Indian Penal Code by his order of June 15, 1983. The petitioner challenged this order in a petition u/s 482 of the Code of Criminal Procedure, wherein he sought quashing thereof. This petition was, however, dismissed on January 25, 1984. After the appearance of the petitioner in the court of Judicial Magistrate at Kharar, M/s Panjab Tractors examined seven witnesses, namely; P.W. 1 Ashok Chander, the Secretary of the Company; P.W. 2 Morada Ram, Security Guard; P.W. 3 PC. Jain, the Accounts Officer, the transporter of the tractors P.W. 4 Kishan Sayal; P.W. 5 A.M. Sawhney, the Head of the Marketing Division of the Company, besides P.W. 6 U.C. Dubey, the Manager of the Bank of Baroda at Fatehpur and P.W. 7 R.K. Tripathi of the State Bank of India, Rai Bareli.

3. After taking into account the evidence adduced, the learned magistrate came to the conclusion that from the evidence adduced, there were grounds for presuming that the petitioner had committed an offence u/s 420 of the Indian Penal Code and a charge thereunder was consequently framed. It is this order that has now been challenged in revision.

4. Counsel for the petitioner launched his attack upon the impugned order by seeking to question the authority of the person who had filed this complaint. It will be seen that the present complaint was filed through the Secretary of the Company, that is, Shri Ashok Chhabra. There is on record a resolution of the Board of Directors of November 4, 1982 which specifically mentions the name of Mr. Ashok Chhabra, Secretary of the Company as being one of the three persons named therein who were authorised to file petitions and defend suits before courts on behalf of or against the Company. Counsel for the petitioner could point to no flaw in this resolution which, on a plain reading, clearly authorises Mr. Ashok Chhabra to file complaints. The sole objection of Mr. A.K. Jaiswal, counsel for the petitioner in this behalf was that according to this resolution Mr. Ashok Chhabra could file a complaint only with the prior approval of the Vice-Chairman or Managing Director, but no such prior approval has been produced on record. At the very out-set, it deserves note that it is for the first time in revision here that such a point has, been raised. At any rate, a reference to the evidence on record would show that there is a clear and categorie statement by P.W. 1 Ashok Chhabra that he had been authorised by the Company to file the present complaint. It was never even suggested to him that the requisite prior approval for the filing of the complaint had not been obtained by him. There is thus no warrant for holding that the complaint has been filed by a person not duly authorised.

5. Next the jurisdiction of the court at Kharar to entertain the present complaint was sought to be questioned on the basis of the judgment of the High Court of Allahabad in Sushil Chandra Verma v. State of Uttar Pradesh 1983 Allahabad Weekly Cases 145 In this case, prosecution had been launched against the petitioner for cheating u/s 420 of the Indian Penal Code. The misrepresentation

alleged was verbal and was said to have been made at Agra. Theproperties in respect of which the cheating was alleged to have been committed were delivered to the petitioner at Jaunpur, It was held that the deception alleged to have been practised was only by verbal representation, the deception practised at Agra could not confer jurisdiction upon the Agra courts in view of the language of Section 182 of the Code of Criminal Procedure, 1973 (hereinafter referred to as ''the Code''). It was consequently held that the Agra courts had no jurisdiction and it was only the courts at Jaunpur which would take cognizance, of the offence.

6. Section 182 of the Code is a new provision brought on to the statute book by the Code of Criminal Procedure, 1973. The Objects and Reasons which led to enactment of this provision mention the recommendations of the Law Commission in its Forty-first Report in this behalf where the Commission had commented : --

Controversial questions have frequently arisen in regard to the venue for the offence of cheating where the fraudulent or dishonest misrepresentation is made by post, telegram or long distance telephone and where the property of which the person deceived or cheated is delivered to a common carrier or other agent at one place and received by the cheat at another place. In the absence of special provisions similar to those contained in section 181, such questions have necessarily to be decided with reference to the general principles laid down in Sections 177, 179 and 182 (now sections 177, 178, 179). Different view have been expressed by High Courts in applying these principles to the facts of the particular cases before them.

After analysing the different views expressed on the subject, the Commission recommended :--

On the strength of this analysis it might be argued in comparable cases that no part of the offence of cheating and dishonestly inducing delivery of property takes place at the accused person''s end. The application of section 179 (now section 178) or section 182 (Now section 179) might be regarded as of doubtful validity. There should, however, be no objection in principle to the person accused of cheating from a distance being triable for the offence, not only at the place where his victim was deceived and/ or made to part with property, but also at the place where the accused has been carrying on his dishonest practices and reaping the benefits.

7. It is, apparent, therefore, that the intention of the Legislature in enacting Section 182 of the Code was to extend the jurisdiction in cases of cheating and to make it possible for proceedings to be taken against persons accused of such an offence at places other than those already provided for by the existing provisions of the Code. Further, a plain reading of Section 182 of the Code would show that it deals with offences committed where the deception is practised by means of letters or tele-communication messages. Section 179 of the Code,

which is not restricted to deception by letters or tele-communications, on the other hand, confers jurisdiction upon the court where the act is done or its consequence ensues. Keeping in view the Objects and Reasons for the enactment of Section 182 of the Code, to read it as limiting the scope and ambit of Section 179 of the Code, would clearly be an unwarranted interpretation. Seen in this light, the view expressed in Sushil Chandra Verma''s case (supra) cannot be supported and it is respectfully submitted, does not lay down correct law. The judgment of the Supreme Court in K. Satwant Singh Vs. The State of Punjab, still holds the field and provides an apt precedent for repelling the objection to the jurisdiction of the court at Kharar as raised by the counsel for the petitioner. The mis-representation, in this case, had been made by the accused at Simla and the consequence thereof occurred at Lahore, as induced by the mis-representation, the delivery of property, that is, the money, was made by the accused at Lahore. It was consequently held that the accused could be tried either at Lahore or at Simla. Confronted with this authority, counsel for the petitioner was constrained to concede that if not rendered inapplicable by the provisions of Section 182 of the Code, it provided a complete answer to his objection to the jurisdiction of the court at Kharar There is clearly no warrant for holding that the law laid down in this case is in any manner been affected by the enactment of Section 182 of the Code.

8. Faced with this situation, counsel for the petitioner sought to contend that no offence u/s 420 of the Indian Penal Code could be said to have been committed in view of the letters exhibits D/2, D/7 and D/8.

9. The letter exhibit D/2 is of December 28, 1982 by Mr. A.M. Sawhney, Head of the Marketing Division of Messrs Punjab Tractors to the Manager of the Uttar Pradesh Vikas Bank to confirm that Messrs Gautam Enterprises had been allowed by them to operate in Rai Bareli and all drafts for Swaraj cases may consequently be issued in their favour. D/7 another letter written by Shri A.M. Sawhney on the same day, that is, December 28/1982 to the petitioner with reference to their request to be allowed to operate in Rai Bareli. By this letter, the Company conveyed it No Objection to this. The third letter is again of Shri A M. Sawhney of the same day to Kumar Machine Stores regarding the complaint that they bad been mis-guiding customers in their neighbouring district of Rai Bareli. Counsel for the petitioner referred to these letters with a view to show that even after the alleged deception practised by the petitioner upon Messrs Punjab Tractors Limited, the Company did not cancel the dealership of the petitioner and it must be assumed, therefore, that no cheating had been done by the petitioner. This is indeed a contention wholly devoid of merit. The allegations in the complaint and the evidence led, clearly establish the requisite ingredients of the offence of cheating u/s 420 of the Indian Penal Code, the mere fact that despite the discovery of this cheating, the dealership of the petitioner was not cancelled, provides no escape route to the petitioner from this charge. It is also pertinent to note that no suggestion to this effect was ever made to Shri A.M. Sawhney when he appeared in the witness box.

10. Another limb of the contention regarding the offence of cheating was the argument that the complaint in the present case, alleged the commission of an offence by the petitioner under sections 406 and 420 of the Indian Penal Code and that both these offences were anti-thesis of each other and no charge under either was thus competent. In support, reliance was sought to be placed upon the judgment of this Court in P.N. Sehgal v. Amar Nath 1980 P.L.R. 39 This was a case where a cement dealer was alleged to have taken the permit and money for supply of cement and did not thereafter supply any cement nor did he return the money. It was held on facts that no offence u/s 406 of the Indian Penal Code had been committed as the amount had been paid by draft to the Cement Company and not to the accused and nor was any offence committed u/s 420 of the Indian Penal Code as the accused were in the business of supplying cement. It was in dealing with this situation that the Court observed that an offence u/s 406 of the Indian Penal Code was in a way. antithesis of the offence u/s 420 of the Indian Penal Code as in the case of criminal mis-appropriation of property, the property is voluntarily kept in custody by the accused, whereas cheating takes place when the accused, by deceitful means, induces the complainant to part with the property. A plain reading of this authority would show that provides no warrant or support for the contention that merely because a complaint mentions the alleged offences committed by the accused to be under sections 406 and 420 of the Indian penal Code, neither can be said to have been committed. As mentioned earlier, the complaint here, as also the evidence led, clearly bring out the false representation made by the petitioner, which led the Company to part with the tractors. The requisite ingredients of the offence u/s 420 of the Indian Penal Code are thus prima facie established to amply justify the framing of a charge u/s 420 of the Indian Penal Code.

11. Finally, the contention was raised that the dispute here was merely with regard to the payment by the petitioner to Messrs Punjab Tractors of the price of six tractors, obtained by him. It was thus of a civil nature and deserves to be dealt with and adjudicated upon by the civil court and not the criminal court. Great stress was, in this behalf, also laid upon the fact that a civil suit had already been filed against the petitioner to recover the cost of the tractors delivered. The relevant provisions of the dealership agreement between the Company and the petitioners were also adverted to in support.

12. It is well-settled that mere pendency of a civil suit for the recovery of an amount received by the opposite party, by cheating, is no ground to bar proceedings in the criminal court in respect of such heating. The consequences that flow from the decision of the two courts are quite separate and distinct. The criminal court will punish the offender for the wrong committed, but it will not and cannot compensate the victim of such cheating for what he has lost thereby. This can only be done by the civil court and consequently both proceedings can continue simultaneously. Once in a case like the present, it stands established from the material on record, that the requisite ingredients of the offence of cheating stands established, mere pendency of the civil suit is no ground to

either bar or stay the proceedings in the criminal court.

13. It may be mentioned here that counsel for the petitioner, had, in support of his contention, that the dispute here was of a civil nature and proceedings in the criminal court be, therefore, quashed or stayed, cited the judgment of the Supreme Court in Sardar Trilok Singh and Others Vs. Satya Deo Tripathi, , and of the High Court of Patna, in Nandu Babu v. Rajendra Kumar Singh AIR 1970 Pat. (sic)87. Both these authorities are distinguishable on facts from the present case. In Trilok Singh''s case (supra), a truck had been purchased under a hire-purchase agreement, the financiers had seized this truck for non-payment of instalments. The complainant alleged that only a blank form had been got signed by him and on the default of the third instalment, the truck had been forcibly seized and removed by the financiers. Here proceedings against the financiers were held to be an abuse of the process of the court as the. dispute raised was purely of a civil nature. It was further held that obtaining signatures of a person on a blank sheet of paper was not by itself any offence. It becomes an offence only when the paper is fabricated into a document of a type which attracts the relevant provisions of the Penal Code making it an offence, or such document is used as a genuine document. Taking of the truck by the financiers in the present case, could have been done in the exercise of their bona fide right of seizing the truck on the complainant''s failure to pay the instalments in time. It was thus a bona fide civil dispute between the parties.

14. A somewhat similar situation arose before the High Court of Patna in Nand Babu''s case (supra). This again concerned a hire purchase agreement for a truck. The financiers filed a suit against the complainant to recover the balance of the instalments due. The complainant, thereafter, filed a complaint alleging mis-appropriation of two instalments paid by him. Considering the facts and circumstances of this case, the High Court, in the exercise of its inherent powers, stayed the criminal proceedings pending decision of the civil court in the earlier suit filed by the financiers. No such situation exists in the present case. Neither of these authorities bear any resemblance to the facts here and thus provide no support for the point canvassed. No exception can thus be taken to the order of the trial magistrate framing a charge u/s 420 of the Indian Penal Code against the petitioners. This revision petition is accordingly hereby dismissed with the direction to the trial magistrate to try and dispose of the case as expeditiously as possible.

