
(2009) 07 RAJ CK 0088

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 1171 of 2007

Rekha Jamalia (Smt.)

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 28-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 405, 406, 420

Citation : (2009) 07 RAJ CK 0088

Hon'ble Judges : H.R. Panwar, J

Bench : Single Bench

Judgement

H.R. Panwar, J.—This criminal miscellaneous petition u/s 482 Cr.P.C. is directed against the order dt. 28.06.2007 passed by the Session Judge, Hanumangarh (for short, "the Revisional Court" hereinafter) in criminal Revision Petition No. 31/2007, whereby the revisional Court partly allowed the revision petition filed by the petitioner against the order dt. 19.01.2007 passed by the Judicial Magistrate, Hanumangarh and order framing charge against the petitioner for offence u/s 420 IPC was set aside. However, the order of the trial Court dt. 19.01.2007 framing charge in relation to the offence u/s 406 IPC was maintained.

2. Brief facts giving rise to the instant revision petition are that the petitioner purchased a truck from the respondent No. 2 having advanced a sum of Rs. 68,000/- as loan amount on the basis of Hire Purchase Agreement. The loan amount was to be paid in 24 equal installments at the rate of Rs. 2800/- per month. It has been stated that the petitioner paid three installments and thereafter, failed to pay the remaining installments on which the respondent No. 2 filed a complaint on 18.03.2004 before the trial Court. The trial Court framed charges against the petitioner for the offences u/s 420, 406 IPC. However, on revision, the revisional Court set aside the order of the trial Court framing charge against the petitioner for offence u/s 420 IPC and maintain the order framing charge against the petitioner for the offence u/s 406 IPC. Hence, this petition.

3. I have heard learned Counsel for the parties.

4. It is contended by learned Counsel for the petitioner that ownership of the property remains with the petitioner and according to the petitioner, in the instant case, the vehicle is registered in the name of the petitioner, may be, with the endorsement of Hire Purchases Agreement on the Registration Certificate but at any rate, it cannot be said that the petitioner is not the owner of the vehicle. What the petitioner was required to do is to repay the loan amount in installments, which the petitioner failed after paying three installments at the rate of Rs. 2800/- per month. At any rate, it cannot be said that the petitioner committed the offence of criminal breach of trust. Learned Counsel has relied on the decisions of Hon"ble Supreme Court in C.B.I., New Delhi v. Duncas Agro Industries Ltd., Calcutta, 1996(3) RCR 60.

5. Learned Counsel for the respondent submits that hypotheticated goods has to be constructed to be entrustment of the goods and misappropriating the said goods amounts to criminal breach of trust.

6. The Criminal breach of trust has been defined u/s 405 IPC, which reads as under:

405. Criminal breach of trust.-Whoever, being in any manner entrusted with property, or with any dominion dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust.

7. In C.B.I., New Delhi v. Duncans Agro Industries Ltd., Calcutta (supra), while considering the case of Bank credit and hypothecation of the goods which was subsequently disposed off by the person who hypotheticated the goods and in such circumstances as to whether offence u/s 405 IPC is made out or not, the Hon"ble Apex Court held that ownership of goods still remains with the person who hypothecated the goods and therefore, basically it was a matter of Civil dispute. While considering the expression "entrusted with property" as envisage u/s 405 IPC or "with any dominion over property" which has been used in vide sense in Section 405 IPC, the Hon"ble Supreme Court held that such expression includes all cases in which goods are entrusted, that is, voluntarily handed over for a specific purpose and dishonestly disposed of in violation of law or in violation of contract. The expression "entrusted" appearing in Section 405 IPC is not necessarily a term of law. It has wide and different implications in different contexts. It is, however, necessary that the ownership or beneficial interest in the ownership of the property entrusted in respect of which offence is alleged to have been committed must to be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit. The expression "trust" in Section 405 IPC is a comprehensive expression and has

been used to denote various kinds of relationship like the relationship of trustee and beneficiary, bailor and bailee, master and servant, pledger and pledgee. When some goods are hypothecated by a person to another person, the ownership of the goods still remains with the person who has hypothecated such goods. The property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused or the beneficial interest in or ownership of it must be in other person and the offender must hold such property in trust for such other person or for his benefit. In a case of pledge, the pledged article belongs to some other person but the same is kept in trust by the pledgee. In the instant case, a floating charge was made on the goods by way of security to cover up credit facility and on that premises, the Hon''ble Supreme Court held that in such a case for disposing of the goods covering the security against credit facility the offence of criminal breach of trust is not committed.

8. In the instant case, there is no evidence that right at the inception, the petitioner has any fraudulent intention not to keep the promise while entering into Higher Purchase Agreement. Indisputably, the petitioner has paid three installments at the rate of Rs. 2800/- per month and therefore, in keeping in view the decisions of Hon''ble Supreme Court referred hereinabove, in my view, there is no essential ingredients to construe the offence of criminal breach of trust as defined u/s 405 IPC punishable u/s 406 IPC.

9. Consequently, the criminal misc. petition is allowed. The order impugned passed by the revisional Court affirming the order of trial Court framing charge against the petitioner u/s 406 IPC is set aside. However, it will be open for the respondent No. 2 to enforce civil right since the matter essentially is of civil dispute. Stay petition stands disposed of.