
(2009) 05 JH CK 0045

In the Jharkhand High Court

Case No : Criminal M.P. No. 1700 of 2008

S. Chakraborty @ Suwendu Chakraborty

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 11-05-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 34, 420

Citation : (2009) 05 JH CK 0045

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : Prashant Pallav, for the Appellant; Rohit Ranjan Prasad, for O.P. No. 2, Assistant Public Prosecutor for State, for the Respondent

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—The petitioner, an Assistant Manager of M/s Sunlit Enterprises, has challenged the order dated 28/07/2008, taking cognizance of the offence under Sections 420, 120B/34 IPC against him on the basis of the complaint, petition, filed by the O.P. No. 2 Divya Singh, mainly on three grounds:

(i) Even if the allegations made in the complaint petition

(ii) He was not the proprietor of the Firm Sunlit Enterprises rather he was only an Assistant Manager and whatever allegations has been made in the complaint petition are against the proprietor of the Company.

(iii) Lastly, that the allegations made in the complaint petition only make out a case of civil nature since the dispute between the parties arose out of a contract.

2. In support of his submissions, Mr. Prashant Pallav, learned Counsel for the petitioner has relied on a decision of the Supreme Court in the case of Sharon Michael and Others Vs. State of Tamil Nadu and Another, .

3. On the other hand, Mr. Rohit Ranjan Prasad, learned Counsel appearing for O.P. No. 2, i.e. the complainant by inviting my attention to the allegations made

in the complaint petition (Anexure-1) has submitted that the petitioner, who was an Assistant Manager of Sunlit Enterprises, which was owned by his own brother namely Nilendu Chakraborty and it was this petitioner, who represented the Sunlit Enterprises, met O.P. No. 2 with dishonest intention and induced her to purchase Generator from them as they were providing the Generator at lower price than the market price and he assured that the Sunlit Enterprises was the dealer of Kirlosker Company, which used to manufacture Generator Sets. It has specifically been alleged in the complaint petition that it was this petitioner, who assured and promised the complainant that on payment of Rs. 5,65,000/- a Generator Set of 82.5 KVA sound proof would be supplied within 30 days of payment and, accordingly, the aforesaid amount of Rs. 5,65,000/- was paid to the Sunlit Enterprises by the complainant on 23/03/2007, but the Generator Set was not supplied in spite of receiving full payment on, one pretext or the other.

4. It is also submitted that the petitioner misrepresented that his Company was the authorized dealer of Kirlosker Company but in fact, their dealership was already cancelled and, therefore, it is apparent that it was this petitioner, who misrepresented and induced the complainant to pay Rs. 5,65,000/- for supply of Generator set, which was never done and, therefore, it is a clear case of cheating by not only the proprietor of the Sunlit Enterprises but by the petitioner also, who had met O.P. No. 2 and assured her to supply Generator Set on payment of the amount within 30 days.

5. The learned Counsel for O.P. No. 2 has relied on the decisions of the Supreme Court in the case of Rajesh Bajaj Vs. State NCT of Delhi and Others, and in the case of Mushtaq Ahmad Vs. Mohd. Habibur Rehman Faizi and others, .

6. Heard the parties and gone through the judgment of the Supreme Court cited by the petitioner. The decision cited by the learned Counsel for the petitioner is not applicable in the facts and circumstances of the present case because of the fact that in the case before the Supreme Court it appears that:

E a German Company approached M in Hong Kong, for supply of certain garments. M contacted T, the appellant company, to procure those goods and supply them to E. The appellant Company approached A, the complainant, for supply of the aforesaid goods. Pursuant, thereto, in furtherance of the contract entered into by and between the parties, T and A, export of the said garments were made by A, which was certified by T to be in good condition.

The buyer Company E, refused to accept the shipment on the premise that on a random checking too many defects disqualifying the goods were found and, thus, the goods being sub-standard, were not acceptable. They asked for the goods to be picked up from their warehouse. A, the complainant, however, did not make any attempt to re-export the said goods from Germany to India. It filed a complaint petition with the police to help it to recover dues from the appellant Company. The appellant Company thereafter sent a legal notice to the complainant, inter alia, stating that it had suffered damages by the non-

performance of the complainant asking it go pay compensation to the appellant Company. The complainant was also called to withdraw the complaint which amounted to malicious prosecution meant to harass the appellant Company.

7. In such a situation as aforementioned, it was held that the F.I.R. did not reveal that any misrepresentation was made at the time of formation of the contract and in such a situation the liabilities of the Company was held to be civil liability.

8. Whereas in the present case, the petitioner induced the complainant to believe that the Company would supply the Generator Set on receipt of full payment but the Company did not supply the same to the complainant even on receipt of full payment and, therefore, in such a situation the order taking cognizance against the petitioner cannot be said to be bad in law.

9. The Supreme Court in the case of "Rajesh Bajaj" (Supra) has held that it is no necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent.

10. In this view of the matter, no case at all is made out for quashing of the order taking cognizance or the criminal prosecution against the petitioner.

11. Accordingly, having found no merit, this application is dismissed.