(1989) 11 OHC CK 0034

In the Orissa High Court

Case No : Criminal Revision No. 214 of 1985

S. Shankarmani and Others APPELLANT

Vs

Nibar Ranjan Parida and Another RESPONDENT

Date of Decision : 17-11-1989

Acts Referred:

Banking Regulation Act, 1949 — Section 23
Civil Procedure Code, 1908 (CPC) — Section 80
Criminal Procedure Code, 1973 (CrPC) — Section 202, 482
Penal Code, 1860 (IPC) — Section 109, 418, 420

Citation : (1991) CriLJ 65 : (1989) 2 OCR 623

Hon'ble Judges : V. Gopalaswamy, J

Bench : Single Bench

Advocate : P.K. Dhal, N.C. Mohanty and D. Naik, for the Appellant; B. Panda, Devasis Panda, S.C. Mohapatra and Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

V. Gopalaswamy, J.—This revision is filed for quashing the order dated 7-5-1985 passed by the Sub-divisional Judicial Magistrate, Kendrapara, in ICC No. 52 of 1985, taking cognizance u/s 418/109, I.P.C. against the accused persons (the present petitioners) on the basis of the complaint petition filed by the present opposite party No. 1.

2. The complainant''s case may be briefly stated as follows :

The complainant''s father constructed a building in village Guhalsingh and after its construction the Manager of United Commercial Bank, Thakurpatna Branch (accused No. 4) approached the complainant''s father on 5-12-1981 and induced him to let out the said building on rent to the Bank as he proposed to shift their branch office at Thakurpatna to Guhalsingh of the same revenue village. Accordingly on 5-12-1981 the complainant''s father addressed a letter to the Assistant General Manager, UCO Bank, Division Office, Bhubaneswar, through the Branch manager, Thakurpatna, offering to let out his building on rent.

Subsequently the plaintiff''s father made the offer in Bank''s standard form on 5-1-1982 and sent it to the. Division Office at Bhubaneswar. In the second week of March, 1982 the then Area Manager of Cuttack District of UCO Bank Division Office (accused No. 3) along with his staff inspected the premises and after enquiry regarding the location etc., selected the said building for opening the Branch Office. Thereafter the complainant''s father was induced by accused No. 3, the Area Manager, and accused No. 4, the Branch Manager, to make additions and alterations to his building to make it suitable as per the requirements of a Bank by incurring huge expenditure. By his letter dated 25-3-1983 the Branch Manager intimated the complainant''s father regarding the approval of the premises in question by the Premises Department of the Head Office at Calcutta. After the premises were so approved, the Branch Manager and the Field Officer (accused Nos. 4 and 5) approached the complainant''s father and demanded of him to pay a bribe of Rs. 7,000/-, but he refused to pay the same. So accused Nos. 4 and 5 instigated witness No. 3 of the complaint petition to object to the shifting of the Bank. Subsequently the complainant''s father was induced to make further alterations and modifications in his building incurring huge expenditure. Thereafter the complainant''s father addressed a letter dated 21-7-1983 to the Branch Manager to take possession of his building. In spite of the complainant''s father meeting accused Nos. 2 and 3 requesting them to take possession of his house, as the possession of his house was not taken by the Bank, he had to serve a notice through his lawyer on the accused persons u/s 80, C.P.C. on 28-8-1983 requesting them either to take over possession of his building or to pay him Rs. 52,000/- towards the expenses incurred by him for the structural alterations of his house at their instance. Thereafter the Branch Manager (accused No. 4) induced the complainant''s father to withdraw the lawyer''s notice, making it a condition precedent for taking possession of his house and accordingly, he had withdrawn his notice. Thereafter accused No. 4 had again induced the complainant''s father to take a loan of Rs. 4,500/-from the Bank and utilise it for fixing gates, shutters, etc. to his building. Accused Nos. 4 and 5 instigated the local people to oppose the shifting of the Bank from Thakurpatna. The complainant''s father was again compelled to issue a second lawyer''s notice u/s 80, C.P.C on 9-5-1984 on the accused persons requesting them to take over possession of the premises within a week and intimating them that if they failed to do so, suitable action would be taken against them. Accused No. 2 by his letter dated 29-5-1984 requested the complainant''s father not to take any action as they were awaiting the decision of the Reserve Bank of India. On 9-1-1985 accused No. 1 intimated the complainant''s father that they were not in a position to shift the Bank from Thakurpatna. Hence the complaint petition had to be filed against the accused persons on 16-2-1985.

3. The gist of the complainant''s case is that it was only because of the false representations made to his father by the accused persons which made him believe that his house would be taken on rent for their Bank, and so he incurred huge expenditure for making the house suitable for the occupation of a Bank and

that ultimately when his house was not taken on rent he suffered heavy monetary loss and under the circumstances the accused persons are guilty of the offence of cheating.

4. In this revision the prayer is made for quashing the order of the S.D.J.M. taking cognizance against the petitioners u/s 418/109, I.P.C. and issuing summons to them for their appearance. In Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, : a decision relied on by the learned counsel for both the parties, the Supreme Court indicated the guidelines as to when the order of the Magistrate issuing process against the accused can be quashed or set aside, as follows (para 5) :

"(1) where the allegations made in the complaint or the statement of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no, prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused persons;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like."

5. In support of his case against the accused persons the complainant has filed several documents and has examined two P.Ws. in the course of Section 202, Cr. P.C. enquiry. Section 418, I.P.C. prescribes the punishment for an aggravated form of cheating. So it is necessary to consider if the allegations made in the complaint petition, the sworn statement of the complainant, the evidence of P.Ws. 1 and 2 and the documents, when taken at their face value do not disclose the essential ingredients of the offence of cheating which is alleged against the accused persons.

6. According to the complaint petition, petitioner No. 1 was the Assistant General Manager, UCO Bank, Division Office, Bhubaneswar; petitioner No. 2 was the Assistant Area Manager for Cuttack District; petitioner No. 3 was the Area Manager for Cuttack District; petitioner No. 4 was the Branch Manager; UCO Bank at Thakurpatna; and petitioner No. 5 was the Field Officer, UCO Bank, Thakurpatna. It would be convenient to approach the complainant''s case on the basis of the dates of occurrence, given by the complainant himself at page 2 of his complaint petition:

"First date of occurrence:-- 7-12-1981

Second date of occurrence :-- 25-3-1983.

Third date of occurrence:-- 11-4-1983. (when they directed to proceed further)

Fourth date of occurrence :-- 21-7-1983. Last date of occurrence :-- 12-1-1985."

From the complaint petition it is seen that on 5-12-1981 the Branch Manager, UCO Bank, Thakurpatna, induced the complainant''s father to let out his house to the Bank for accommodating the Thakurpatna Branch Bank office giving him an impression that he would get an attractive monthly rent of Rs. 600/-. From the documents filed by the complainant it is seen that 7-12-1981 (the alleged first date of occurrence) is the date when the complainant''s father made a written offer to the Assistant General Manager (accused No. 1) stating that he is agreeable to let out his building to the Bank on a monthly rent of Rs. 600/-. According to the complainant, he made the offer on 7-12-1981 because of the inducement held out to him by the Branch Manager on 5-12-1981. On a perusal of the notice issued by the complainant''s father through his Advocate Shri Tripathy on 9-4-1984, it is seen that on the completion of the building in question one Mr. Brahma, the ex Branch Manager of UCO Bank, Thakurpatna Branch, approached him oh 5-12-1981 and requested him to let out his premises on a monthly rent of Rs. 60/-. So if at all the complainant''s father was induced on 5-12-1981, the inducement was by one Mr. Brahma, the then Branch Manager, who is not an accused in this case, and not by the present Branch Manager, Mr. R. N. Mallik, who figures as accused No. 4.

25-3-1983, the alleged second date of occurrence is the date when the Branch Manager (accused No. 4) by his Letter intimated the complainant''s father about the approval accorded by the Premises Department of the Head Office at Calcutta. The said letter discloses that approval from the Head Office at Calcutta was necessary before the premises in question could be taken on rent. So when accused No. 4 had merely intimated the complainant''s father about the approval of the premises by the Head Office at Calcutta it cannot be considered to be an incriminating circumstance against him.

On 11-4-1984, the alleged third date of occurrence, the accused No. 4 had intimated the house owner that the Bank was not willing to sanction any loan for the construction of the specified strong room and that any room, more or less like a strong room available in the building, will serve their purpose for keeping the valuables and other documents. No malice or dishonest intention can be attributed to accused No. 4 when he wrote such a letter.

On 21-7-1983, the alleged fourth date of occurrence, the house owner addressed a letter to accused No. 4 requesting him to take his house on rent as soon as possible.

On 12-1-1985 the complainant received the letter dated 8-1-1985 addressed by the accused No. 1 intimating him that they were not in a position to shift the Thakurpatna Branch to his premises as it does not come within Thakurpatna village, but situated in Kendrapara Municipality.

7. In the light of the materials placed on record in the preceding paragraphs, an attempt was made to find out the significance of the dates of occurrence mentioned by the complainant in the complaint petition and it is found out that on none of the above dates, any of the accused persons had done anything or made any representation which is likely to incriminate him in some way or other in the charge u/s 418, I.P.C. On 7-12-1981 the complainant''s father made a written offer offering to let out his newly constructed house at Guhalsingh to the UCO Bank on a monthly rent of Rs. 600/-. On the basis of his offer, there were prolonged negotiations between the officials of the Bank on the one hand and the complainant''s father on the other in the matter of making the house suitable for the occupation of the Bank and regarding the shifting of the existing Bank at Thakurpatna to the new premises at Guhalsingh etc. Ultimately on 8-1-1985 the accused No. 1 had addressed a letter to the complainant''s father intimating him that for the reasons stated in that letter the Bank at Thakurpatna cannot be shifted to his new premises and the said letter was received by the complainant''s father on 12-1-1985. At the time the complainant''s father made his offer on 7-12-1981 he had the knowledge that his house could be taken on rent if only the existing UCO Bank Branch at Thakurpatna was shifted to his new premises.

8. The offence of cheating is established when all the following elements are proved : (a) that the representation made by the accused was false, (b) that the accused knew that the representation was false at the very time when he made it, (c) that he made that false representation with the dishonest intention of deceiving the person to whom it was made, and (d) that he thereby induced that person to deliver any property or to do or to omit to do something which he would otherwise not have done or omitted.

9. The subsequent negotiations that took place between the parties were due to the offer made by the complainant''s father on 7-12-1981 for letting out his house on rent to the Bank authorities. The complainant''s case is that he would not have made that offer but for the inducement held out to him by the then Branch Manager, Thakurpatna. Even if the said allegation is believed to be true, it is seen from the documents filed by the complainant himself that the Manager who so induced him is one Mr. Bramha and not Mr. Mallick, the accused No. 4. Likewise the first Area Manager, who told the complainant''s father that he had received his offer and the recommendation of the Branch Manager was one Shri Mahadev and not Mr. N. V. Rao, the accused No. 3. So none of the accused persons was in any way responsible for the making of the offer by the complainant''s father on 7-12-1981. Evidently all the accused persons were dealing with the offer made by the complainant''s father in their official capacity.

10. The complainant''s father was a retired Deputy Collector and an Advocate by the relevant date. It is significant that the copies of the lawyer''s notice dated 9-5-1984 issued to the accused persons were also sent to the General Manager of the Head Office at Calcutta and the Deputy Manager, R.B.I., Bhubaneswar, for

their information and necessary action. From the letter dated 25-3-1983 filed by the complainant it is seen that even the premises had to be approved by the Head Office at Calcutta. So the complainant''s father was well aware that the ultimate decision in the matter of shifting the Thakurpatna Branch was with the Head Office at Calcutta and the officials of Reserve Bank of India. In Section 202, Cr. P.C. inquiry P.W. 1 is the Advocate who proves the notice issued by him u/s 80, C.P.C., P.W. 2 is the mason who made some constructions in the house of the complainant. That the complainant''s father incurred some expenditure for making the house suitable for a Bank is not in dispute. The materials placed on record by the complainant would show that the accused persons were acting in their official capacity on the bona fide belief that there was scope for shifting the Thakurpatna Branch to the premises of the complainant''s father. Paragraph 3 of the complaint petition reads thus:

"That on the completion of the building the Manager of U. Co. Bank, Thakurpatna, approached the complainant''s father on 5-12-1981 and induced him to let out his premises for shifting their branch office at Thakurpatna, in the same revenue village of Guhalsingh and......"

(Emphasis is mine)

So it is evident, that even when the then Manager of UCO Bank Mr. Brahma made the suggestion to complainant''s father to let out his premises, Mr. Brahma was under the erroneous impression that Thakurpatna and Guhalsingh are in the same revenue village. From the letter of the Assistant Manager dated 8-1-1986, filed by the complainant, it is seen that as the shifting of the Thakurpatna Branch of the Bank to the premises of the complainant''s father would be shifting the Bank from one village to another village, the local public as well as the Government Executives were opposed to it. From Section 23 of the Banking Regulation Act, 1949 also it appears that prior permission of the Reserve Bank would be necessary for such shifting. In the said letter dated 8-1-1985 accused No. 1 stated that because of the above circumstances the Thakurpatna Branch could not be shifted to the premises of the complainant''s father.

11. It is only with a view to attribute malice to the accused persons that the complainant made certain allegations which cannot be accepted as true in view of the materials placed by the complainant himself. For instance, the complainant made a bald allegation that shortly after the approval order dated 25-3-1983 was received, accused Nos. 4 and 5 demanded a bribe of Rs. 7,000/-from the complainant''s father stating that they took a lot of trouble for getting the approval of the Head Office, but as he refused to pay them anything, they bore a grudge against him. The complainant does not state either the approximate date or the approximate month when the accused Nos. 4 and 5 had allegedly demanded the bribe. That apart the complainant''s father issued two lawyer''s notices on 12-8-1983 and 9-5-1984, but in neither of the notices any mention was made about the demanding of the bribe by accused Nos. 4 and 5. The sworn statement of the complainant shows that even subsequent to the date of demand

of bribe by accused No. 4, his father was induced by accused No. 4 to incur huge expenditure for making structural alterations and modifications to his building. It is difficult to believe that the complainant''s father (a retired Deputy Collector and an Advocate) had still faith in accused No. 4 in spite of his demanding a bribe from him and was prepared to act according to his instructions. One of the serious allegations in the complaint petition is that accused Nos. 4 and 5 had instigated witness No. 3 of the complaint petition Gouranga Jena to raise objection against the shifting of the Thakurpatna Bank to the complainant''s father''s building. In Section 202, Cr. P.C. enquiry P.Ws. 1 and 2 were examined to prove certain undisputed facts but the said Gourang Jena was not examined as a witness at all. In the lawyer''s notice dated 12-8-1983 also there was no mention about the accused Nos. 4 and 5 instigating others to raise an objection against the shifting of the Bank to the new premises. From the letter dated 11-4-1983 of the Manager (filed by the complainant) it is seen that the Bank Manager did not insist on the construction of the specified strong room and on the other hand, informed the complainant''s father that any room, more or less like a strong room, would serve the purpose. Under the circumstances, it is not understood why at all the complainant''s father incurred expenditure for the construction of a strong room as claimed by him in his lawyer''s notice dated 12-8-1983. The very fact that the complainant has come out with certain allegations, which cannot be accepted as true, would suggest that he is out to abuse the process of the court.

12. The learned counsel for the petitioners relied on the decision Sardar Trilok Singh and Others Vs. Satya Deo Tripathi, . In the above case the dispute between the parties related to the purchase of a truck by the complainant (respondent). A hire-purchase agreement was entered into between the respondent and a Finance Corporation (accused appellants). The loan was payable in monthly instalments. According to the agreement, on default of any one instalment, the financer had the right to terminate the hire-purchase agreement even without notice and seize the truck. The complainant''s case was that only a bank form was got signed by him. The complainant''s case further was that he had paid back two monthly instalments and the third instalment was payable on July 31, 1973. But before that date all the accused persons in a high-handed manner during his absence came to his house and in spite of protest by his wife forcibly under threat of arms removed the truck and thus they are said to have committed various offences including the offence of dacoity. After enquiry the Magistrate directed the issue of summons. The appellants moved an application u/s 482, Cr. P.C. for quashing of the proceedings. On the above facts, the Supreme Court observed thus (para 5):

"We are clearly of the view that it was not a case where any processes ought to have been directed to be issued against any of the accused. On the well-settled principles of law it was a very suitable case where the criminal proceeding ought to have been quashed by the High Court in exercise of its inherent power. The dispute raised by the respondent was purely of a civil nature even assuming the facts stated by him to be substantially correct..... Obtaining signature of a person on blank sheet of paper by itself is not an offence of forgery or the like. It becomes an offence when the paper is fabricated into a document of the kind which attracts the relevant provisions of the Penal Code making it an offence or when such a document is used as a genuine document. On the face of the complaint petition itself the highly exaggerated version given by the respondent that the appellants went to his house with ''a'' mob armed with deadly weapons and committed the offence of dacoity in taking away the truck was so very unnatural and untrustworthy that it could not take the matter out of the realm of civil dispute."

In Lord Match Industries v. M.S. Salvasekharan (1983) 55 CLT 24 this Court while quashing the cognizance on the ground that the case was one of mere breach of contract, without prima facie materials to make out an offence of cheating, placed reliance on the following observations of the Supreme Court in State of Kerala Vs. A. Pareed Pillai and Another, :

"To hold a person guilty of the offence of cheating, it has to be shown that his intention was dishonest at the time of making the promise. Such a dishonest intention cannot be inferred from the mere fact that he could not subsequently fulfil the promise."

13. On a careful consideration of the entire material placed on record it is seen that all along the accused persons showed bona fide interest for taking the house of the complainant''s father on rent. The documentary evidence filed by the complainant clearly shows that none of the accused persons had any final say in the matter. Ultimately the house of the complainant''s father could not be taken on rent by the Bank for reasons beyond the control of any of the accused persons. Even according to the complainant his father made the offer to let out his house on rent on being induced to do so by one Mr. Brahma, who is not an accused in the case. There is nothing on record to show that any of the accused persons knowingly made a false statement with the dishonest intention of deceiving the complainant''s father. There is absolutely no motive for any of the accused persons which could have prompted them to deceive the complainant''s father with a view to put him to loss.

14. Criminal liability for the offence of cheating arises only when it is proved that the accused had made a false statement, that he knew it to be false at the very time when he made it and that it was made with the dishonest intention of deceiving another. Otherwise the liability is only civil. (See Mobarik Ali Ahmed Vs. The State of Bombay,

Mere breach of a contract cannot give rise to a criminal prosecution. The distinction between a case of mere breach of contract and one of cheating depends upon the intention of the accused at the time of the alleged inducement which may be judged by his subsequent act, but of which the subsequent act is not the sole criterion. Where there is no clear and conclusive evidence of the criminal intention of the accused at the time the offence is said to have been committed and where the party said to be aggrieved has an alternative remedy in the civil court, the matter should not be allowed to be fought in the criminal courts. (See Bageshwar Misser Vs. Mt. Khandari Kuer and the State,).

In S.B. Goenka Vs. Rajendra Prasad Agarwalla, , this Court held that every breach of contract by a person does not constitute an act of cheating u/s 420, I.P.C. It must be shown that his intention was dishonest at the time of making the contract. Dishonest intention cannot be inferred from the mere fact that the person did not subsequently fulfil the promise.

15. In the present case there is no material to show that at any stage of the negotiations between the parties any of the accused persons was actuated by any dishonest intention. Generally speaking a criminal offence consists of an act done by an accused with a specific criminal intent or state of mind constituting mens rea. The material placed on record by the complainant discloses that the dispute between the parties, if any, is purely of a civil nature. If the complainant feels aggrieved the remedy is available to him in a civil court. In Sardar Trilok Singh and Others Vs. Satya Deo Tripathi, , the Supreme Court laid down that when the dispute raised is purely of a civil nature, as in the present case, the initiation of a criminal proceeding is an abuse of the process of the court and deserves to be quashed.

16. In the result, I quash the proceedings in LCC No. 52 of 1985 on the file of the S.D.J.M., Kendrapara, as its continuance against the petitioners would amount to permitting an abuse of the process of the court and accordingly allow the revision.