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**(2012) 03 JH CK 0175**

**In the Jharkhand High Court**

**Case No :** Criminal Miscellaneous Petition No. 901 of 2007

Sanjay Kumar Choubey

APPELLANT

Vs

State of Jharkhand and Mandal Lal Gope

RESPONDENT

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**Date of Decision :** 22-03-2012

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 34, 405, 406, 415, 420

**Citation :** (2012) 3 Crimes 435 : (2012) 3 JCR 146 : (2012) 2 JLJR 402

**Hon'ble Judges :** Rakesh Ranjan Prasad, J

**Bench :** Single Bench

**Advocate :** Atanu Banerjee, for the Appellant; Mahesh Kumar Sinha for the Opp.Party No. 2, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

R. R. Prasad

1. Heard learned counsel appearing for the petitioner, learned counsel appearing for the State and learned counsel appearing for the opposite party No. 2. This application has been filed for quashing of the order dated 30.5.2007 passed by the then Additional Chief Judicial Magistrate, Bermo at Tenughat in Gomia P.S case No. 10 of 2007 (G.R. No. 61 of 2007) whereby and whereunder cognizance of the offences punishable under Sections 420/406/34 of the Indian Penal Code has been taken against the petitioner and others.

2. The facts giving rise to this application are that one Mandal Lal Gope, opposite party No. 2 lodged a case alleging therein that this petitioner and one Vyash Kumar used to pressurize him to have share of the Petrol Pump. Being persuaded with, he on 26.6.2003 paid a sum of Rs. 1,50,000/- to Vyash Kumar, Manager of the Petrol Pump under a receipt granted by him. While taking money, the petitioner and other accused had told the informant that accounting would be done after a year.

3. Before completion of the year, the other accused Vyash Kumar again

persuaded the informant to give money on the pretext that business is not running smoothly. Upon it, further a sum of Rs. 2,00,000/- was given on 13.5.2004, for which receipt was again granted by Vyash Kumar. After completion of one year, when the informant started demanding money, the accused persons avoided to make payment on one pretext or the other. The other day, it could be known from the news published in the newspaper that the accused persons after closing the Petrol Pump have fled away and that they have cheated in the same manner to number of persons.

4. On such allegation, Gomia P.S case No. 10 of 2007 has been registered under Sections 420/406/34 of the Indian Penal Code against the petitioner and other accused Vyash Kumar. After investigation, nothing was found against the petitioner by the Investigating Officer so as to come to the conclusion that the petitioner has committed any offence and, therefore, charge sheet was submitted only against Vyash Kumar whereas this petitioner was exonerated from the accusation. The court below on the basis of materials available on record, took cognizance of the offence not only against Vyash Kumar but also against this petitioner, vide order dated 30.5.2007 which is under challenge.

5. Learned counsel appearing for the petitioner submitted that accepting the entire allegation to be true, the petitioner cannot be said to have committed offence of cheating or misappropriation as the petitioner has never been alleged to have induced the informant dishonestly and fraudulently to part with the money and hence, no offence of cheating is made out under which cognizance has been taken against the petitioner.

6. In this regard it was further submitted that according to the allegation, the money had been paid to the co-accused, Vyash Kumar who had granted receipt to the informant and in this view of the matter also, the offence either u/s 406 or 420 of the Indian Penal Code is not made out.

7. However, learned counsel appearing for the informant submitted that from the allegation made in the first information report, it would appear that this petitioner in connivance with other co-accused, Vyash Kumar had cheated the informant as both of them induced the informant to part with the money to have share in the Petrol Pump. On their assurance, money was given but that was never returned and thereby the petitioner can certainly be said to have committed offence under which cognizance of the offences has been taken.

8. It be stated that the Hon"ble Supreme Court in a case of State of Haryana and others Vs. Ch. Bhajan Lal and others, has been pleased to lay down certain categories of the cases by way of illustration wherein inherent power u/s 482 of the Code can be exercised either to prevent abuse of the process of court or otherwise to secure ends of justice. One of such categories is:-where the allegations made in the first information report or 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 a case against the accused.

In the context of the principle laid down one needs to consider as to whether the allegation made in the first information report does constitute offence of cheating or criminal breach of trust ?

The offence of cheating has been defined u/s 415 of the Indian Penal Code which reads as follows:

Cheating- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any persons shall retain any property, or intentionally induces the person so deceived 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, is said to "cheat"

From its reading it appears that following ingredients should necessarily be there for constituting offence of cheating.

(1) there should be fraudulent or dishonest inducement of a person by deceiving him

(2) (a) the person so deceived should be induced to deliver any property to any persons, or to consent that any person shall retain any property or

(b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived.

(3) in cases covered by 2(b) the Act or omission should be one which causes or is likely to cause damage or harm to the person induced in bodily or reputation or property.

9. Thus, the first element necessary for constituting the offence of cheating is a deception of the complainant by the accused. Unless there is deception, the offence of cheating never gets attracted. After deception has been practiced the persons deceived should get induced to do or omit to do something. Then, the question arises as to what is the deception ?

10. In the ordinary sense deception has in it the element of misleading or making a person believe something that is false or inculcating of one so that he takes the false as true, the unreal as existent, the spurious as genuine and it is also necessary that deception should be right from the beginning of the contract- Applying the principle constituting a criminal offence of cheating in context of the allegation it does appear that first element of deception constituting an offence of cheating is lacking as nowhere the allegations made in the complaint do indicate that the petitioner fraudulently or dishonestly induced the informant to part with the money.

11. Here it would be relevant to refer to a case of Iridium India Telecom Limited vs. Motorola Incorporated and others (supra) wherein the Hon'ble Supreme Court taking notice of Section 415 of the Indian Penal Code has been pleased to hold that deception is a necessary ingredient for the offence of cheating under

both parts of the Section.

12. Thus, it can easily be said that the allegation made in the first information report never constitute any offence u/s 420 of the Indian Penal Code so far this petitioner is concerned.

13. So far as the offence u/s 406 of the Indian Penal Code is concerned, that also does not appear to have been made out against the petitioner. Criminal breach of trust has been defined in Section 405 of the Indian Penal Code which reads as under:

405. Criminal breach of trust - Whoever, being in any manner entrusted with property, or with any dominion over property, 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"

14. On reading of the said provision, the following ingredients should be there for constituting the offence u/s 405 of the Indian Penal Code.

(a) a person should have been entrusted with property or entrusted with dominion over property;

(b) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or willfully suffer any other-person to do so;

(c ) that such misappropriation, conversion, use or disposal should be in violation of any direction of laws prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust,"

15. In the background of the allegation made in the first information report, I do not find it a case of criminal breach of trust, rather it is a pure case of breach of agreement which could have been enforced in the competent court of civil jurisdiction.

16. Under the circumstances, the order dated 30.5.2007 taking cognizance of the offence is hereby set aside. In the result, this application is allowed.