

(2013) 11 JH CK 0077
In the Jharkhand High Court
Case No : Criminal M.P. No. 2641 of 2012

Sanjay M. Patel

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 18-11-2013

Acts Referred:

Citation : (2013) 4 JLJR 634

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : H.C. Prasad, for the Appellant; Niki Sinha A.P.P for the State, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Ranjan Prasad, J.—Heard learned counsel appearing for the petitioner and learned counsel appearing for the State. This application is directed against the order dated 05.10.2012 passed in C.P. Case No. 44 of 2012 by learned Judicial Magistrate, 1st Class, Dhanbad whereby and whereunder, complaint petition was dismissed, after holding that no criminal liability is made out against the accused persons/petitioner.

2. It is the case of the complainant that on giving assurance by the accused that he will supply a machinement for manufacturing Corn Flakes and Chocos etc. for a price of Rs. 1,19,75,000/-, on making payment of a sum of Rs. 44,00,000/- in advance, the machine was supplied and subsequently, entire consideration amount was paid, but the machine, which was supplied, was defective, as a result of which, the complainant failed to manufacture the products for which the machine had been purchased.

3. On such allegation, the complaint was lodged, which was dismissed as according to the court, no criminal liability is made out, even if the entire allegation is accepted to be true.

4. Learned counsel appearing for the petitioner submits that it was on the

assurance given by the accused persons that machine would be supplied in good condition for manufacturing Corn Flakes and Chocos etc., part payment was made firstly in advance and then on supply of the machine, rest of the amount was paid, but the machine, which was supplied was found to be defective, as a result of which, the complainant could not produce anything and, thereby, the petitioner can certainly be said to have committed offence of cheating and misappropriation, but the court below did not consider the matter, in right perspective, and dismissed the complaint and hence the order dismissing the complaint is fit to be quashed.

5. In view of the submission, one needs to take notice of the provision as contained in Section 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".

6. 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.

7. Thus, the first element necessary for constituting the offence of cheating is 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?

8. 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.

9. Applying the principle constituting a criminal offence of cheating in the 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 about the complainant being deceived by the petitioners in any manner as the accused has not been alleged to have induced the complainant dishonestly or fraudulently to go for purchase of the machine, rather the case

seems to be a breach of agreement, which could have been enforced in the competent court of civil jurisdiction.

10. Here, I would like to refer a case of Iridium India Telecom Ltd. Vs. Motorola Incorporated and Others, wherein It has been observed that there is a growing tendency in business circle to convert purely civil dispute into criminal cases. This is obviously on account of the prevalent impression that civil law remedies are time consuming and do not adequately protect the interest of lenders/creditors. Such tendency is seen in several family dispute also leading to irretrievable brake down of marriages/families. There is also an impression that if a person could somehow be entangled into a criminal prosecution, there is likelihood in imminent settlement. It has emphatically been said by the Hon"ble Supreme Court in the said decision that any effort to settle civil dispute and claims which do not involve any criminal offence by applying pressure through criminal prosecution should be deprecated and discouraged.

11. Thus, I do find that necessary ingredients are lacking constituting offence of cheating and thereby, the court has not committed any illegality in refusing to take cognizance of the offence of cheating.

12. 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".

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

1. a person should have been entrusted with property or entrusted with dominion over property;

2. 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;

3. 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.

14. In the background of the allegation made in the complaint, 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.

15. Under the circumstances, I do not find any illegality with the order impugned dated 05.10.2012 passed in C.P. Case No. 44 of 2012. Accordingly, it is dismissed.