
(2012) 08 JH CK 0181

In the Jharkhand High Court

Case No : Writ Petition (Cr.) No. 22 of 2012

Savita Lohariwal and Another

APPELLANT

Vs

The State of Jharkhand and Another

RESPONDENT

Date of Decision : 03-08-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200
Penal Code, 1860 (IPC) — Section 120B, 406, 420

Citation : (2012) 4 JLJR 317

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Advocate : Sumeet Gadodia, for the Appellant; Rajesh Kumar for the State and M/s Rajeeva Sharma and Manoj Kumar for Opp. Party No. 2, for the Respondent

Final Decision : Allowed

Judgement

Alok Singh, J.—By way of present petition, petitioners are assailing the order dated 23.9.2010 passed by Sub-Divisional Judicial Magistrate, Dhanbad, in C.P. Case No. 287 of 2010 as well as entire criminal proceeding. Brief facts, inter alia, are that complainant-Respondent No. 2, has filed a criminal complaint u/s 200 Cr. P.C. in the Court of C.J.M., Dhanbad, with the allegation that M/s VSS Electro Cast Pvt. Ltd., 23 Netaji Subhas Road, 2nd Floor, Kolkata, of which accused Nos. 1 and 4 were the Directors, persuaded the complainant-Respondent No. 2 to make supply of fire bricks on different dates. Fire bricks were supplied on different dates on the assurance of accused Nos. 1 and 4, the Director, M/s VSS Electro Cast Pvt. Ltd., that the payment would be released. Last supply was made on 9.4.2007. It is further alleged in the complaint that thereafter, M/s SRC Metallic Pvt. Ltd. was constituted and M/s SRC Metallic Pvt. Ltd. has accepted all the liabilities of M/s VSS Electro Cast Pvt. Ltd. and accused Nos. 1, 2 and 3 became new Directors of M/s SRC Metallic Pvt. Ltd. It is further contended in the complaint that although correspondence were exchanged between the complainant and accused persons for payment of the outstanding amount against the material supplied by the complainant to the accused. However,

accused have given a deaf ear to the complainant. It has further been contended in the complaint that despite legal notice to the accused persons dated 23.12.2009, accused have not paid money to the complainant on false and frivolous reasons.

2. Learned Magistrate, vide order dated 23.9.2010, has directed to summon the accused to face the trial for an offence punishable under Sections 420/406/120B I.P.C.

3. I have heard learned counsel for the parties and have carefully perused the record.

4. Mr; Rajeeva Sharma, learned Senior Advocate, appearing for the complainant, has vehemently argued that initially, in reply to the notice, accused persons have denied their liability saying payment has been made, while on asking by the Income Tax Department in scrutiny, they have admitted that the amount is outstanding to be paid to the complainant, therefore, dishonesty, on the part of the accused, is proved.

5. Undisputedly, accused Nos. 2 and 3 were neither the Director of M/s VSS Electro Cast Pvt. Ltd. nor were present at the time when negotiation took place for supply of the materials, therefore, it cannot be said that they ever deceived the complainant. Therefore, simply because they became Directors of the second company owning the liability of first, no offence can be said to have been made out against them under Sections 420/406/120B I.P.C.

6. Merely because accused persons are not making payment to the complainant for the materials supplied by the complainant will not constitute offence of cheating in the absence of mens rea since very beginning. Moreover, material supplied under sale-purchase negotiation shall not amount to entrustment of property to the buyer to attract offence of criminal breach of trust. Present case seems to be a case of breach of mercantile promise, but does not make out case of cheating or criminal breach of trust.

7. Undisputedly, accused No. 4 Ajay Kumar Gupta @ Ajay Gupta, has also challenged the criminal proceedings as well as order of summoning in Cr. M.P. No. 76 of 2012 before this Court. On the petition of Ajay Kumar Gupta, accused No. 4, Coordinate Bench of this Court, vide judgment dated 10.4.2012 was pleased to quash the summoning order. I do not find any valid reason to take contrary view. Accordingly, present petition is allowed. The impugned order is quashed.