

(2009) 07 JH CK 0082
In the Jharkhand High Court
Case No : Criminal M.P. No. 152 of 2005

Somnath Chandra

APPELLANT

Vs

The State of Jharkhand and Ramanand Prasad

RESPONDENT

Date of Decision : 24-07-2009

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 120B, 405, 406, 408, 415

Citation : (2009) 07 JH CK 0082

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Advocate : M.M. Pal, for the Appellant; S.K. Srivastava, APP, A.K. Sinha, for the O.P. No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Prashant Kumar, J.—In this application petitioner prayed for quashing the FIR, entire criminal proceeding / investigation in connection with Pakur Nagar(T) P.S. Case No. 2 of 2004 corresponding to G.R. Case No. 3 of 2004 u/s 406, 408 and 120B of the IPC pending in the court of Chief Judicial Magistrate, Pakur.

2. The brief facts of the case is that in the year 2001 informant wished to purchase a second hand Truck and expressed his desire to co-accused Jamil Mistry. It is further stated that the said Jamil Mistry took him to Calcutta on 30.11.2001 and introduced with petitioner (Somnath Chandra) and Shantanu Chandra. It is further stated that the petitioner and co-accused shown him a second hand Truck bearing registration number WB 23-7354. It is stated that the informant agreed to purchase the said truck on payment of Rs. 2,50,000/-. It is further stated that the informant had given advance of Rs. 2,500/- and promised to pay rest of the amount within a week and returned to Pakur. It is alleged that at Pakur the informant prepared two bank drafts each of the value of Rs. 1,20,000/- and informed the petitioner and co accused Shantanu Chandra for taking the same. It is stated that on 4.12.2001 the petitioner and other accused

persons came to his residence at Pakur and received bank drafts and cash Rs. 7500/-. It is further stated that thereafter the informant went to Calcutta for taking the delivery of the Truck, but he had been told by the accused persons that there was some delay in preparation of papers, therefore, he had been asked to come after one month. It is then alleged that when the informant went after one month, he had been informed that the said Truck sold to some other person on higher price, however, accused persons assured that they will deliver another truck to the informant. It is stated that the informant went to Calcutta, several times and requested the accused persons for delivery of truck, but they did not give any heed to his request. It is then alleged that when the informant asked the accused persons to return his money, they refused to do so and threatened to implicate him in case. Accordingly the present FIR filed.

3. It is submitted that the petitioner is innocent and he has been falsely implicated in this case. It is further submitted that if the allegation made in the FIR is taken to be true on its face value, no offence u/s 406, 408 and 120B of the IPC is made out. It is then submitted that the case comes under the purview of civil dispute arising out of breach of contractual obligation, therefore, criminal case is not maintainable. Learned Counsel for the petitioner placed reliance on a decision of Hon'ble Supreme Court reported in 2009 (2) JLJR 1. It is further submitted that for the same offence a complaint was filed by the informant vide P.C.R. No. 223 of 2002 in the court of CJM, Pakur and the same is pending. Therefore the present case on police report is barred under the law as no person can be prosecuted for the same offence twice. It is also submitted that there is inordinate delay in lodging the FIR and therefore on that ground also the FIR and the entire criminal proceeding initiated on the basis of such FIR is liable to be quashed.

4. On the other hand, it is submitted by learned Counsel for the O.P. No. 2 that from the allegation made in the FIR, pima facie offence of criminal breach of trust and cheating are made out. It is submitted that it is settled law that only because a civil proceeding can be initiated, it would not necessarily mean that the criminal proceeding should be barred. It is then submitted that the complaint case has been filed by the informant u/s 138 of N.I. Act because the cheque of Rs. 23,000/- given by the accused-petitioner was dishonoured by the bank due to insufficient fund. Thus the offence alleged in the complaint case is totally different from the offence committed in the present case. Thus in the instant case doctrine of double jeopardy has no application. It is further submitted that the delay in lodging the FIR has been explained in the written report. Moreover the delay in lodging the FIR is no ground for quashing the criminal proceeding.

5. Having heard the submission, I have gone through the record of the case. From the perusal of FIR, I find that the petitioner had paid Rs. 2,50,000/- by way of two bank drafts and cash to the petitioner for purchasing a second hand truck. It further appears that when for the first time the informant went to Calcutta, the delivery of the truck was not given on the pretext that the paper had not been

completed and asked to come after one month. It further appears that thereafter when the informant went Calcutta for taking the delivery of truck, he had been informed that the said truck had already been sold to some other person on higher price. The aforesaid acts and omission of the accused-petitioner prima facie shows that he along with other co-accused had deceived the informant by making a false and misleading representation that the truck bearing registration No. WB 23-7354 will be sold to him and thereby they induced the informant to pay Rs. 2,50,000/-. The aforesaid acts and omission certainly come within the four corners of definition of cheating as defined u/s 415 of the IPC.

6. The subsequent action of the accused petitioner in not returning the money to the informant, will amounts to criminal breach of trust as defined u/s 405 of the IPC and if the said criminal breach of trust is committed by any employee and/or officer of a firm then he is liable to be punished u/s 406 and 408 of the IPC.

7. The judgment of Supreme Court in V.Y. Jose and Anr. v. State of Gujrat reported in 2009 (2) JLJR 1 has no application in the facts of this case. The facts of the aforesaid judgment is entirely different. In that case there was an agreement between two parties for supply of a machine of a definite specification. It is alleged in that case on inspection it was found that the machine did not conform to the specification mentioned in the contract. Considering the aforesaid facts, their Lordships of Supreme Court has held that there is no element of cheating as defined u/s 415 of the IPC and the case appears to be a case of breach of contract. In the instant case the fact is totally different. The accused petitioner had taken money for selling a particular truck to the informant, but after taking money from the informant they sold it to somebody else and even on repeated request they did not return the money to the informant. Thus, it appears that the accused petitioner had deceived the informant by making a false and misleading representation that they will sell the said truck to him and thereby took money from him. Thus, in my view, prima facie case u/s 420 of the IPC is made out. As I have already noticed above, accused petitioner did not return the money to the informant, thus prima facie case u/s 406 and 408 of the IPC is also made out.

8. It has been held by their Lordships of Supreme Court in a decision in Rajesh Bajaj Vs. State NCT of Delhi and Others, .

It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transaction. One of the illustrations set out u/s 415 of the IPC (Illustration f) is worthy of notice now.

(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.

9. Thus, in view of the aforesaid decision of their Lordships of Supreme Court, it is clear that if from the allegations made in the FIR prima facie an offence of cheating as well as the offence of criminal breach of trust is made out then the criminal proceeding is not barred even though the said offence was committed in course of a commercial transaction. In that view of the matter, the contention of learned Counsel for the petitioner is not acceptable.

10. The next contention raised on behalf of petitioner appears to be misconceived and misleading. From the complaint petition of PCR No. 223 of 2002 (Annexure-3) it appears that the petitioner accused had issued a cheque of Rs. 23,000/- to the complainant/informant of this case on 10.3.2002. It is further alleged that when the said cheque was presented in SBI, Pakur for encashment it was returned with a note that there is no sufficient fund in the account, therefore, the said complaint has been filed alleging that the petitioner accused has committed an offence u/s 138 of N.I. Act. Thus the allegation made in the aforesaid complaint petition is totally different from the present case. The offences are also different. Under the said circumstance, the contention of learned Counsel for the petitioner that no body can be prosecuted twice for the same offence is wholly misconceived and misleading, therefore liable to be rejected. So far the contention of learned Counsel for the petitioner that there is delay in lodging the FIR, I find that the delay has been explained. Moreover the delay in lodging the FIR is no ground for quashing the FIR.

11. In view of the discussions made above, I find no merit in this application. Accordingly, this application is dismissed.