(1998) 03 P&H CK 0110

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision No. 351 of 1998

State of Punjab APPELLANT

Vs

Satish Kumar Aneja RESPONDENT

Date of Decision : 25-03-1998

Acts Referred:

Citation : (1998) 2 AICLR 653 : (1998) 3 RCR(Criminal) 233

Hon'ble Judges : M.L.Singhal, J

Advocate : Sukhbir Singh, R.K. Kwatra, Advocates for appearing Parties

Judgement

M.L. Singhal, J.

1. This Criminal Revision is directed against the order passed by Additional Sessions Judge, Ropar dated 23.12.1987 whereby he set aside the order dated 29.1.1986 passed by Judicial Magistrate First Class, Kharar in case FIR No. 38 of 20.4.1983 under Sections 409/420 Indian Penal Code of PS Mohali ordering the frame of charge against the accusedrespondent Satish Kumar Aneja under Sections 409/420 Indian Penal Code.

2. The prosecution case in brief is that Satish Kumar Aneja accused was sub dealer of M/s Punjab Tractors Limited (in short `PTL''). Two tractors were despatched to him on 2.6.1982. Three tractors were despatched on 7.6.1982. Accused was the sole proprietor of M/s Aneja Traders, appointed as subdealer for Gurdaspur on 1.7.1981 by the PTL, Mohali. On 31.5.1982, the accused approached PTL and requested them to despatch 5 tractors i.e. 3 Swaraj 735 tractors and 3 Swaraj Sartaj Model Tractors. There was hesitation on the part of the PTL to supply him tractors as his firm had defaulted in making payments against the earlier supplies but accused represented that he had already collected margin money from the farmers against 5 tractors and if he failed to supply them tractors, he will be beaten by them and he will feel embarrassed. Taking into account his plight, he was told that tractors would be despatched to him only if the tractors stood in the name of PTL. He agreed to this suggestion assuring PTL of his sincerity and faithfulness towards them. He undertook that he

would hold the tractors for and on behalf of PTL but the bills should be in his firm''s name as it would facilitate the financing of the tractors from the banks. PTL agreed to despatch 5 tractors to the accused keeping in view the assurances and promises held by him. He was clearly told that he would hold the tractors in trust as an agent on behalf of PTL and that he would despatch the sale proceeds of the tractors without any delay. PTL vide invoice No. 6297/8182 and despatch advice No. 25306 dated 2.6.1982 despatched 2 Swaraj Sartaj tractors to the accused. PTL despatched 2 Swaraj 735 tractors to the accused vide invoice No. 6337/8182 despatch advice No. 25344 dated 7.6.1982. Accused had dishonest intentions while approaching the PTL on 31.5.1982 and requesting them for the delivery of 5 tractors inasmuch as he did not intend to make payments for the tractors. He intended only this much that PTL should part with tractors and run after him for money. He intended only to cheat the PTL.

3. On 11.10.1982, he gave four cheques for an amount of Rs. 2.64 lacs covering the price of the tractors despatched to him in June 1982 which he had undertaken to hold for and on behalf of PTL. At the time when he was asked to send money by draft instead of issuing cheques, he told them that he had enough money in the bank and the cheques would be honoured on presentation. It was on this assurance given by the accused that cheques were accepted. When presented the cheques dated 20.10.82, 15.11.1982, 30.11.1982 and 15.12.1982 were dishonoured. He was to hold the tractors for and on behalf of the PTL. He was to remit the sale proceeds to PTL on the sale of the tractors without delay. He sold the tractors despatched to him in June 1982 as an agent of PTL. He collected the sale proceeds again as their agent. He misappropriated the amount raised by the sale of the tractors and put it to his own use. He issued cheques knowing fully well that he had no money in his account in the bank. On these allegations case FIR No. 38 was registered at PS Mohali under section 409/420 Indian Penal Code on 20.4.1983.

4. Vide order dated 29.1.1986, Judicial Magistrate First Class, Kharar ordered that there was a prima facie case against the accused under section 409/420 Indian Penal Code and that he be charged thereunder. In revision against order dated 29.1.1986 passed by Judicial Magistrate First Class, Kharar, Additional Sessions Judge, Ropar found that no case was made out against the accused and as such he discharged him.

5. Aggrieved from the order passed by Additional Sessions Judge, Ropar, State has come up in revision to this court and has prayed that the accused be charged and tried according to law.

6. It has been submitted by the learned Assistant Advocate General for the State of Punjab that the intention not to make payment of tractors was present in the mind of the accused in the very beginning. To fulfil that intention, he represented to PTL that he had already collected margin money from the farmers against 5 tractors and if he failed to supply them tractors, he would be beaten by them and that his position would be embarrassed. PTL was unwilling to supply him tractors

as he had defaulted in the payment of earlier supply. PTL taking into account the plight of the accused, agreed to supply him 5 tractors but told him that tractors would stand in the name of PTL. Accused undertook that the tractors would be held by him for and on behalf of PTL but the bill should be in the name of Aneja Traders as that would facilitate financing the tractors from the banks. In view of this assurance and promise of the accused that the tractors were despatched. He was to hold the tractors as trustee on behalf of PTL and he was to remit the sale proceeds to PTL on sale of the tractors. Tractors were delivered to the accused in June 1982. It was on 11.10.1982 that he gave 4 cheques to PTL for a sum of Rs. 2.64 lacs.

7. Section 415 Indian Penal Code defines cheating as follows :

"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 person 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"."

8. Section 405 Indian Penal Code defines criminal breach of trust as follows :

"405. Criminal breach of trust Whoever, being in any manner entrusted with property, or with any dominion over property, dishonesty 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 wilfully suffers any other person so to do, commits `criminal breach of trust''."

9. According to the prosecution, the accused intentionally induced PTL into this belief that 5 tractors be supplied to him and he would make payment. PTL refused to supply him tractors as he had made default in the payment of earlier supply. According to the prosecution, the accused represented that he had collected some margin money from the farmers against the said tractors and if tractors were not supplied to him, his position will become awkward. PTL was taken in by this representation and supplied him 5 tractors. If the accused had been honest in his dealings, he would not have given cheques in October 1982 to the PTL when those cheques could not be honoured. Accused was a subdealer of PTL. He was to sell tractors for and on behalf of PTL and to remit the sale proceeds after tractors had been sold. By the retention of the sale proceeds and not handing over the sale proceeds to the PTL, the accused, according to the prosecution committed criminal breach of trust.

10. Illustration (c) appended to Section 405 of the Indian Penal Code which reads as follows, according to the learned Assistant Advocate General, Punjab fits in with the facts of this case :

"(c) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A, according to Z''s direction. Z remits a lakh of rupees to A, with directions to A to invest the same in Company''s paper. A dishonestly disobeys the directions and employs the money in his own business. A has committed criminal breach of trust."

11. It was further submitted by the learned AAG, Punjab that the Court should not have thrown the prosecution case at the very outset. Court should have framed charge as in a warrant case instituted on police report charge is framed not that the case would in all probability end in conviction but charge is framed when there appears to be some case in favour of the prosecution which should be tried.

12. Section 239 Cr.P.C. lays down that if upon considering the police report and the documents sent with it under section 173 Cr.P.C. and making any such examination of the accused as the Magistrate thinks necessary and after giving the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless he shall discharge the accused and record his reasons for so doing."

Section 240 Cr.P.C. reads as follows :

"240. Framing of Charge :

(1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried."

13. Learned AAG, Punjab submitted that in warrant cases instituted on police report charge is framed when the framing of charge is considered to be groundless. Charge is framed when in the opinion of the Magistrate, there is some ground for presuming that the accused has committed the offence. It was submitted by the learned AAG, Punjab that there was absolutely no reason for the court to have felt that there was no case against the accused and the framing of charge was groundless.

14. Faced with this position, learned counsel for the accused (respondent) submitted that it was a case of civil liability and it was not a case of criminal liability. In support of this submission he drew my attention to Lt. Col. Mohinder Singh v. State of Haryana, 1995(2) RCR 84 . He drew my attention to Bengal Sales Corporation and another v. Podar Tyres Ltd., 1995(2) RCR 570.

15. In Lt. Col. Mohinder Singh''s case (supra) the facts were that Lt. Col.

Mohinder Singh Gill filed complaint under sections 406/408/409 Indian Penal Code on the allegations that the accused Lt. Col. Mohinder Singh as President of the District Exservices League, Kurukshetra collected an amount of Rs. 19,000/ towards the Chief Minister''s draught and relief fund which was so collected by contributing one day''s pension in pursuance of that resolution on that account. The said sum was to be deposited with the Chief Minister in his account or was to be handed over to him and as and when he visited the town. Said amount was not deposited in the Chief Minister''s fund for being handed over to him. It was held that no offence under sections 406/408/409 Indian Penal Code was committed when there was no allegation that money was used dishonestly.

16. In Bengal Sales Corporation''s case (supra), the facts were that M/s Podar Tyres Limited filed complaint against M/s Bengal Sales Corporation and another under Sections 403/405/406/409 read with section 34 of the Indian Penal Code. It was alleged that in order to market the produce of the company, different ownership agents were appointed in different States of India and the complainantcompany appointed accused firm as an agent to sell the goods for and on behalf of the complainantcompany for the State of West Bengal, recover sale proceeds and hold them in trust for the complainantcompany. Accused firm was appointed as ownership agent in ownership agreement for indefinite period. On the basis of the clause in agreement that if payment is not made, 18% interest or as decided from time to time will be charged and further a civil suit for the recovery of Rs. 98,860/ had been filed by the accused against the complainantcompany prior in point of time and it was only as a matter of counterblast that the complaint was filed in the year 1991.

17. In my opinion, the respondentaccused cannot draw any support from these authorities as here the facts are totally different. Accused, according to the prosecution, sold the tractors, collected the sale proceeds and instead of handing over the sale proceeds to PTL, he misappropriated the sale proceeds and to quiet PTL, he gave them cheques which could not be met.

18. He also drew my attention to Mrs. Rama Gupta and others v. M/s Bakeman''s Home Products Limited, 1992(3) RCR(Crl.) 141 : 1992(2) All India Criminal Law Reporter 18 in support of this submission that where a cheque is issued to discharge preexisting liability and the cheque is dishonoured, no offence of cheating is made out. Facts of this case are totally different from the facts of the case in hand inasmuch as M/s Bakeman''s Home Products Limited was engaged in the manufacture of biscuits and confectionery and selling it in different parts of the country through its distributors and dealers. Mrs. Rama Gupta and others were its authorised distributors and dealers. Goods had been supplied from time to time to Mrs. Rama Gupta. On 26.9.1989 the accused had agreed to clear the outstanding amount received by the accused through cheques of Rs. 10,000/ every month. Cheque No. 09786 dated 30.6.1990 for Rs. 10,000/ was issued as part payment which was not honoured. The said cheque was returned by the bankers with the remarks "short payment". It was in these circumstances that it

was held that no offence of cheating under section 420, Indian Penal Code was made out. To constitute an offence of cheating, there must be inducement on the part of the accused and the inducement should be made fraudulently or dishonestly with a view to deceive a person and as a result of inducement, the person so deceived should deliver property to the accused person or give consent that the accused person shall retain the property. According to the prosecution, there was dishonest inducement on the part of the accused to PTL. According to the prosecution if the representation had not been made by the accused to the PTL, PTL would not have parted with the tractors. According to the prosecution, a sum of Rs. 4,01,849.55 was due on 2.6.1982 from the accused as per the statement of account maintained by the PTL and with a view to run their business, the accused remitted some amount. It was thus not a case of civil liability. Even otherwise, charge should be framed by the court in a warrant case instituted on police report if the prosecution has some case. If prosecution has some case, it should be taken to the trial and not thrown at the outset.

19. For the reasons given above, this Criminal revision is accepted and the order passed by Additional Sessions Judge is set aside and the order of the Magistrate ordering that accused be charged, is restored. Magistrate is now directed to frame necessary charge against the accused and hold the trial.

Revision allowed.

