

(2023) 04 CAL CK 0010
In the Calcutta High Court

Case No : Criminal Revision No. 48 Of 2016, CRAN 11 Of 2018, 16 Of 2020 (Old No: CRAN 2047 Of 2018, 1197 Of 2020)

Sunil Bharti Mittal & Anr.

APPELLANT

Vs

State Of West Bengal & Anr.

RESPONDENT

Date of Decision : 05-04-2023

Acts Referred:

Indian Penal Code, 1860 — Section 415, 463, 464, 465, 468
Code Of Criminal Procedure, 1973 — Section 200, 204, 463, 464, 482

Citation : (2023) 04 CAL CK 0010

Hon'ble Judges : Rai Chattopadhyay, J

Bench : Single Bench

Advocate : Sabyasachi Banerjee, Ayan Bhattacharjee, Anand Keshri, Arindam Chandra, Atish Ghosh, Sumana Biswas, Antara Dey, P. K. Dutta, N. Dhali

Final Decision : Allowed

Judgement

Rai Chattopadhyay, J

1. The two petitioners are the Chairman and Chief Executive Officer of "Bharti Crescent", respectively, against whom and other two persons the opposite party No.2 has lodged a complaint in the Court of Additional Chief Judicial Magistrate at Bidhannagore, being registered as Complaint Case No. C/39 of 2015 (corresponding to T.R. No 44 of 2015), under sections 465 & 468 of the Indian Penal Code. The orders of the Court dated 17.1.2015 and 8.9.2015, passed in the said case, are under challenge in the instant revision.

2. In brief, the allegations of the complainant are as follows:-

On 30. 8. 2014 the complainant applied for two connections of Airtel broadband. As stated earlier, the present petitioners are the topmost authorities of the said company. The other two accused persons, to whom the complainant has said to have applied for the said connection, has been described in the complaint, as the agents of the present petitioners. The complainant has further stated that he was

assured by the other two accused persons to be sent a 'customer relationship form', required to be filled in for the purpose of obtaining the said connections. Complainant has alleged that though at the time of obtaining such connection he was promised to be given a rental discount of ₹ 300/- per month for each connection, he has never been provided with such discount.

3. The complainant was provided with the connections, as applied for and usage of the same by him is also an admitted fact in this case. However, he has alleged that in the bill raised by the company in November 2014 against such usage of the afore stated broadband connections, any such discount as was promised to him earlier was not granted by the company. The complainant has also alleged regarding blatant refusal by the other two accused persons of any such promise being extended earlier to the complainant. He has further informed, that 'customer relationship form' did not contain his signature or photograph. He has asserted that, any form if submitted by the other two accused persons (said to be the agents of the petitioners) in the office of the petitioners would contain his forged signature as well as forged electricity bill of CESC Ltd, whereas the complainant is a consumer of WBSEDCL. The complainant has also alleged of being subjected to intimidation and threat by the other two accused persons on his pointing out their mistakes as above, that he would be entangled in false criminal cases. He says that his grievance was not redressed even by the higher official seated at Salt Lake. Thus for redress he had to go to the police station and lodge a general diary on 14.1.2015.

4. Thus the complainant, in his complaint dated 17. 1. 2015, has alleged of the offences of cheating, forgery and criminal conspiracy to have been committed against him by all the four accused persons including the present petitioners.

5. By dint of its order dated 17.1.2015, the Court has taken cognizance of offence on the basis of the complaint of the opposite party No.2, as above. Upon examination of the complainant and another witness under section 200 Cr.P.C, the Court, in its order dated 8.9.2015, has enumerated that a prima facie case under sections 465 and 468 of the Indian Penal Code is made out against all the four accused persons named in the complaint, including the present petitioners and directed issuance of process against all of them under section 204 Cr.P.C. The present petitioners are aggrieved regarding taking cognizance against them by the court as well as issuance of process.

6. Mr. Banerjee appears for the petitioners and submits emphatically that the orders of the Magistrate taking cognizance of offences in this case against his clients under sections 465 and 468 of the Indian Penal Code and issuance of process against them, are absolutely illegal and those are required to be set aside, so far as his clients are concerned. It has been pointed out that as regards offence under the Indian Penal Code, as alleged in this case, the accusation against the present petitioners for their being vicariously liable, for the alleged offence committed by the company, cannot be sustained. He points out by taking this court to the complaint, that in the same no specific allegation has been

made against any of the petitioners as to their role in commission of the alleged crime. Thus according to Mr. Banerjee the complaint is silent about any cognizable offence to have been made out against the present petitioners. Mr. Banerjee is also candid enough to point out that the allegations made in the said complaint, even if taken on its face value, would not constitute a case against the present petitioners. He says that a proceeding against his client on the basis of the said complaint cannot be sustained in the eye of law. He has emphasised that while taking cognizance against his clients, the Court has acted without applying judicious mind and both the orders of the Court as mentioned above are de hors the law and not maintainable.

7. During his argument Mr. Banerjee has relied on the following judgments:

- (i) Sharad Kumar Sanghi vs. Sangita Rene, reported in (2015) 12 SCC 781;
- (ii) Sunil Bharti Mittal vs. CBI, reported in (2015) 4 SCC 609;
- (iii) Sheila Sebastian vs. R.Jwaharaj and Another, reported in (2018) 7 SCC 581;
- (iv) S.K.Alagh vs State of Uttar Pradesh & Others, reported in (2008) 5 SCC 662;
- (v) Maksud Saiyad vs. State of Gujrat & Others, reported in (2008) 5 SCC 668;
- (vi) Asoke Basak vs State of Maharashtra & Others, reported in (2010)
- (vii) Thermax Limited & Ors. Vs. K.M.Johny& Others, reported in (2011) 13 SCC 412.

8. State is represented. State supports the prosecution. No one is appearing in this case on behalf of the opposite party No.2/complainant, though the service has been completed. Hence, in view of the age of the case, the same is taken up for final determination without wasting any further time.

9. The factual aspects may be discussed at the outset. Airtel broadband connection is provided by the company namely "Bharti Crescent". Petitioner No.1 is the Chairman of the said company whereas petitioner No.2 is the Chief Executive Officer thereof. As the superior most amongst the entire workforce of the company, both the petitioners are seated at New Delhi. The other two accused persons appear to have been assigned for local distribution. The status of the complainant vis-à-vis the petitioners company, is that of a customer. He applied for two broadband connections and obtained the same. Usage of the same by him has also not been denied in the complaint. When his turn comes for payment of bill, he feels himself aggrieved by not having been provided with the discount of ₹ 300/- against each connection, which he claims to have been promised to be given, at the time of applying for the connections. However according to his own admissions, there has been no documentation as regards company's alleged promise of allowing discount. He challenges the 'customer relationship form' on the ground of the same being devoid of his signature or photograph, that however, after enjoying the service of the company for a considerable period of time. The complainant, within the four corners of the said

complaint, could not have been able to bring on record any iota of evidence, even prima facie, regarding the alleged promise of allowing him discount upon his monthly usage of the broadband connection provided to him.

10. So far as the present petitioners are concerned, who are the policymakers of the said company, the complainant has desired to entangle them only vicariously for the alleged offences which are possibly said to have been committed by the other two accused persons named in the complaint. Even if the offences of cheating, criminal conspiracy and forgery are taken to have been prima facie laid out in the complaint, taking the allegations made, on their face value, the same cannot be said to have been attributed against any of the present petitioners as the Chairman of the Board and the CEO of the said company. The Court is constrained to find that the complaint, on the face of it, has not disclosed any of the offences against the present petitioners, as alleged. This point shall further be fructified in the discussions made hereinafter.

11. The Court in this case has been caused to invoke its extra ordinary power and inherent jurisdiction under section 482 Cr.P.C, to quash the criminal proceeding against the present petitioners, to prevent abuse of the process of court and also otherwise to secure the ends of justice. The cult classic Bhajanlal's case reported in 1992 Supp(1) SCC 335, may be mentioned to find as to what would be an appropriate case where the Court can exercise such an extra ordinary power. The Supreme Court has catagorised that cases 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 offences or make out a case against the accused person – would be an appropriate case for the court to espouse its extra ordinary power under section 482 Cr.P.C, to quash the proceedings. The court has further held that where the allegations and other materials do not disclose a cognizable offences against the accused persons, it would be natural and proper for the Court to interfere into the said proceeding in exercise of the power under section 482 Cr.P.C.

12. The law being settled in this way, one should examine as to the ingredients of offence, as alleged against the petitioners in this case.

13. The petitioners have been alleged of offences under sections 465 and 468 of the Indian Penal Code.

14. Section 465 of the Code has enumerated punishment for forgery. Forgery has been laid down in section 463 of the Code, as follows:

"463. Forgery

Whoever makes any false documents or part of a document with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed,

commits forgery.”

15. In the case of Sheila Sebastian (*supra*), as relied on by the petitioners, the Supreme Court has held that section 463 defines the offences of forgery, while section 464 of the Code substantiates the same by providing an answer as to when a false document could be said to have been made for the purpose of committing an offence of forgery under section 463 IPC. The court has further held that section 464 defines one of the ingredients of forgery that is, making of a false document. The Court has discussed the law that first it has to be proved that forgery was committed under section 463, implying that ingredients under section 464 should also be satisfied.

16. It is necessary to go through the text of section 464 IPC, which is as follows:

“464. Making a false document

A person is said to make a false document-

First- Who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed; or

Secondly- Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly- Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document, knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him, he does not know the contents of the document or the nature of the alteration.

Explanation 1- A man's signature of his own name may amount to forgery.

Explanation 2- The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

Explanation 3 – for the purposes of this section, the expression “affixing electronic signature” shall have the meaning assigned to it in clause (d) of subsection (1) of section 2 of the Information Technology Act, 2000”.

17. Therefore the complaint should have to *prima facie* disclose against the accused persons, in this case the petitioners, that false documents have been made with the *mens rea* or criminal intent to commit fraud and forgery. Also that

making the false document should be encumbered with a dishonest and fraudulent intention of the accused persons so that the document can be caused to be believed to have been signed or executed by the person whose signature may be affixed on the same.

18. Section 468 IPC is the punitive provision for the offences of forgery for the purpose of cheating. Having understood the offences of forgery in the manner as above, the same should be found to have been committed for the purpose of cheating, in order to bring this provision of the statute to the fore. Cheating is defined in section 415 IPC, in the following manner:

“415. 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 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".

Explanation- A dishonest concealment of facts is a deception within the meaning of this section”.

19. Therefore fraudulent and dishonest inducement of any person to deceive him, would constitute an offence under the said provision of law.

20. It can also be emphasised that to bring on record the prima facie ingredients of offences as per the afore stated provisions of law, a definite, positive and overt act committed by the accused person towards and in a manner as stated in the said provisions, along with him possessing the criminal intent and/or mensrea to commit such an offence, would be required to be available against the accused persons to justify a criminal proceeding against them. A charge of forgery cannot be imposed on a person who is not the maker of the same – is the finding of the Apex Court in Sheila Sebastian’s case (supra).

21. As discussed earlier, the complainant in this case has not been able to project in his written complaint any prima facie material as above, against the present petitioners. At the cost of reiteration it can be stated that the complaint is vague and silent about any specific role of any of the petitioners in commission of the alleged acts. It can be noted that the petitioners have been entangled vicariously for the offences alleged to have been committed by the other two accused persons (who have been described as the agents of the company) and may be, also the company. However it is the settled law that the code does not contemplate any vicarious liability on part of any party who is not charged directly for commission of an offence, save and except some provisions specifically provided therefor. In this regard the decision of the Supreme Court in S.K. Alagh (supra) may be referred to.

22. Even in a case where a vicarious liability is fastened under certain statutes,

the Hon'ble Supreme Court has held that the vagueness of allegations made in the complaint and the fact that the company has not been made a party therein, would prompt the court to vitiate initiation of the criminal proceeding, by exercise of its power under section 482 Cr.P.C. This point has been categorically dealt with by the Supreme Court in the case of Sharad Kumar Sanghi (supra), as referred to by the petitioners. Again in the case of Sunil Bharti Mittal (supra), the Supreme Court has held that an individual who has perpetrated the commission of an offences on behalf of the company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. That, he can be implicated in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

23. The Code, excepting in certain specific cases, would not endorse vicarious liability of a person as regards any offence promulgated under it.

24. The findings of the Hon'ble Apex Court in the case of Ashok Basak (supra), would squarely apply in this case as regards the present petitioners, wherein the Court finds that allegations in the FIR or complaint, when taken at their face value and accepted in their entirety do not constitute offences as alleged against the accused persons and that in a case like this, the court would be justified in invoking powers under section 482 Cr.P.C. The court has further held that in absence of any specific averment demonstrating role of the accused in commission of offence, no prima facie case can be held to have been made out against him as regards the alleged offences. The law has been settled that, specific averment as to the definite role of the accused person must be pleaded to constitute prima facie material against him. It has already been discussed and seen in this case against the petitioners the complainant has remained silent regarding their specific role in commission of the alleged crime. Thus according to the ratio of this decision of the Apex Court and also that of Thermex Limited (supra), where the Hon'ble Supreme Court has held that the complainant must disclose essential ingredients of offences as alleged, there is no impediment to find in this case that neither any cognizable offences have been disclosed in the complaint, even prima facie, against the present petitioners nor the allegations against them as made in the said complaint, when taken even on their face value, have made out any prosecutable case against the present petitioners.

25. Under such circumstances taking cognizance of offence against the present petitioners and issuance of process against them by the trial Court appears to be suffering from gross illegality. In the case of Sunil Bharti Mittal (supra), the Supreme Court has categorically held that a wide discretion has been given as to grant or refusal of process upon the Magistrate and it must be judiciously exercised. The Court opined that a person ought not to be dragged into court merely because the complaint has been filed. That the words "sufficient ground for proceeding" appearing in section 204 Cr.P.C are of immense importance. That, the said words amply suggest that an opinion is to be formed only after

due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself.

26. Therefore formation of an opinion by the Magistrate with conscious judicious mind and upon consideration of the materials regarding existence of a prima facie case against the accused persons would be a sine qua non for the Magistrate, to take cognizance of the offence and issuance of process against the accused under section 204 Cr.P.C.

27. On the entire discussion as above, this Court comes to the conclusion that, in this case to proceed against the present petitioners would only amount to gross abuse of the process of Court as well as that of law which is however, to be prevented, pursuant to the laws settled in this regard. Hence the present is found to be a fit case in which the Court should invoke its extraordinary power under section 482 Cr.P.C and quash the proceeding against the present to petitioners.

28. Hence, the criminal proceeding against the present petitioners in complaint case No. C/39 of 2015 (connected TR No. 44/2015) is quashed and set aside.

29. The revision being CRR 48 of 2016, is allowed. Connected applications being CRAN 11 of 2018 (Old No: CRAN 2047 of 2018) and CRAN 16 of 2020 (CRAN NO: 1197 of 2020) are also disposed of.

30. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.