

(2002) 06 CAL CK 0015
In the Calcutta High Court

Case No : Criminal Revisional Jurisdiction C.R.R. No. 1044 of 1996

Swapan Kr. Mondal and Another

APPELLANT

Vs

Subhas Ch. Pal and Others

RESPONDENT

Date of Decision : 13-06-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 406, 420, 427

Citation : (2002) 3 CALLT 416

Hon'ble Judges : Malay Kumar Basu, J

Bench : Single Bench

Advocate : S.M. Kumar, for the Appellant; R.S. Chatterjee, for the Respondent

Final Decision : Allowed

Judgement

M.K. Basu, J.—This revisional application under Sections 397 and 482 read with Section 401 Cr.PC has been directed against the order dated 15th March, 1996 passed bny the learned C.J.M., Burdwan in C.R. Case No. 132/96 under which the learned Magistrate took cognizance of the offence under Sections 406, 420, 427 IPC and issued summons upon the accused persons in the case, namely, C.R. Case No. 132/96 who are the petitioners in the present application. The petitioners' case is that the complaint does not disclose ingredients of those offences and cognizance taken was bad and the entire proceeding should be quashed.

2. The complaint as it stands is to the effect that the complainant Sri Subhas Pal approached the accused-petitioner the owners of S.M. Cold Storage Pvt. Ltd. in Katwa village with the request for keeping 90 bags of potatoes in the said cold storage. The petitioners gave them word that they would comply with their request if they paid money at the rate of Rs.3/- per bag of potatoes totaling Rs.370/- and thereafter the complainant paid the said money which the petitioners received alter granting receipt. But in spite of repeated requests from the side of the complainant they did not keep the potatoes into their cold storage. Then the complainant approached them again when they assured him of

arranging the storage of his potatoes, in default, they would refund money to them. But on 14th March, 1996 when the petitioners came to the complainant's village in connection with some other matters the complainant reminded them and renewed their request in the presence of his witnesses but at that time the petitioners got excited and abused him in filthy language and declared that they would neither keep the potatoes into their cold storage, nor they would refund the money. Hence the complainant lodged this complaint before the Court of the learned C.J.M., Burdwan.

3. The learned C.J.M., Burdwan after taking initial depositions of the complainant and one of his witnesses, passed the impugned order to the effect that he was satisfied that a prima facie case had been made out in support of the complainant's allegation against the accused persons under Sections 406, 420 and 427 of the Indian Penal Code and accordingly he issued summons upon both the accused.

4. Being aggrieved by this order, both the accused have preferred this revisional application challenging that order as erroneous, illegal and unsustainable and praying for an order quashing the entire criminal proceeding and setting aside the impugned order.

5. Mr. Kumar, learned Advocate appearing on behalf of the petitioners, has contended that the ingredients of the offences in question, namely, offences under Sections 406, 420 and 427 of the Indian Penal Code are conspicuous by their absence in the allegations leveled in the complaint and in view thereof, the learned Court below ought not to have passed the impugned order issuing summons upon the accused persons as one cannot be satisfied with the prima facie establishment of such offences. According to Mr. Kumar, the allegations that there has been an offence u/s 427 of the Indian Penal Code is totally unfounded, because there is absolutely no allegation to the effect that the accused persons caused any mischief to any property of the complainant. It has been stated in the complaint, in the last but one paragraph, that 90 bags of potato had been rotten in open and vacant land for being not loaded into the cold storage in disregard of the promises given by the accused persons and the same became totally destroyed being under the sun and in this way the complainant suffered a loss to the tune of Rs. 10,000/- on this score.

6. The offence of mischief has been defined u/s 425 of the Indian Penal Code is as follows:

"Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, cause the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility or affects in injuriously, commits "mischief."

7. In the present case, on a perusal of the complaint it is found that the complainant after depositing the money when the accused persons had given

him word that they would keep potato into the cold storage, kept 90 bags of potato outside that cold storage of his own accord. It is not the allegation that the accused persons told him to keep the potato there, nor there is any allegation to the effect that the accused persons intentionally or knowingly caused any damage or destruction to such potato. Therefore, the allegation of an offence of mischief u/s 427 of the Indian Penal Code against the accused persons is practically not leveled at all in the complaint itself and so the question of considering whether the ingredients of such an offence have been prima facie made out does not arise.

8. The next question is whether the allegation of the offence u/s 406 of the Indian Penal Code, criminal breach of trust against the accused has been prima facie substantiated. The offence has been defined u/s 405 of the IPC. It is found that such an offence can be said to have cropped up when the accused 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".

9. It is needless to point out that none of these ingredients have been alleged in the petition of complaint at all. What has been said there is that the complainant approached the accused persons with a request to keep his potatoes into their cold storage and the latter agreed to do so and took money from him but ultimately failed to comply with their promise and also pleaded their inability to do it. From such allegations no iota of any ingredient of the offences of breach of trust can be said to have emerged. Therefore, the allegation of the offence u/s 406 IPC also cannot be said to have been prima facie made out and accordingly the order of the learned Court below issuing summons against the accused persons under that section becomes erroneous.

10. Lastly, it is alleged that the accused persons committed the offence of cheating. Mr. Kumar, on behalf of the petitioners, has vehemently and emphatically argued before me that the ingredients of the offence of cheating also cannot be said to have been present prima facie in the very allegations of the complaint. He draws my attention to the definition of the offence of cheating given u/s 415 of the Indian Penal Code and also the Illustration (g) (latter part) thereto. u/s 415, 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 likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat". Explanation to this section provided that a dishonest concealment of

facts is a deception within the meaning of this section. The Illustration (g) is as follows :

"A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats, but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract."

11. Thus, it appears that in order to come within the purview of this definition of the offence of cheating the act done by the accused persons in question must be accompanied by fraudulent or dishonest inducement. In the present case, as per the allegations made in the complaint, the complainant himself approached the accused persons at their office and offered to keep his potato in their cold storage when the accused persons allegedly agreed to accept such an offer and took the money amounting to Rs. 3,270/-. The further allegation is that sometime after, when the complainant again approached the accused persons with further request to take his potato into their cold storage, they pleaded their inability and they told the complainant that they would do the job later on and if they failed to take the potato into their cold storage, they would refund his money. The further allegation of the complainant is that thereafter when the accused persons came to his village in connection with another matter, the complainant approached them with the same request when they told him that it would not be possible for them to take his potato for loading in their cold storage, nor they would refund him the money so deposited.

12. It is noted that in support of his allegations no document has been forthcoming. Only initial depositions of the complainant and one witness has been relied upon by the learned Court below. Be that as it may, from such allegations the main ingredient of the offence of cheating, namely, intentional and deliberate deceit on the part of the accused persons is not found to be present. Simple making of an offer to the accused persons by the complainant and acceptance of that offer by the accused persons may at the most constitute a contract and disobedience to its term may lead to violation of the said contract, but, at any rate, it cannot be said that it forms an ingredient of the offence of cheating.

13. Mr. Chatterjee, learned Advocate appearing on behalf of the State, has strongly put forward his arguments to convince the Court that the act of the petitioners fulfills all the elements and ingredients of the offence of cheating. But I am unable to accept this contention because of the conspicuous absence of the main and chief ingredient of this offence, namely, fraudulent and dishonest inducement, on the part of the accused persons.

14. Considering the above reasons, I am constrained to hold the ingredients of the offence having not been prima facie established from the very allegations

and averments of the complaint itself, it cannot be said that the alleged offences have been prima facie made out or established against the accused persons. If that be so, the issuance of summons by the learned Magistrate could not be justified and has to be set aside. The complaint forming the very basis of the criminal proceeding in question and having not disclosed the ingredients of the offence alleged, nothing remains of it and in view thereof it is found to be a fit case where the entire proceeding in question is liable to be quashed.

Accordingly, the revisional application be allowed. The impugned order be set aside and the impugned criminal proceeding be quashed.

Let urgent xerox certified copy of this order, if applied for, be given to the learned Advocates for the parties as early as possible.