
(2009) 03 P&H CK 0125
In the Punjab And Haryana At Chandigarh

Taish Tex Styles (India) Pvt. Ltd. and Others

APPELLANT

Vs

Kohinoor Impex Inc.

RESPONDENT

Date of Decision : 10-03-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 192, 200

Citation : (2009) 154 PLR 791

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kanwaljit Singh Ahluwalia, J.—Petitioners have been summoned to stand trial in a complaint filed by respondent. The complaint has been annexed as Annexure P1.

2. A perusal of complaint show that there were on going business transaction between the complainant/respondent and accused/petitioners. Goods were supplied by the complainant on different occasions against different bills to the accused/petitioners. It is stated that part payment was made as from the very inception the accused/petitioners had the intention to cheat the complainant.

3. Mr. Harsh Kinra, Advocate, appearing for the accused/petitioners, has stated that there were ongoing business transactions and goods were supplied and the payments have been made, no offence of cheating is made out. It will essentially be case of civil liability.

4. To controvert this, Mr. Yogesh Goel, Advocate, has placed reliance upon the judgments rendered in Rajesh Bajaj v. State NCT of Delhi 1999 (2) RCrR 160, Medohl Chemicals & Pharma Pvt. Ltd. v. Biological E. Ltd. 2000 (2) RCR 122 and Indian Oil Corporation v. NEPC India Ltd. and Ors. 2006 (3) RCR 740.

5. Mr. Kinra appearing for the petitioner has raised another argument that in the summoning order it has been wrongly recorded that complainant was examined on oath. He has sated that in fact complainant had furnished his affidavit.

6. Mr. Yogesh Goel, Advocate, is unable to controvert this contention.

7. Mr. Kinra has read Section 200 Cr.P.C. Section 200 Cr.P.C. states as under:

200 Examination of Complainant.

A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) If a public servant acting or purporting to act in the discharge of his official duties or a court has made the complaint; or

(b) If the Magistrate makes over the case for inquiry, or trial to another Magistrate u/s 192:

Provided further that if the Magistrate makes over the case to another Magistrate u/s 192 after examining the complainant and the witnesses, the latter Magistrate need not reexamine them.

8. Mr. Kinra has stated that essential ingredient of the Section is that the complainant and his witnesses are to be examined on oath. He has relied upon Maharaja Developers and Another Vs. Udaysingh Pratapsinghrao Bhonsle and Another, , a Division Bench judgment of the Bombay High Court to say that Magistrate is duty bound to examine on oath the complainant and his witnesses before issuance of process.

9. Any statement of witness recorded can be used by the complainant subsequently to confront the witness with the previous statement. Therefore, it was incumbent upon the Magistrate to record the statement of witnesses before issuing the process against the accused.

10. Consequently, summoning order (Annexure P2) is set aside. The matter is remanded back to the Court of the Judicial Magistrate, 1st Class, Ludhiana to proceed afresh with the complaint after following due procedure prescribed u/s 200 Cr.P.C.

The present petition is disposed off.