**(2006) 08 UK CK 0050**

**In the Uttarakhand High Court**

**Case No :** Criminal Miscellaneous Application No. 549 of 2006

Tata Motors Limited and Others APPELLANT

Vs

State of Uttaranchal and Another RESPONDENT

**Date of Decision :** 07-08-2006

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 120B, 406, 420

**Citation :** (2007) 2 UC 988

**Hon'ble Judges :** B.C. Kandpal, J

**Bench :** Single Bench

**Advocate :** Shailendra Nsuriyal, S.K. Aggarwal, V.K. Bisht, assisted by, Sudhir Singh and V. Kumar, for the Appellant; Kamana Vohra, Lalit Sharma for Respondent No. 2 and Nandan Arya, A.G.A. for State, for the Respondent

**Final Decision :** Allowed

# Judgement

B.C. Kandpal, J.—By means of this petition the Applicants have challenged the order dated 22-5-2006 passed by the Judicial Magistrate, Haldwani taking cognizance in criminal complaint case No. 444/2006, Under Sections 420, 406 and 120-B I.P.C. against the Applicants.

2. Brief facts of the case are that the Petitioner No. 1 is a Company incorporated under the Companies Act and is engaged in the manufacture and sale of automobile. The Petitioner No. 2 is Regional Manager of Operative Division of M/s Tata Motors Limited. The Petitioner No. 3 is the Regional Manager (North) of Tata Motors Limited, Petitioner No. 4 is the Chief Executive Officer of Tata Motors Finance and Petitioner No. 5 is the Chief Operating Officer of Tata Motors Finance. The Petitioner Nos. 2 to 5 are the employees of Tata Motors Ltd.

3. A criminal complaint was filed by the Respondent No. 2 with the allegation that the complainant is a partnership firm and is an authorized dealer of Tata Motors Ltd. dealing in the sale of light commercial vehicles. It has been alleged in

the complaint that the Petitioner No. 2 Subroto Kumar visited the office of the complainant in May, 2005 and asked him to deliver 11 number of vehicles to Standard Chartered Bank (hereinafter called as ''SCB'') on the assurance that sum total of invoice value shall be adjusted in trade advance account maintained at ''SCB'' located at Haldwani. It was further alleged in the complaint that a letter was received by the complainant on 18-5-2005 on behalf of Tata Motors Ltd. to hand over 11 number of vehicles on the assurance that sum total of invoice value shall be adjusted in the trade advance account of the complainant maintained at ''SCB''. It has also been alleged in the complaint that on the basis of misrepresentation by Sh. Subroto Kumar, Petitioner No. 2, in connivance with ''SCB'', the complainant was induced into delivering 11 vehicles to Tata Motors Limited. It has also been alleged in the complaint that after the delivery of 11 vehicles the amount was not adjusted with ''SCB'' inspite of repeated reminders sent by the complainant to Tata Motors Limited and ''SCB''. The complainant has also alleged that the Petitioners did not adjust the alleged agreed amount in the inventory funding facility account of the complainant and that the ''SCB'' allegedly in connivance with Tata Motors Ltd. has filed a complaint u/s 138 of the Negotiable Instruments Act, against the complainant.

4. The statement of the complainant was recorded u/s 200 Code of Criminal Procedure and thereafter statement of the witness was recorded u/s 202 Code of Criminal Procedure The Judicial Magistrate after having perused the complaint and the statements of the complainant and his witness, took cognizance in the matter vide order dated 22-5-2006, summoning the Petitioners Under Sections 406, 120-B and 420 I.P.C.

5. The Petitioners have thus filed this petition challenging the summoning order as well as for quashing the entire proceedings of criminal complaint case No. 444/2006, Under Sections 406, 420 and 120-B I.P.C. against the Petitioners, pending before the Judicial Magistrate, Haldwani, District Nainital.

6. The counter affidavit has been filed by the complainant stating therein that in the instant case there are sufficient evidence for criminal breach of trust and cheating, as well as criminal conspiracy against all the Petitioners. It has also been pleaded that the Petitioners cannot seek any remedy at this stage by way of the petition u/s 482 Code of Criminal Procedure as there are disputed questions of facts which can be dealt with by the trial court after the evidence by the parties are adduced.

7. From bare perusal of the complaint it reveals that the complainant has alleged failure on the part of the Petitioners to keep-up their promise of payment of invoice value of 11 vehicles. My attention has been invited towards the letter dated 15-7-2005 issued by Standard Chartered Bank requesting therein that 11 commercial vehicles handed over by M/S Mega Motors Ltd. be sold and sale proceeds be remitted towards balance payment of outstanding dues of the complainant towards Standard Chartered Bank. Another letter dated 19-7-2005, which is contained as Annexure-6 to the petition, is also indicative to this fact

 

that Tata Motors Ltd. merely facilitated the entire transaction on the request of Standard Chartered Bank being a facilitator. Annexure-12 to the petition shows that the complainant sent a letter dated 7-11-2005 to the Tata Motors Company requesting therein to transfer a sum of Rs. 5,57,266 = 41 P. and Rs. 9,38,056 = 06 P. from their account to Standard Chartered Bank inventory funding account. Again Annexure-13 to the petition is a letter sent by Standard Chartered Bank to Tata Motors Ltd. requesting therein to release 11 vehicles to the complainant enabling him to sell the vehicles in question to settle the outstanding over-dues. Annexure-15 to the petition shows that the Tata Motors Ltd. addressed a letter on 16-11-2005 to the complainant confirming handing over constructive possession of 11 vehicles to the complainant. The copy of this letter was also endorsed to Commercial Motors, Bareilly where the vehicles in question were parked, authorizing him to handover possession of the vehicles to the authorized representative of the complainant. Therefore, on the basis of the aforesaid documents available on the record it appears to be a case of settlement of accounts between the Petitioner, Bank and the complainant. The material available on the record also shows that the proposal of the return of vehicles was mooted by the complainant himself and it is not a result of inducement of the Petitioners in that regard. In case if the part payment is not allegedly made owing to certain dispute with regard to certain amount, which is actually due, it would not retrospectively convert a pure and simple commercial transaction into one of cheating.

8. A bare perusal of the facts of this case reveal that the instant matter pertains to a dispute which is purely civil in nature and is a mere counterblast to the recovery proceedings initiated by Standard Chartered Bank against the complainant.

9. In order to establish the offence u/s 420 I.P.C. there should be material that the accused had dishonest or fraudulent intention at the time of inception of transaction and in the present case there is no such allegation levelled against the Petitioners. Mere failure on the part of one of the parties to keep up the promise as made under the agreement/letter of repossession, does not satisfy ingredients of cheating since such a subsequent failure cannot be presumed to be a deception or fraudulent intention at the inception of the agreement between the parties. It is settled proposition of law that before a person can be said to have committed criminal breach of trust within the meaning of Section 406 I.P.C, it must be established that the accused was either entrusted with or entrusted with dominion over the property, which he is said to have converted to his own use or disposed off in violation of direction of law. The Petitioner Nos. 2 to 5 are the employees of Tata Motors Limited and merely because of this no overt act or criminal liability can be attributed against them as no vicarious liability under the Indian Penal Code can be foisted on the Petitioners merely by virtue of their designation in the company. There does not appear to be a prima facie case making out offence u/s 120-B I.P.C. for which it is a prerequisite that meeting of minds which forms the very basis of the ingredient of Section 120-B I.P.C. must

 

be established after which ''mens rea'' flows. The Hon''ble Supreme Court in the case of S.W. Palanitkar and others Vs. State of Bihar and another, , has held that the fraudulent or dishonest intention must be shown to exist at the time of making of inducement, otherwise mere failure to keep up the promise subsequently, cannot be presumed as an act leading to cheating. The Hon''bla Supreme Court in another case of Hridaya Ranjan Pd. Verma and Others Vs. State of Bihar and Another, , has also held that in case if the allegation in the complaint as a whole not indicating expressly or impliedly any intentional deception on the part of the accused right from the beginning of the transaction, would not make out an offence punishable u/s 420 I.P.C. or allied offences. Under these circumstances if the criminal proceeding against the accused is continued the same would amount to an abuse of process of court.

10. In view of the aforesaid, I come to the conclusion that the complaint against the Petitioners is not maintainable and the order dated 22-5-2006 summoning the Petitioner to face the trial Under Sections 406, 420 and 120-B I.P.C. by the Judicial Magistrate, Haldwani is liable to be quashed.

11. Accordingly the petition is allowed. The impugned order dated 22-5-2006 as well as the proceedings of criminal complaint case No. 444/2006, Mega Motors Limited v. Tata Motors Limited and Ors. Under Sections 406, 420 and 120-B I.P.C. pending in the court of Judicial Magistrate, Haldwani, District Nainttal are hereby quashed as far as it relates to the Petitioners.