
(2011) 08 CAL CK 0166
In the Calcutta High Court
Case No : C.R.R. No. 814 of 2009

Ushiar Rahaman

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 17-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)
Penal Code, 1860 (IPC) — Section 204, 323, 341, 342, 379

Citation : (2012) 2 CHN 500

Hon'ble Judges : Kanchan Chakraborty, J

Bench : Single Bench

Advocate : Kasem Ali Ahmed and Manasi Sarkar, for the Appellant; Sumanta Chakraborty, Sourav See for the opposite party No. 2 and Soumik Ganguly for the State, for the Respondent

Judgement

Kanchan Chakraborty, J.—Affidavit-in-opposition filed in Court today on behalf of the opposite party No. 2 be kept with the record. Copy is served on the petitioner. On 14.05.07, Dilip Samanta, the opposite party No. 2 filed the petition of complaint in the Court of learned Chief Judicial Magistrate, Purba Medinipore at Tamluk against the petitioner Ushiar Rahaman alleging therein that he purchased one motor-cycle from the petitioner at Rs. 12,000/-out of which he paid Rs. 11,000/- on 21.10.2004 and took over possession of the same along with the documents of the motor-cycle. The opposite party have been using the motorcycle since then. He requested the petitioner to get the vehicle registered in his name. On assurance of the petitioner he waited till 2006 and returned the original documents to the petitioner for the purpose of getting the vehicle registered by the petitioner. The petitioner, however, did not make any effort to register the vehicle in the name of the opposite party No. 2, Dilip Samanta. On the contrary, he by lodging a false case under. Sections 342/ 323/ 379 of the Indian Penal Code against the opposite party, took over possession of the motor-cycle with the help of the police. The criminal action initiated by the petitioner was entirely false and frivolous, in fact, the petitioner defrauded the opposite

party and thereby deceived to pay Rs. 11,000/- which he declined to return afterwards on his failure to get the vehicle registered in the name of the opposite party.

2. The petition of compliant was not sent to the police station u/s 156(3) of the Code of Criminal Procedure although a pray was made to that effect. The learned C. J. M., Purba Medinipore, Tamluk opted to make enquiry into the matter himself and recorded initial statement of the complainant and one witness and thereafter had taken cognizance of the offence u/s 420 of the Indian Penal Code against the present petitioner. Process was issued against him u/s 204 of the Code. The petitioner being the accused in that case has come up with this application praying for quashing of the proceedings, mainly, on the following grounds :--

a) that the petition of compliant and the initial statement made by the opposite party and his witness together does not constitute any offence, prima facie, u/s 420 IPC against the petitioner;

b) that the complaint was afterthought and counter-blast of the case instituted by the petitioner against the opposite party No. 2, Dilip Samanta under sections 341/323 /379 of the Indian Penal Code;

c) that the motor-cycle in question was seized from the possession of the opposite party as it appears from the order passed in criminal revision No. 11 of 2008 dated 11.12.2008 by the learned Additional Sessions Judge, Fast Track Forth Court, Tamluk;

d) that the continuance of the proceeding against the petitioner would be amounting to the abuse of the process of the Court.

3. A short reference to the factual aspect is required to be given for the proper appreciation of the matter.

4. The opposite party No. 2, Dilip Samanta purchased the motor-cycle from the petitioner of Rs. 12,000/- and out of Rs. 12,000/-, he paid Rs. 11,000/- on 21.10.2004 and took over possession of the motor-cycle as well as the documents from the petitioner. A written agreement between them in respect of that transaction was also executed on 21.10.2004. In view of the terms and conditions of the said written sale transaction, the opposite party, Dilip Samanta undertook the obligation to pay balance consideration money of Rs. 1,000/- at the time of transfer of ownership i.e., registration and that he would take initiative for getting the motor-cycle registered from the Transport Authority with the help of the petitioner, Ushiar Rahaman.

5. The opposite party No. 2, Dilip Samanta started using the motor-cycle since 21.10.2004 undisturbly till it was seized by the police on 11.04.2007. The seizure of the motor-cycle was done in compliance with an order passed by the learned C.J.M, Purba Medinipore, Tamluk in connection with the case lodged by the petitioner, Ushiar Rahaman against the opposite party under sections 341 /323 /379, IPC. On 11.04.07, i.e. about one month thereafter, the opposite

party filed a petition of complaint before the learned CJM, Purba Medinipore against the present petitioner, Ushiar Rahaman alleging therein that he was defrauded by him and made a prayer to refer the matter to the local police station treating the same as FIR and investigate into the matter.

6. Mr. Kasem Ali Ahmed, learned Counsel appearing on behalf of the petitioner, Ushiar Rahaman contends that the allegations and aspirations averred in the petition of complaint even if are taken on their face value in their entirety and uncontroverted, do not constitute any offence u/s 420 of the Indian Penal Code. He contends that in order to make out a prima facie case u/s 420, IPC, the prosecution is to show that there was a element of criminality and intention to deceive from the very inception on the part of the accused.

7. He submits further that the pure and simple breach of contract of sale does not constitute the offence of cheating.

8. In support of his contention, Mr. Ahmed, learned Advocate appearing on behalf of the petitioner refers to the following decision:

- a) Dalip Kaur and Others Vs. Jagnar Singh and Another, ;
- b) Sunil Sawant & Ors. vs. State of West Bengal & Anr., reported in 2011(2)CCr. LR(Cal)445;
- c) T. Chandrasekhar vs. State of West Bengal & Anr., reported in 2011 Cr. LJ 3444;
- d) Narinder Kumar Singla vs. State of Punjab & Anr., reported in 2006 Cr. LJ 4348;
- e) Manoj Mahavir prasad Khaitan vs. Ram Gopal Poddar & Anr., reported in 2011(2) CCr. LR(SC)19.

9. Mr. Chakraborty, learned Advocate appearing on behalf of the opposite party No. 2, Dilip Samanta contends that the petitioner defrauded the opposite party Dilip Samanta by refusing to the return the money after his failure to get the motor-cycle registered in the name of the opposite party Dilip Samanta. Not only he refused to return the money by filing a false criminal case against Dilip Samanta, but also seized the motor-cycle from his possession. The petition of complaint discloses each and every fact in detail showing criminality as well as the intention to deceive from the very inception on the part of the petitioner. Therefore, this is not a proper case where the prosecution is to be quashed on the ground taken by Mr. Ahmed.

10. On careful perusal of the petition of compliant it appears that the entire dispute between the parties has arisen out of a contract of sale of a motor-cycle. In fact, the motor-cycle was sold to Dilip Samanta by the petitioner and possession of the same together with relevant documents was given to Dilip Samanta by the petitioner long back in the year 2004 against the payment of Rs. 11,000/-.

11. A cursory perusal of the agreement of sale makes it abundantly clear that the opposite party Dilip Samanta took the responsibility to get the Vehicle registered in his name with the help of the petitioner on payment of balance consideration money of Rs. 1,000/-. That has never been done. Whether or not the petitioner initiated a false and frivolous criminal action against Dilip Samanta is to be decided by the Trial Court where the matter is pending. The order passed in a criminal revision No. 11 of 2008 dated 11.12.2008 indicates clearly that the vehicle was seized from the possession of Dilip Samanta. It is admitted position that he had been using the motor-cycle since the date of purchase till the date of seizure. If so, even the allegations and aspirations set forth in the petition of complaint are accepted on their face value in their entirety and uncontroverted do not constitute any offence of cheating as defined u/s 415 punishable u/s 420 of the Indian Penal Code. section 420 of the Indian Penal code are reads as follows:--

S. 420. Cheating and dishonestly inducing delivery of property--

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

12. In the instant case, it is clear from mere reading of the petition of complaint that the opposite party was not deceived at all by the petitioner and the petitioner did not fraudulently or dishonestly induced him to deliver him any property. Therefore, the essential elements of section 420 are absent in" this case.

13. It is settled principles of law that to hold a person guilty of cheating it must not be shown that intention was dishonest at the time of making the promise. Such a dishonest intention cannot be interfered from the mere fact that the accused could not subsequently fulfil his promise.

14. In the instant case, however, the factual aspects are quite different. The petitioner herein did not fail to keep the promise in view of the terms and conditions of the agreement relied on by both the parties. On the contrary, it was Dilip Samanta, the opposite party No. 2, who failed to fulfil his obligation according to the agreement by getting the same registered in his name upon payment of balance consideration money of Rs. 1.000/-. There was no dishonest intention at the inception on the part of the petitioner as he delivered the motor-cycle in question together with its paper to the opposite party No. 2, Dilip Samanta on the very date he received the money and did not even disturb his possession since, the offence allegedly; committed by Dilip Samanta for which a criminal action was brought to against him.

15. That being the fact and averments in the petition of complaint, I must say

that no offence, prima facie, u/s 420, IPC is made out against the petitioner. On that ground, the proceeding is liable to be quashed.

16. Mr. Ahmed, learned Advocate appearing on behalf of the petitioner contends that the petition of complaint filed by Dilip Samanta, opposite party No. 2 was afterthought and counter-blast of the criminal action taken by the petitioner against him. The possibility as apprehended by Mr. Ahmed cannot be ruled out. The motor-cycle in question was delivered to the opposite party Dilip Samanta on the very date he paid Rs. 11,000/- to the petitioner together with all relevant documents on condition that he would take all initiatives, of course, with the help of the petitioner to get the motor-cycle registered in his name upon payment of the balance consideration money of Rs. 1,000/-. After initiation of the criminal action by the petitioner against the Dilip Samanta, the motor-cycle in dispute was seized from his possession and one month thereafter, the opposite party lodged the petition of complaint in the Court of learned C JM., Purba Medinipore, Tamluk alleging that he was defrauded. These facts altogether indicate that there was normal intention on the part of the petitioner or dishonest inducement on his part to acquire the motor-cycle in a fraudulent way by lodging a false criminal case. Whether the petitioner refused to return back the money and whether the opposite party had forcefully snatched away the motor-cycle from the possession of the petitioner as alleged by the petitioner in the criminal case initiated by him, are matters of strict proof which cannot be taken into consideration by the Court at this juncture.

17. Suffice it to say that the allegations and aspirations put forth in the petition of complaint do not constitute any offence u/s 420, IPC against the petitioner.

18. That being the fact, I must say that the proceeding against the petitioner is liable to be quashed.

19. Accordingly, I allow the prayer. Let the proceedings in complaint case being C. R. No. 253 of 2007 (T. R. No. 577/2007) u/s 420 of the Indian Penal Code pending before the learned Judicial Magistrate, 2nd Court, Tamluk, Purba Medinipore stand quashed against the present petitioner Ushiar Rahaman. The criminal revision is, thus, disposed of accordingly.