
(1993) 01 P&H CK 0070

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 7965-M of 1991

Ved Parkash and anr

APPELLANT

Vs

State of Punjab and anr

RESPONDENT

Date of Decision : 27-01-1993

Acts Referred:

Citation : (1993) 1 AICLR 801 : (1993) 2 RCR(Criminal) 200

Hon'ble Judges : G.S.Chahal, J

Advocate : D.S. Walia, Roop Rekha Sharma, Hari Om Sharma, Advocates for appearing Parties

Judgement

G. S. Chahal, J.

1. M/s Keshav Traders, Delhi, and its Partner Ved Parkash has come to this Court in this : petition under Section 482 of the Code of Criminal Procedure for quashing of complaint dated 10.10.1988 (Annexure P) and orders dated 16.11.1988 and 2221991 (Annexures p. 9 and P. 14).

2. Allegations on which the petitioners are being Prosecuted for offences under sections 406 and 420 of the Indian Penal Code are contained in paras 2 to 6 of the complaint which read as follows :

"2. That the accused No. 1 is the partner, of accused No. 2 Shri Ved Parkash son of Shri Kesho Ram approached the complainant at their office situated at Gokal Road, Ludhiana and requested the complainant to supply them the vegetable oil i.e. ghee on the clear understanding that the accused shall be the trustee of the goods so received by him and that he shall remain trustee to the complainant for consignment as and when they are disposed of by the accused in the market To gain confidence of the complainant, the accused sold the goods on behalf of the complainant after receiving them on consignment basis and remitted the sale proceeds to the complainant. Since the accused No. 1 learnt that he has gained confidence of the complainant, and that the complainant is now believing their representation made by him to be true, the accused received vegetable oil i.e.

ghee tins worth Rs. 1,86,000/ which was taken out of the factory of the complainant against their challan dated 1281987 and which were taken by the accused through Truck Union Doraha Mandi against GR No. 8465 dated 1241987 in truck PJN 4376. These were taken by the accused to Delhi after getting it clear from the Delhi Barrier on 1341987 vide their receipt No. 475006 thus the accused received the goods and took them to his premises.

3. That as stated above, the goods were only the trust with the accused and the accused was under obligation to remit the price as soon as these goods were sold to different customers. Since these goods were received by the accused only on consignment basic meaning hereby that the ownership of the goods vested in the complainant.

4. That the complainant learnt that the accused had disposed of the entire goods as such he requested the accused to remit the amount of the ghee sold by him. At first he hesitated, then he issued a cheque No. 099121, dated 1541987 drawn on Bombay Merchantile Coop Bank, Darya Ganj, New Delhi for Rs. 1,75,000. The cheque was presented to the bank and it was dishonoured

5. That after dishonouring the cheque, the complainant informed the accused that the cheque has been dishonoured and that he should make the payment. On this the accused approached the complainant at Ludhiana and requested him to return the cheque so that he may send the draft or to pay the amount in cash. Believing the representation of the accused to be true, the complainant handed over the cheque alongwith the memo regarding dishonouring of the cheque to the accused No. 1. The accused took the cheque and bank memo attached with it and assured that the payment shall be made within 5 days.

6. That as the intention of the accused from the very beginning was not true he was making all the representation, simply to cheat the complainant, the accused never turned nor he remitted the amount as far as the cheque amount of. Rs. 1, 75,000/."

It as further complained that the petitioner had issued the cheque simply to cheat the complainant as he had no funds to his credit and further he had misappropriated the goods by conversion of the same to its own use.

3. The petitioner has claimed that this prosecution has been launched malafide in order to harass the petitioner, that in fact the consignment sent by truck No. PJN 4376 on, April 12, 1987 was not, received by the petitioner although the other consignments described in para No. 2 of the petition had been received. It was admitted that the petitioner had issued a cheque for Rs. 1,75,000/ when the representative of respondent No. 2 came to collect the amount from the shop of the petitioner but later on the petitioners were informed that the respondent had not accepted the payment through cheque. The petitioner, therefore, made the payment of Rs. 1,60,000/ by means of demand draft dated 23rd April, 1986 (1987) and as per accounts of the petitioners only that amount was due.

4. The petitioners have relied upon a certificate issued by the Bombay Mercantile Cooperative Bank, Limited, New Delhi (Annexure P15) certifying the payment of Rs. 1,60,000/ to M/s Nav Bharat Banaspati & Allied Industries. The respondent in the reply has stated that the price for the goods taken by the petitioners had not been paid and with respect to the pleading in paragraph 8 it was stated that it was in September, 1988 as a result of the audit, that it came to light that the petitioners had committed criminal breach of trust for about rupees two lacs which they had collected by selling the oil entrusted to them for sale at Delhi.

5. Plea of the payment of amount of Rs. 1,60,000/ is supported by a certificate of the bank and though the petitioner had specifically alleged that a sum of Rs. 1,60,000/ had been paid through the bank draft yet this was not specifically denied by the respondents. It was rather claimed in para No. 6 that no price of the goods had been paid by the petitioner and it was further claimed that on audit it came to the light that a criminal breach of trust had been committed. The contents of para No. 9 run counter to that is stated in the complainant itself. The case of the complainant is not based on any written contract of creation of trust but on an oral plea that handing over the goods were in fact a matter of entrustment of goods in trust and the petitioner was to discharge that trust by paying the value of the goods. It is, however, clear from the facts narrated above that there was dispute with respect to the price of the goods sold and the petitioner had paid a sum of Rs. 1,60,000/ towards that price more than 11/2 years prior to the presentation of the complaint. Probably the petitioners claim more amount as the price and that will only make out a civil liability. The process of criminal courts cannot be allowed to be misused for settling of civil disputes and criminal prosecution on the face of the facts stated above amounts to abuse of process of the court. 1, hereby, accept this petition and quash the criminal complaint Annexure P. 1 and all consequent proceedings.