
(2013) 04 JH CK 0044

In the Jharkhand High Court

Case No : Criminal M.P. No. 512 of 2011

Vinay Kumar Tiwari and Others

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 10-04-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 406, 415, 420, 506

Citation : (2013) 2 AJR 566 : (2013) 2 JLJR 614

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : K.P. Deo and Girish Mohan Singh, for the Appellant; Manish Kumar, for the Respondent

Judgement

Rakesh Ranjan Prasad, J.—Heard learned counsel appearing for the petitioners, learned counsel appearing for the State and learned counsel appearing for the opposite party No. 2. This application is directed against the order dated 24.2.2011 passed in Cr. Rev. No. 77 of 2010 whereby and whereunder learned Sessions Judge, East Singhbhum, Jamshedpur affirmed the order dated 16.2.2010 passed in Complaint Case bearing C-1 No. 1612 of 2008 whereby and whereunder prayer for discharge from accusation made by the petitioners was rejected.

2. It is the case of the complainant-opposite party No. 2 that petitioner Nos. 1 and 2, the Managing Director and the Executive Director of M/s. Bastu Vihar, Techno Culture Building Centre Pvt. Ltd. approached the complainant and allured him for taking residential house in a building being constructed by them at Beliguma, Police Station M.G.M, Jamshedpur in the name and style of Vastu Vihar Duplex Complex. They represented before the complainant that they will provide duplex measuring an area of 900 sq.ft. with built up area 1285 sq.ft. @ Rs. 645/- per sq. ft. and they further promised that construction would be completed within 15 months. On being allured, the complainant booked a flat and paid 96% of cost plus extra charges coming to Rs. 8,33,672/- but the

petitioners failed to construct the house as per design and specification shown to the complainant at the time of entering into agreement.

3. Further case is that when the accused persons did not hand over the flat after constructing the same as per design and specification, the complainant filed a consumer case wherein the stand was taken by the accused persons on putting appearance that last installment of Rs. 33, 153/- was supposed to be given by the complainant for the flat having an area of 1285 sq.ft. but the same was never given, though built up area of the flat was never to the extent of 1285 sq.ft., rather it was 1235.74 sq. ft. and thereby a sum of Rs. 33,153/- was never paid by the complainant to the accused persons.

4. It has further been alleged that while the consumer case was being pursued the accused held out threat that he should withdraw the case otherwise his only son would be eliminated.

5. Thus, it was alleged that the accused persons committed offences punishable under Sections 406, 420, 506, 120-B of the Indian Penal Code.

6. On such allegation, complaint case bearing C-1 No. 1612 of 2008 was registered, upon which cognizance of the offences as aforesaid was taken. Thereupon an application was filed for discharge which was rejected by the Court below. That order was challenged before the Revisional Court in Cr. Rev. No. 77 of 2010 which also met with the same fate.

7. Being aggrieved with that order, this application has been filed.

8. Mr. K.P. Deo, learned counsel appearing for the petitioners submits that accepting the entire allegation to be true, though the correct position has not been placed in the complaint, no offence is made out as the petitioners have never been alleged to have fraudulently and dishonestly induced the complainant to part with the money for booking the flat and thereby it becomes a simple case of breach of agreement which can be enforced by a competent Court of civil jurisdiction. Moreover, the petitioner has been pursuing the matter before the consumer Court.

9. Learned counsel further submits that the flat was completed within the time as stipulated under the agreement but the payment was never made as per the agreement and thereby the complainant was asked to make payment of last installment of a sum of Rs. 33,153/- and take the possession but instead of making payment, the complainant filed a consumer case wherein same stand was taken by the petitioners that built up area is never less than 1285 sq.ft. However, since stand of the complainant was that its built up area is only 1235.74 sq.ft., an Arbitrator was appointed for taking measurement. Said matter is still pending for adjudication.

10. Learned counsel in this regard further submits that since the demand had been made of Rs. 33,153/-, the complainant not only approached to the consumer Court but also filed a criminal case, though it is out and out a case of

civil liability and thereby the Court committed illegality in refusing to discharge the petitioner from accusation.

11. As against this, Mr. Manish Kumar, learned counsel appearing for the complainant submits that as per the agreement, payment was supposed to be made by the complainant in installment from time to time as the construction goes on but the accused persons by duping the complainant took payment prior to construction of the flat and then did not hand over possession of the flat within the time stipulated under the agreement and thereby it can easily be gathered from the circumstances appearing in the case that accused persons cheated the complainant and misappropriated the amount.

12. In the context of the submissions advanced on behalf of the parties one needs to take notice of the provision as contained in Section 415 of the Indian Penal which reads as under;

Cheating -- 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 persons 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 is likely to cause damage or harm to that person in body, mind reputation or property, is said to "cheat".

13. From its reading it appears that following ingredients should necessarily be there for constituting offence of cheating.

(1) there should be fraudulent or dishonest inducement of a person by deceiving him

(2) (a) the person so deceived should be induced to deliver any property to any persons, or to consent that any person shall retain any property or

(b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived.

(3) in cases covered by 2(b) the Act or omission should be one which causes or is likely to cause damage or harm to the person induced in bodily or reputation or property.

14. Thus, the first element necessary for constituting the offence of cheating is deception of the complainant by the accused. Unless there is deception, the offence of cheating never gets attracted. After deception has been practiced the persons deceived should get induced to do or omit to do something.

15. In the instant case, there does not appear to be any allegation nor any inference could be drawn from the allegation that the accused persons ever induced the complainant fraudulently or dishonestly to purchase the property in question, rather allegation seems to be there of making promise of giving flat on taking payment which according to complainant was breached.

16. It be further stated that simple allegation what has been made in the complaint is that accused persons did approach the complainant and conveyed the complainant that they are constructing residential building in the name and style of M/s. Vashtu Vihar Techno Culture Building Centre in which he may take a flat @ Rs. 645/- per sq.ft. At that time it was also conveyed that within 15 months, the construction would be completed. Believing the version of the petitioners, the complainant took a flat and paid a sum of Rs. 8,33,672/- in different installments. Further case of the complainant is that the accused persons took the money prior to the period which was there under the agreement. Even if all these facts are accepted, it nowhere suggests that accused persons had fraudulently and dishonestly induced the complainant to part with the money and thereby no offence of cheating or criminal breach of trust is made out, rather the case appears to be of a civil liability for which complainant has been pursuing the matter before the consumer Court.

17. Under the circumstances, no offence is made out either u/s 420 or u/s 406 of the Indian Penal Code.

18. Accordingly, the impugned order whereby it has been held that prima facie materials are there for framing charge under Sections 406, 420 and 120-B of the Indian Penal Code are hereby quashed.

19. So far the offence u/s 506 of the Indian Penal Code is concerned, there does not appear to be prima facie materials showing commission of offence u/s 506 of the Indian Penal Code by petitioner Nos. 1 and 2. Accordingly that part of the order holding therein that prima facie material is there against them for framing charge u/s 506 of the Indian Penal Code is hereby quashed.

20. So far petitioner No. 2 is concerned, the Court has rightly held that prima facie materials are there for framing charge u/s 506 of the Indian Penal Code. In the result, this application is allowed but in part.