(1989) 11 MP CK 0011

In the Madhya Pradesh High Court

Case No : Miscellaneous Cr. C. No. 3115 of 1987 (J.)

Vinod Doshi APPELLANT

Vs

The State of Madhya Pradesh and Others RESPONDENT

Date of Decision : 20-11-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 420

Citation : (1990) MPJR 702

Hon'ble Judges : Gulab C. Gupta, J

Bench : Single Bench

Advocate : K.P. Munshi, for the Appellant; U.K. Sharma, G.A. for non-applicant No. 1, Shri Umesh Trivedi, for non-applicant No. 2 and Shri S.C. Jain, for non-applicant No. 3 and 4, for the Respondent

Judgement

Gulab C. Gupta, J.

Applicants, accused persons, summoned to appear before the Additional Chief Judicial Magistrate, Bilaspur in Cr. Case No. 365/ 1987 to face trial for offence punishable u/s 420 I.P.C, have approached this Court invoking its inherent jurisdiction u/s 482 Cr, P. C , submitting that proceedings in the aforesaid Criminal Case amount to gross abuse of process of law and should, therefore, be quashed.

Applicant No. 1 Vinod Doshi is the Chairman and applicant No. 2, Rakesh Mehta the Market Development Executive of M/s. Premier Automobiles Ltd , a public limited company engaged in manufacture and sale of Premier Cars in the Country. M/s. National Garage, a registered partnership firm of Raipur, is the duly authorised dealer of the aforesaid company for Chhatisgarh Region and Non-applicants Heeralal Shah and T. S. Chawhan represent the said partnership firm at Raipur and Bilaspur respectively. Respondent Santosh Awasthy filed a complaint before the Additional Chief Judicial Magistrate, Bilaspur on 20th April, 1987 alleging commission of Criminal offence punishable u/s 420 I.P.C. by the applicants and Respondent Nos. 3 and 4. The said Non-applicant submitted that he was an Industrialist at Bilaspur and needed a ''premier Padmini'' car for his business purpose. He alleged that on 11-2-1987 the applicants and respondednt No. 3 had come to Bilaspur and were available at the Branch Office of M/s. National Garage at link road, Bilaspur. According to the complaint, the branch office of M/s. National Garage at Bilaspur was newly established and interested in promoting sale of the car in the area. The complainant claims to have met the applicants and Respondents No. 3 and 4 and expressed his desire to purchase a car for his use. According to the complainant, the applicants disclosed a scheme to him and other purchasers wherein payment of total price of the car in lump sum before hand would entitle him to the car delivered within 10 days. The complainant further alleged that since he was interested in getting the car within 10 days, he paid the entire price including the cost of transportation on 12-2-1987. The complainant alleged that the applicants, after having obtained the total price from him and others, did not deliver the car within 10 days as promised and thereby committed the offence punishable u/s 420 I.P.C. The complainant relied on documents disclosed in the complaint and also furnished a list of witnesses which he would examine to support his case. It appears that the learned Magistrate examined the complainant on 20-4-1987 and fixed the case for 23-4-1987 to decide whether to register the complaint or not. On 23-4-1987 the learned Magistrate heard arguments of the learned Counsel for the complainant and held that the statement of the complainant and documents disclose prima facie commission of offence u/s 420 I.P.C. and ordered issue of process against applicants and non-applicants Nos. 3 and 4. It is, this order which is impugned in this application.

The submission most vehemently pressed lor consideration of this Court by the learned Counsel for the applicants is that the camplaint does not, even prima facie, disclose commission of an offence u/s 420 I.P.C. and, therefor, the applicants could not be summoned to face the trial. It is also submitted that a fair reading of the complaint would at the most, show existance of a dispute of civil nature and hence the learned Magistrate should not have taken cognigance of the same. The learned Counsel for the Respondent complainant, however, supported the impugned order and submitted that no case whatsoever exists for exercising extra ordinary jurisdiction u/s 482 Cr.P.C.

Complainant alleges that all 4 accused persons were present at Bilaspur on 11-2-87 and promised delivery of car within 10 days of payment of price and transport charges. Complainant Santosh Awasthy has supported these allegations by his statement on oath. That the car was not delivered within 10 days of payment of price to N. A No. 4 is also stated in the complaint and supported by the sworn testimeny. Whether these facts, prima facie, disclose commission of offence punishable u/s 420 I.P.C. ? Cheating, as defined in Section 415 I.P.C, is the first requirement of this offence. Where there is no cheating, there can possibly be no offences under this section.(See Jageshwar Singh Rastogi Vs. State of Madhya Pradesh, and Prem Pandit and Ors. v. Mahesh Garg

1980 J L J 45. In order to constitute ''cheating'', deceiving as well as fraudulent and dishonest inducement by the applicants must be established as they are basic and essential elements of the offence. The Complaint and the statement of N. A. Santosh Awasthy should, prima facie, disclose these essential elements. Deceiving is to lead into error by causing a person to beliave what is false or to disbelieve what is true. There is nothing either in the complaint or the sworn testimony of Santosh Awasthy from which deceit could be inferred Criminal offence as disclosed in the complaint and statement consists of giving false hope of delivery of cal within 10 days and thereby inducing the complainant to pay the entire price in advance. There is no allegation that any of the accused persons did any thing else. It is also not a case of unauthorised persons claiming to be authorised and obtaining advantage. It is well known that demand of Premier Padmini car out-strips its supply and therefore customers are willing to pay the entire price in advance. In such a situation, it is not possible to infer ''deceit''on the part of the applicants only because, of payment of full price in advance. The promice to effect delivery within 10 days, even if made, would also not be sufficient to infer fraudulent representation in the context of particular fact situation. In the absence of deceit or fraudulent representation, essential ingredient of Section 415 IPC would remain wanting.

Section 420 IPC requires something more. For a person to be convicted under this provision it has to be established that not only he cheated someone, but also that by doing so he has dishonestly induced the person who was cheated to deliver any property or do any other act mentioned in the section. The complainant Santosh Awasthy, according to the complaint, needed the car for his business. It is, therefore, not a cage where someone who did not need the car has been induced to purchase one. The question whether he would have not booked the car and not paid its entire price, if ho was not promised its delivery within 10 days becomes important in such a fact situation. Then the complainant Santosh Awasthy is not fire about 10 days delivery. In his statement para 1 he deposes that the accused persons told him that 8-10 days time, which is normally taken in transporting the car from Deman to Bilaspur would be the delivery time; but in para 2 he status that promise was to deliver the car before budget and at pre budget price. The budget, as is well known, is presented on 26th February each year and hence promised time of delivery, in this present fact situation, would be 16 days. In view of this statement, letter dated 8-4-1987 from N. A. No. 4 assumes importance. This,etter was filed and proved by the complainant and inform him that "cars are being delivered from Deman strictly as per booking". The complaint does not seem to have protested on this statement. These facts prima facie show that there was no promise as such to effect delivery within 10 days and hence no question of dishonestly inducing the complainant to pay full price of the car would arise.

In Tulsi Ram Vs. State of U.P., the Supreme Court considered the meaning and scope of Section 420 IPC and held that not only ''chasting'' but also that by so doing the accured, dishonestly induced the person who was cheated to deliver the property must be proved to hold a person guilty. A person can, according to Supreme Court be said to have done a thing dishonestly if he does so with the intention of causing wrongful gain to one person or wrongful loss to another person. Wrongful loss is the less by unlawful means of property to which a person is entitled while wrongful gain to a person means a gain to him by unlawful means of property to which the person gaining is not legally entitled. In an offence u/s 420 IPC, according to Supreme Court, a pecuniary question necessarily arises. There no pecuniary question arises the leement of dishonestly need not be established and it would be sufficient to establish that the Act was fraudulent. Where the Act is fraudulent, intention to cause injury to the person defaunded must be established. But where the allegation is that a person has dishonestly induced another to part with property something different has to be considered and that is whether he has thereby cause in wrongful loss to the person who parted with the property or has made a wrongful gain to himself. Application of this law to the present fact situation would justify the conclusion that no offence as alleged is made out. The complain act has not paid anything more than the real price. Infact, by purchasing the car at Deman, be has saved about Rs. 3000/- and hence there is no wrongful loss to him or wrongful gain to the applicants. There is also nothing on record to hold that but for the promised delivery within 10 days, care would not have been sold. Indeed, it is complainant''s own case that there were more buyers then the cars and hence no special efforts were needed to sell those care.

The aforesaid discussion leads to the inevitable conclusion that facts disclosed in the complaint and the statement of N. A. Santosh Awasthy do not constitute u/s 420 IPC and hence there is no justification for summoning accused persons u/s 204 Code of Criminal Procedure to face trial. This conclusion would lead to further conclusion that there is no sufficient ground for proceeding and hence the complaint must be dismissed u/s 203 Cr. P. C, The words "sufficient grounp for proceeding" have been construed to mean the satisfaction that a prima face case is made out against the person accused by the evidence of witnesses entitled to a reasonable degree of credit and not sufficient ground for the purpose of conviction. Ramgopal Ganpatrai Ruia and Another Vs. The State of Bombay, and Nirmaljit v. State of West Bengal AIR 1963 SC 2638. In J.P. Sharma Vs. Vinod Kumar Jain and Others, , the Supreme Court held that where taking the allegations and complaint as these were, without adding or substracting anything, if no offence is made out, the High Court would be justified in quashing proceeding in exercise of its powers u/s 482 Code of Criminal Procedure Though these powers are to be used very sparingly and under compelling circumstances, absence of prima facie case is sufficient justification for their exercise. In this view of the matter, there is no impediment in this Court''s exercise of its jurisdiction u/s 482 Cr.P C. and quash proceedings against the accused persons.

This Court is also not satisfied that the learned Magistrate has acted in accordance with the law in taking cognizance of the complaint and issuing summons. Order-sheet of the case discloses that the learned Magistrate has exercised powers u/s 204 Code of Criminal Procedure and issued summons to the accused persons to appear before him. Section 204 Code of Criminal Procedure prescriber the stage subsequent to taking cognizance of the complaint. The cognizance is taken u/s 190 Cr.P.C, Section 190 (1) (a) authorises a Magistrate to take cognizance of any offence upon receiving a complaint of facts which constitute such offence. Though the expression "take cognizance of any offence" is not defined in the Code, it has been interpreted as haviag a limited meaning and indicating the point of time when the Magistrate takes judicial notice of an offence. In Devarapalli Lakshminarayana Reddy and Others Vs. V. Narayana Reddy and Others, , it was held that before it can be said that the Magistrate has taken cognizance of any offence u/s 190 (1) (a), Code of Criminal Procedure he must not only have applicable mind to the contents of the petition but must have done so far the purpose of proceeding in a particular way i. e. Section 200 and thereafter sending it for inquiry and report u/s 202 Cr. P.C. Though no formal action of any kind is necessary, application of mind by the Magistrate to the facts with the intention of initiating judicial proceedings constitute compliance of the provision. It is. therefore, clear that taking cognizance of offence is not an empty formality and requires application of mind. Once the Magistrate takes cognizance, he has to proceed u/s 200 Cr. P C. to examine the complainant and his witnesses and thereafter decide whether to conduct further inquiry u/s 202 Code of Criminal Procedure If the examination of complainant and his witnesses prompts the Magistrate to postpone issue of process, he has to consider whether resort to Section 202 Code of Criminal Procedure would be necessary. It is only thereafter that the Magistrate is empowered to decide whether there is sufficient ground for proceeding in the matter. If such examination shows absence of sufficient ground, the complaint is liable to be dismissed u/s 203 Code of Criminal Procedure But if the conclusion of the Magistrate be that there is sufficient ground for proceedings further he may issue warrant or summons u/s 204 Code of Criminal Procedure It is, therefore, clear that issue of process against accused persons is a part of judicial process and not an empty formality. It is, on the contrary, a very serious and sublime exercise casting duty on the Magistrate, first to apply his mind to the facts stated in the complaint before taking cognizance thereof, to ascertain whether it disclose commission of offence, secondly to consider whether facts disclosed in the examination of the complainant and bis witnesses constitute sufficient ground for issue of process or whether the matter needs further inquiry or investigation. In case of doubt, further inquiry before issue of process because the obligation of the Magistrate. It is only when the matter has been thoroughly investigated as aforesaid, that the third stage is reached when the Magistrate is required to apply his mind to the facts and circumstances of the case to ascertain whether there is sufficient ground to issue summons or warrants against accused persons and proceed further. The complaint under reference, has not passed through these three stages. The order sheet shows that on 20th April, 1987 the complaint was presented and the statement of the complainant recorded. Thereafter it was directed to be put up on 23-4-87 for consideration whether it deserved to be registered. The learned Magistrate has used the word ''Panjiyan'' in his order, from which it appears that he had decided to postpone the issue of process against the accused pet son u/s 202 Cr P.C. It was, therefore, necessary for him to consider whether it needed inquiry or investigation for purpose of deciding whether or not there is sufficient ground for proceeding. That the learned Magistrate was not clear about the existence of sufficient ground is apparent from the order sheet dated 20-4 1987. In such a situation he should have considered the necessity of further inquiry and investigation as provided u/s 202 Code of Criminal Procedure Since the learned Magistrate had not done anything on the complaint on 20-4-87, it may even be urged that he did not take cognizance of the complaint. As long as the mind was not applied to decide whether to proceed u/s 200 Cr. P. C, it can not be held that the cognizance of the complaint had been taken. Then there is nothing in the order sheet to indicate why witnesses cited by the complaint were not examined The use of the word ''shall'' in Section 200 Code of Criminal Procedure indicates that the Magistrate is bound to examine witnesses; if any. May be the witnesses were not present and hence not examined. But there is no justification for not considering the necessity of further inquiry/investigation issue of process as required by Section 202 Cr P. C.

The object of inquiry and investigation u/s 202 Code of Criminal Procedure is to ensure that no person is compelled to answer a criminal charge unless the Court is satisfied that there is prima facie case for proceeding and issuing the process against him. The object of this inquiry was clarified by the Supreme Court in Chandra Deo Singh Vs. Prokash Chandra Bose and Another, , Pramatha Nath Taluqdar Vs. Saroj Ranjan Sarkar, and Vadilal Panchal Vs. Dattatraya Dulaji Ghadigaonker and Another, . These decisions, without doubt establish that it is the bounden duty of the Magistrate to elicit all facts not merely with a view to protect interest of the accused persons but also with a view to bring to book a person or persons against whom grave allegations are made. The inquiry or investigation is, therefore designed to afford the Magistrate an opportunity of either confirming or removing any hesitation, he may feel in issuing process against the accused and to form an opinion as to whether process should be issued or not. Though the nature of inquiry varies with the circumstances of each case and it need not be exhaustive like a regular trial. It must be sufficient to collect adequate material upon which a rational decision could be founded. It is, thus apparent that even reasonable defences may require consideration at this stage. Sub-section (1) of Section 202 indicates that though the Magistrate may have to depend on facts alleged in the complaint at the time of taking its cognizance, he is not obliged to depend only on the complainant''s help in the matter while deciding whether or not there is sufficient ground for proceeding further with the complaint. At this stage the Magistrate has the discretion either to rely on the statement of complainant and his witnesses, if he thinks fit or direct an inquiry into the case to be held by him or an investigation to be made by any police officer or any other person. Though the expression "if he thinks fit", vests the discretion in the Magistrate whether or not an inquiry under this section should be made or an investigation ordered, the discretion has to be judicially exercised and in a manner so as to achieve the object and purpose of the provision. It may, therefore, be necessary for the Magistrate to consider the intrinsic quality of the statement made before him with referance to the essential ingredients of the alleged offence. It is only when the Magistrate is satisfied that sufficient grounds exist for proceeding further in the matter that he can issue process and not otherwise.

In this connection powers of a police officer to investigate commission of a cognizable offence may also be noticed to understand the nature, scope and object of investigation by him. Referance to Chapter XII of the G. P. Code would indicate that a police officer is not required to rely on the statement of the complainant and his witnesses alone, but is under an obligation to make detailed inquiry to ascertain whether it would be lawful to put the accused person to trial. For this purpose, the police officer is authorised to record the statement of accused persons and make such other investigation as he may consider necessary. It is well known that a crime is an offence against the society and, therefore, it is the obligation of the police to bring the culprit to book. The procedure in Chapter XV is an alternative procedure and therefore, it is only reasonable that the inquiry or investigation is done with the same object and purpose as the investigation by the police officer. The obligation of the Magistrate to see that no innocent person is put on trial and made to face apparently false and fabricated charges, makes it necessary for him to be thorough in the matter and as certain sufficient grounds by considering all possible aspects of the case. To separate unfounded from substantial cases at the out set and to prevent innocent persons from being brought before him and subjected to annoyance of fabricate charge should, therefore, be the obligation of the Magistrate under this provision.

If the aforesaid be the true nature, scope and object of the inquiry or investigation it must, in the context of the facts and circumstances of the present case be held that the learned Magistrate has not exercised bis discretion judicially and has not proceeded in the matter in accordance with law. The learned Magistrate was apparently not clear in his mind about the future course of action on 20-4-87 when he recorded the statement of complainant and that is why he postponed the issue of process and required the Advocate of the complainant to make oral submission on 23-4-87. On 23-4-87, the learned Magistrate apparently missed Section 202 Code of Criminal Procedure and, therefore, did not consider either its utility or requirement. Not even the documents which were filed with the complaint were taken into consideration. Then the learned Magistrate readily accepted the complainant''s statement about presence of applicants at Bilaspur without subjecting the same to any scrutiny. He has also not considered whether it was possible for any one to effect delivery of the car within 10 days at Bilaspur from the date of deposit of money. Then the question whether the date of deposit would be the deposit with the non-applicant

No. 4 at Bilaspur or with Premier Automobiles Ltd., Daman in whose name the bank-draft was admittedly drawn was also missed. If the letter dated 8-4-1987 addressed by Respondent No. 4 to the complainant had been perused, the learned Magistrate might have wanted to know when actually the Premior Automobiles Ltd., Daman received the money. The complaint has been filed on 20-4-87 i. e. within 12 days of writing this letter. If M/s. Premier Automobiles Ltd., Daman had effected delivery within 10 days of the receipt of the money by them, the question whether there was any intention to cheat would have become important. All these questions have direct bearing on the criminality alleged against the applicants and should have been clarified. It is therefore, apparent that the learned Magistrate acted in hot haste and in complete disregard of Section 202 Cr P. C. in proceeding further in the matter. It is also apparent that the learned Magistrate did not exercise his discretion judicially and, therefore, failed to protect the interest of applicants which was his obligation u/s 202 Code of Criminal Procedure The impugned order, therefore, suffers from a serious illegality and causes failure of justice as its necessary consequence. It is, therefore, the obligation of this Court to quash the impugned order dated 23-4-87 and remit the matter to the learned Magistrate to reconsider the same in accordance with law.

For the reasons aforesaid, the application succeeds and is allowed. The impugned order dated 23-4-1987 issuing process against the applicants is hereby quashed and the matter is remitted to the learned Magistrate for proceeding in the matter in accordance with law with due advertence to the observations made aforesaid.