
(1996) 10 J&K CK 0011
In the Jammu And Kashmir High Court
Case No : Petn. No. 45 of 1988

V.K. Tenaja (Ex-Office Manager) Jammu Branch and Others	APPELLANT
Vs	
B.K. Behal	RESPONDENT

Date of Decision : 08-10-1996

Acts Referred:

Jammu and Kashmir Criminal Procedure Code, 1989 — Section 561A
Ranbir Penal Code, 1989 — Section 420

Citation : (1997) CriLJ 593

Hon'ble Judges : G.D. Sharma, J

Bench : Single Bench

Advocate : K. Chopra, for the Appellant;

Final Decision : Allowed

Judgement

G.D. Sharma, J.—Through the medium of this petition made under the provisions of Section 561A Cr.P.C. the petitioners herein have

sought quashing of the proceedings which have been initiated against them in complaint No. 10/88 filed by the respondent-complainant in the court

of learned Sub-Judge, Judicial Magistrate. 1st Class, Jammu. The complainant is a firm registered with the Director of Industries and Commerce J

& K and Mr. B. K. Behal is the proprietor thereof. The respondent-complainant firm had business dealings with the company at 60 Sky Lark

Building. 4th Floor Nehru Palace, New Delhi. The petitioners-accused are the employees of the said company. Respondent-complainant had the

business dealings with the said company and after entering into the correspondence with the said company filed the complaint alleging therein that

various cheques issued by the company were encashed but one cheque bearing No. 0272252 could not be encashed. The amount covered under

the said cheque was in the sum of Rs. 27,458/- and after a lapse of about three years it came to the knowledge of the respondent-complainant that

he has been cheated. Complainant visited the office of the said company situated in Gandhi Nagar Jammu and found that the employee had fled

away. Petitioners-accused had hatched a conspiracy to cheat the respondent-complainant and he filed the complaint whereupon process was

issued in terms of the order dated 20-5-1988 for summoning the petitioners-accused as prima facie they had committed an offence falling u/s 420

RPC. The order passed by the trial Magistrate has been challenged on the grounds that there was no evidence to connect the petitioners-accused

with the commission of the alleged crime and the learned Magistrate had ignored to apply its mind that the dispute was purely of civil nature and in

order to cause the harassment to the petitioners-accused who are the poor employees of the said concerned : a belated complaint was entertained

after a lapse of three years and process was issued. The petitioners-accused had no hand in issuing the cheque in question and no criminal liability

could be fastened against them for its dis-honour.

2. Heard the arguments of the counsel appearing for the petitioners/accused.

3. Mr. Chopra has reiterated in his argument that the dispute between the alleged company and the respondent-complainant was purely of civil

nature and petitioners-accused who are the employees, of the said company could not be fastened with criminal liability.

4. From the perusal of the record it transpires that the respondent-complainant had issued various notices to the company through its functionaries,

such as zonal manager, Vice President, and Law Officer wherein a demand was made for the despatch of goods in lieu of his credit balance

amounting to Rs. 12,875/-. The first notice issued by his Advocate namely, Dr. G. D. Bhargaw (Annexure-D) is dated : 4-6-1987, following by

notice Annexure D-1 which was an answer to the reply received by him from the concerned company in response to notice Annexure-D. In all the

notices the amount in the above-said figure was claimed. The above said company unequivocally impressed in terms of notice annexure E and E-1

to settle the accounts. The test to be applied by this Court to the facts of the case is as to whether the uncontroverted allegations as made prima

facie establish the offence. The Court has also to take into consideration the

special feature to the fact whether it is expedient and in the interest of justice to permit the prosecution to continue. This is so on the basis that the Court cannot be utilized for any oblique purposes and where in the opinion of the Court chances of ultimate conviction are bleak, there remains no useful purpose to allow the prosecution to continue.

5. The facts of the present case disclose that there is a dispute between the parties regarding the settlement of accounts. The petitioners-accused

who are the employees of the said concern are not found by their any act to have defrauded the respondent-complainant. The main ingredients of

an offence of cheating are that there should be deception of a person so as to fraudulently or dishonestly induced that person to deliver any

property to any person or to consent that any person shall retain any property or intentionally induced that person to do or omit to do anything

which he would 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. From this, it follows that a wilful misrepresentation of a definite fact with intent to defraud would be cheating.

Along with this, it has to be shown that the representation made was false to the accused's knowledge at the time when it was made. An act would

not come within the definition of cheating if the representation has turned out to be untrue at a future date.

6. The facts of the complaint at their face do not disclose any of these acts on the part of the petitioners-accused. The alleged deception was

detected after a period of three years and all this shows that the respondent-complainant in order to grind his axe brought to stale claim under the

criminal liability and succeeded in issuing the process in his favour which on the facts and in the circumstances of the case was not warranted. The

facts prima facie disclose that even if there was some dispute that was predominantly of civil nature and that did not fall within the ambit of criminal

offence. In this view of the matter, the petition is accepted and the proceedings initiated in complaint No. 10/1988 titled B.K. Behal v. Jaspal Singh

by the learned Sub-Judge, Judicial Magistrate, Jammu are hereby quashed. The registry is directed to send back the record to the Court below.

The connected Cr. M. P. No. 11/88 also stands disposed of.