
Chinmaya Kumar Mohapatra Vs State of Orissa

CRLMCNo.3643 of 2014

Court: ORISSA HIGH COURT

Date of Decision: Aug. 2, 2016

Acts Referred:

Penal Code, 1860 (IPC) - Section 120B, Section 418, Section 420, Section 468

Citation: (2017) 1 Crimes 425 : (2016) 2 ILRCuttack 842

Hon'ble Judges: B.K Nayak, J.

Bench: Single Bench

Advocate: Mr. Patitapaban Panda, Advocate, for the Petitioner; Mr. Devashis Panda, Advocate, for the Opp. Parties

Final Decision: Allowed

Judgement

B.K. Nayak, J. - In this application under Section 482, Cr.P.C. the petitioner prays for quashing the order dated 12.05.2014 passed by the

learned S.D.J.M., Puri in I.C.C. No.262 of 2013 taking cognizance of the offences under Sections 418/420/468/120-8 of the I.P.C. and directing

issuance of summons to the accused persons including the petitioner.

2. Initially the complainant filed a complaint, registered as I.C.C. No.262 of 2013, against the petitioner and another which was forwarded under

Section 156 (3) of the Cr. P.C. and registered as Puri Seabeach P.S. Case No. 119 of 2013. Upon investigation the police submitted final report

dated 23.10.2013 stating that the allegations in the F.I.R amount to breach of contract and, therefore, the dispute is of the civil nature, Thereupon,

the complainant-opposite party filed protest petition and his initial statement was recorded and enquiry under Section 202, Cr.P.C. was

conducted, where after the impugned order of cognizance has been passed.

3. Learned Counsel appearing for the petitioner submits that the allegations made in the complain and the terms of the agreement executed

between the School Authority and the complainant-Society clearly go to show that the dispute is one of civil nature and, therefore, no prosecution

for the offences for which cognizance has been taken would lie and, hence the order of cognizance should be quashed.

Learned Counsel appearing for the opposite party-complainant submits that though the dispute arises out of a contract, it cannot be said to be of

civil nature and that the allegations, and that the materials prima facie make out the offences.

4. The complainant is a Society represented through its president and it conducts computer training programme for the purpose spreading

computer literacy in and outside the State. The petitioner is the Principal of DAV Public School, Puri and his co-accused is the Regional Director

of DAV Institutions.

5. The allegations in the complaint are as follows :

The DAV School Management through its Regional Director entered into an agreement with the complainant-Society for taking computer training

programme for the students of DAV Public School, Puri. As per the contract, the volunteers of the complainant Society Were to train the School

students as well as staff of the School for the use of computers by providing and installing in the School premises, the computer appliances,

hardware as well as software and this contract was to subsist for a period of ten years commencing from 01.04.2004. The Society was to be paid

service charges"" @ 90% of the total collection from students on monthly basis. In terms of the contract, The Society provided all computer

appliances in the School and had been providing computers education to the staff and students as per approved curriculum and that as per the term

of the contract, the Principal of the School was authorised by the Regional Director of DAV Institutions to make payment of "service charges" to

complainant. It is alleged that with malafide intention, the payment of service charges has not be made to the Society from April, 2011 onwards till

the date of filing of the complaint, i.e. 24.07.2013, even though the agreement between the complainant-Society and the school has not been

rescinded and the complainant-society was still continuing to take classes in the School by using the computer appliances installed in the School. In

the process, the arrear dues of the complainant"s towards "service charges" has been calculated at Rs.4,83,208.74 (Rupees four lakh eight three

thousand two hundred eight and seventy four paise only). In spite of repeated approach by the complainant, the accused persons are not making

the payment and thereby they have committed the offences under section 418/420 and 406 of the I.P.C.

It is also alleged in the protest petition that the course of investigation by the Police on the complaint, accused No. 1 (present petitioner) produced

a circular No.11/395 said to have been issued on 30.07.2011 by the Regional Director, wherein it has been mentioned that the existing agreement

has to be terminated latest by 30.03.2012 and the collection from students have been stopped and the School has made it"s own arrangements for

imparting computer training to students.

6. A copy of the agreement entered into between the complainant and the DAV School authorities has been filed, which goes to show that under

the agreement the complainant was to prepare the lesson plans as prescribed by the DAV/CBSE authorities regularly and get them duly signed by

the Principal of the School, for the guidance of the concerned School faculty. The agreement also provided that the agreement can be terminated

with one year notice from either side on mutually agreed compensation terms and if any dispute between the parties shall be mutually settled and

that in the event of failure of conciliation, the decision of the DAV College managing Committee, New Delhi shall be final and binding upon both the

parties.

7. The main offences alleged against the petitioner and the co-accused are under Sections 403 and 406 of the I.P.C. for criminal breach of trust. In

the case of *Udai Shankar Awasthi v. State of U.P. & Anr.*, 2013 (1) Supreme 590 where the work contract was granted to respondent

No.2 therein by "IFFCO" for the purpose of conducting repairs in their plant and the said work order was subsequently cancelled by IFFCO,

whereupon respondent No.2 filed complaint case under Sections 403 and 406 of the I.P.C. for criminal breach of trust against "IFFCO", the

Hon'ble Apex Court held that the case is of civil nature arising out of breach of contract and that taking cognizance, issuing summons to the

appellants (IFFCO) and continuance of criminal proceeding was an abuse of process of Court.

In the case of *Anil Mahajan v. Bhore Industries Ltd.* (2005) 10 SCC 228, the Hon'ble Supreme Court held that the mere breach of contract

cannot give rise to criminal prosecution for cheating unless fraudulent and dishonest intention is shown at the beginning of the transaction. To

deceive is to induce a man to believe that a thing is true which is false and which the person practicing the deceit knows or believes to be false. If

from examining the complaint it would be found that the ingredients of the offences are wanting and the dispute is of civil nature between the

parties, no criminal prosecution lies.

8. On examination of the complaint in the instant case, it is clear from its substance that there is no allegation of any fraudulent and dishonest

intention of the accused persons at the beginning of the transaction. Admittedly, there is existence of a letter of Regional Director of the DAV

School addressed to the Principal of the School for termination of the service contract, with the complainant from a particular date, though the

learned Counsel for the complainant submits that the said letter/circular is not a genuine document. Further even though it is alleged that since April,

2012 the School Authority has not paid the dues of the complainant in spite of repeated demands, it is alleged that the complainant still continues to

render service even on the date of filing of the complaint, which does not inspire confidence. It is also an admitted position that for realizing the

dues, which the complainant claims to have not been paid by the School Authorities, it has filed Civil Suit (III) No. 1000 of 2015 in the Court of

the learned 3rd Additional Civil Judge (Senior Division), Cuttack, which is said to be still pending.

9. In the aforesaid scenario, this Court holds that the dispute between the parties is one of civil nature, arising out of breach of contract and,

therefore, the impugned order of taking cognizance cannot be sustained which is hereby quashed.

The CRLMC stands disposed of accordingly.