
(2009) 11 GAU CK 0029

Gauhati High Court

Case No: None

Rajesh Sareen

APPELLANT

Vs

State of Assam and Another

RESPONDENT

Date of Decision: Nov. 27, 2009

Acts Referred:

- Constitution of India, 1950 - Article 226
- Criminal Procedure Code, 1973 (CrPC) - Section 155(2), 156(1), 200, 482
- Penal Code, 1860 (IPC) - Section 415, 420

Citation: (2010) 2 GLR 425 : (2010) 1 GLT 306

Hon'ble Judges: Anima Hazarika, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Anima Hazarika, J.

Invoking the inherent power u/s 482 of the Code of Criminal Procedure ("Cr.PC"), the petitioner herein, who is an accused in C.R. No. 807/2008 u/s 420 of the Indian Penal Code (IPC for short) on the file of the Magistrate, 1st Class, Diphu, Karbi Anglong, has called in question, the legality and validity of the proceeding initiated on the complaint filed by the respondent No. 2 herein.

2. Accusation, which led to the institution of the proceedings essentially, are as follows:

The complainant and the accused both are business man. The accused is living at Delhi and deals with the business of M.S. Rods etc., and accordingly on 03.02.2008, the complainant gave Rs. 4,00,000 (Rupees four lakhs) only to the accused for supply of 25 tons of M.S. Rods of diameter 16 mm and 20 mm and the accused assured to supply the aforesaid items within 30 (thirty) days. Cost of the rods and acknowledgment of the aforesaid amount is accordingly issued at Diphu. But the said item never reached at the destination even after 30(thirty) days, thereby

violating the terms and conditions as agreed upon causing great financial loss to the complainant and, hence, the complaint.

3. The complainant was examined u/s 200, Cr.PC and the learned Magistrate being prima facie satisfied that there are materials to proceed against the accused issued summons asking him to appear to face the trial which is called in question before this Court with a prayer for quashing the proceeding at the threshold.

4. Heard Mr. A. Singh, learned Counsel assisted by Ms. M. Devi, Advocate, appearing for the petitioner. Also heard Ms. B. Saikia, learned Additional Public Prosecutor, Assam, for respondent No. 1 as well as Mr. P. Katakey, learned Counsel appearing on behalf of respondent No. 2.

5. Mr. Singh, learned Counsel appearing for the accused petitioner would urge that a reading of the complaint and the statement recorded thereto u/s 200, Cr.PC without adding or subtracting the same do not constitute an offence u/s 415 of the IPC and no prima facie case has been made out to proceed with the trial which amounts to an abuse of the process of the court if allowed to continue and it is a fit case for quashing the criminal proceeding to secure the ends of justice.

6. Countering the attack, Mr. Katakey, learned Counsel appearing for respondent No. 2 would urge that the power u/s 482 of the Cr.PC, should be exercised sparingly and when the learned Magistrate is prima facie satisfied that there is a case to proceed with the trial, more so, when necessary ingredients of the offence u/s 415 of the IPC have been made out, this Court may not interfere with the proceeding at the initial stage.

7. In the instant case, the complaint has been registered u/s 420 IPC. The allegations leveled in the complaint is of cheating. Cheating is defined in Section 415 of IPC and is punishable u/s 420 of IPC. Section 415 of IPC is set out below:

415. 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 person 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".

Explanation: A dishonest concealment of facts is a deception within the meaning of this section.

Section 415, IPC thus, requires the following ingredients to constitute the offence:

1. Deception of any person;

2 (a) Fraudulently or dishonestly inducing that person-

(i) to deliver any property to any person;

(ii) to consent that any person shall retain any property; or

(b) Intentionally inducing that person 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 damages or harm to that person in body, mind, reputation or property.

8. From the analysis of the aforesaid definition, it would appear that there are two separate classes of acts which the person deceived may be induced to do. In the first classes of acts he will be induced fraudulently or dishonestly to deliver property to any person. The second classes of acts is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first classes of cases the inducement must be fraudulent or dishonest. In the second classes of acts, the inducement must be intentional but not fraudulent or dishonest. Intention is the cause of offence to bring home the charge u/s 415 IPC. It is incumbent to show" that the accused had a fraudulent or dishonest intention at the time of making the promise. Failure to keep promise subsequently one cannot presume that he all along had a culpable intention to break the promise from the beginning.

9. It would now be appropriate to quote the complaint and the statement recorded u/s 200, Cr.PC, to determine as to whether the ingredient of Section 415 IPC has been made out in the complaint and the statement recorded and if not whether the trial should be allowed to proceed even if no case has been made out u/s 415 IPC.

The complaint filed by the complainant is quoted here in below:

1. That the complainant is a businessman of Diphu Town and residing at Sitlabari, Diphu Town with his family and children.
2. That the accused person is a businessman and dealing with business of M.S. Rod etc.
3. That on 3.2.2008 the complainant gave Rs. 4,00,000 (Rupees four lacks) only to the above accused person for supply of 25 Tons M.S. Rod of did 16 mm and 20 mm and the accused assured to supply the above 25 Tons M.S. Rod within 30 days.
4. That after received the amount of Rs. 4,00,000 (Rupees four lakhs) only from the complainant the accused gave one receipt at Diphu.
5. That after passing 30 days the accused person not supply the above 25 Tons M.S. Rods nor returned the amount and accused also not respond the complainant after several verbal request to supply the M.S. Rod, or return the amount.
6. That the accused violating the terms and condition with the complainant and thereby causing huge financial loss to the complainant.

Therefore, it is prayed by the complainant that your honors may please to bring the accused person by issuing the due process against the accused person to make accused present in the Diphu court and further be pleased to take action and direct the accused to return the money with interest to complainant and also punish the accused for the crime accused has committed and oblige.

The statement of the complainant reads as follows:

STATEMENT

Name: Barun Sen Gupta

S/O: (L) Govinda Nath Sengupta Sitla Bari Road, Diphu

On Oath:

I filed this case against Sh. Rajesh Sarin who resides at Now Rajendra Nagar, near Now Police Station, Now Delhi. He is a businessman dealing with construction materials. On 3.2.2008 paid him Rs. 4 L for supply of 25 Tons of M.S. Rod of 16 mm and 20 mm diameter. He assured the supply the M.S. Rod within 30 days and he gave me a receipt of Rs. 4 L. After 30 days he neither supplied the consignment nor returned the money. After several verbal request till date he has not supplied the rod or refunded the money. He has violated the terms and conditions agreed upon and thereby is causing huge financial loss to me. Due to his cheating I have filed this case before the hon"ble court.

10. Exercise of power u/s 482, Cr.PC saves the inherent power of the High Court to make such orders as may be necessary to give effect to an order under the Cr.PC, to prevent abuse of the process of the court or otherwise to secure the ends of justice. Therefore, the inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the test specifically laid down in the section itself. It is to be exercised to do real and substantial justice for administration of which alone court exists. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of power court would be justified to quash any proceeding if it finds that the initiation or continuance of it amount to abuse the process of the court or quashing of this proceedings would otherwise secure the ends of justice. When no offence is disclosed in the complaint the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what complainant has alleged and whether any offence is made out, if the allegations are accepted, in toto, as observed by the Apex Court.

11. In [R.P. Kapur Vs. The State of Punjab](#), the Apex Court has summarized some of the categories of cases where the inherent jurisdiction to quash proceeding can and

should be exercised. They are:

(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category.

(ii) Where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not.

(iii) Where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge.

12. The scope of exercise of power u/s 482 of Cr.PC, and the categories of case where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of the process of any court or otherwise to secure the ends of justice were set out in some details by the Apex Court in the case of [State of Haryana and others Vs. Ch. Bhajan Lal and others](#). A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases. The illustrative categories indicated by the Apex Court in Bhajan Lal (supra) are as follows:

102. In the backdrop of the interpretation of the various relevant provisions of the Code under chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers u/s 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any

offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

A reading of the complaint along with the statement recorded in the instant case and the caution made by the Apex Court in various categories of cases, this Court finds that even if all the averments made in the complaint are taken to be correct, the prosecution case u/s 420 IPC is not made out against the petitioner. To prevent abuse of the process and to secure ends of justice it is imperative to quash the entire proceeding being C.R. Case No. 807/2008 pending before the Magistrate, 1st Class, Diphu, which the court hereby do.

13. In the result, this Criminal Petition is allowed and the proceeding pending before the learned Magistrate, 1st Class, Diphu, being C.R. Case No. 807/2008 u/s 420 IPC against the petitioner stands quashed. The parties are left to bear their own costs.