

(2012) 03 JH CK 0001

Jharkhand High Court

Case No: Criminal M.P. No. 327 of 2010

S. Diwakar

APPELLANT

Vs

State of Jharkhand and
another

RESPONDENT

Date of Decision: March 12, 2012

Acts Referred:

- Penal Code, 1860 (IPC) - Section 415, 420

Citation: (2012) 03 JH CK 0001

Hon'ble Judges: Rakesh Ranjan Prasad, J

Bench: Single Bench

Final Decision: Allowed

Judgement

R.R. Prasad

1. This application has been filed for quashing of the entire criminal proceeding of Complaint Case bearing C-1 No. 1405 of 2009 including the order dated 9.12.2009 passed by the then Judicial Magistrate, 1st class, Jamshedpur whereby and whereunder cognizance of the offence was taken u/s 420 of the Indian Penal Code against the petitioner. The case of the complainant is that the complainant had given friendly loan of Rs. 20 lacs to the petitioner. As a security, the petitioner initially paid a cheque of Rs. 2 lac but subsequently, the amount was altered to Rs. 20 lacs which was authenticated on the face of the cheque and that apart, an undertaking was also given subsequently. When the said cheque was presented before the Federal Bank, Jamshedpur on 30.3.2009, the Bank Manager who was in connivance with the complainant did not accept the cheque, rather asked the complainant to deposit it in another Bank. Accordingly, that cheque was deposited in Oriental Bank of Commerce, Jamshedpur. The said cheque got bounced with remarks "alteration requires drawers authentication". On receiving the cheque, the complainant asked the accused to authenticate the alteration made in the cheque but he refused to do so. Thereupon, a notice was sent calling upon the petitioner to make

payment but he refused. On such allegation, complaint was lodged. It was registered as C-1 case No. 1405 of 2009 u/s 420 of the Indian Penal Code. After holding enquiry, the court took cognizance of the offence u/s 420 of the Indian Penal Code. That order is under challenge.

2. Learned Counsel appearing for the petitioner submits that even if the entire allegations are taken to be true, no offence of cheating is made out as the petitioner has never been alleged to have induced the complainant fraudulently and dishonestly to part with the money, rather as per the allegation, the complainant had given friendly loan and thereby even if this allegation is accepted that the petitioner has taken loan but did not return the same, no offence of cheating is made out.

3. As against this, Learned Counsel appearing for the complainant-opposite party No. 2 submits that right from the beginning the petitioner had intention to cheat the complainant and in that pursuit, the petitioner took loan but it was never returned to the complainant and thereby he can be said to have committed offence of cheating.

4. Keeping in view the submission advanced on behalf of the parties, let me advert to consider as to whether the allegation made in the complaint does constitute offence of cheating or not ?

5. The offence of cheating has been defined u/s 415 of the Indian Penal Code which reads as follows:

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.

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.

6. Thus, the first element necessary for constituting the offence of cheating is a 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. Then, the question arises as to what is the deception ?

7. In the ordinary sense deception has in it the element of misleading or making a person believe something that is false or inculcating of one so that he takes the false as true, the unreal as existent, the spurious as genuine and it is also necessary that deception should be right from the beginning of the contract. Applying the principle constituting a criminal offence of cheating in context of the allegation it does appear that first element of deception attract an offence of cheating is lacking as nowhere the allegations made in the complaint do indicate about the complainant being deceived by the petitioners in any manner.

8. At this stage, it would be appropriate to refer a case of [Iridium India Telecom Ltd. Vs. Motorola Incorporated and Others](#), whereby the Hon"ble Supreme Court taking notice of Section 415 of the Indian Penal Code has been pleased to hold that deception is a necessary ingredient for the offence of cheating under both parts of the Section.

9. It has been further observed that there is a growing tendency in business circle to convert purely civil dispute into criminal cases. This is obviously on account of the prevalent impression that civil law remedies are time consuming and do not adequately protect the interest of lenders/creditors. Such tendency is seen in several family dispute also leading to irretrievable brake down of marriages/families. There is also an impression that if a person could somehow be entangled into a criminal prosecution, there is likelihood in imminent settlement. It has emphatically been said by the Hon"ble Supreme Court in the said decision that any effort to settle civil dispute and claims which do not involve any criminal offence by applying pressure through criminal prosecution should be deprecated and discouraged.

10. Having come to the conclusion that the allegation made in the complaint does not constitute offence of cheating, the entire criminal proceeding of Complaint Case bearing C-1 No. 1405 of 2009 including the order dated 9.12.2009 is hereby set aside. In the result, this application is allowed.