
(2007) 10 JH CK 0002

Jharkhand High Court

Case No: None

Jiwan Prakash

APPELLANT

Vs

State of Jharkhand and
Another

RESPONDENT

Date of Decision: Oct. 4, 2007

Acts Referred:

- Penal Code, 1860 (IPC) - Section 138, 406, 420

Hon'ble Judges: Narendra Nath Tiwari, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Narendra Nath Tiwari, J.

In this petition, the petitioners have prayed for quashing the entire criminal proceedings, including the order taking cognizance dated 3.12.2003 in Deoghar P.S. Case No. 243 of 2003, corresponding to G.R. No. 693 of 2003, whereby learned Chief Judicial Magistrate has taken cognizance of the offences under sections 406 and 420 I.P.C. against the petitioner.

2. The case of the complainant-O.P. No. 2 was that the complainant-O.P. No. 2 and the petitioner were good friends. The complainant had to go out of Deoghar. Since the petitioner was a gold merchant of Deoghar, the complainant-O.P. No. 2 handed over the entire gold ornaments of his wife to the petitioner for keeping the same in safe custody. In course of his business, the complainant had also borrowed money, from the petitioner. To maintain credibility, the complainant has withdrawn Rs. 2,00,000/- from Bank of India and at that time, the petitioner was with him. Out of the said amount, Rs. 40,000/- was given to one Baneshwar Prasad Kesnri, Rs. 40,000/- to Rajendra Prasad, Rs. 15,000/- to Amarnath Jha and Rs. 9,000/- to Rabindra Nath Mishra and the remaining amount was given to the petitioner to keep the money in his locker for safety. When the complainant came back to Deoghar, he asked the petitioner to return his money and gold ornaments,

but the petitioner refused to return the same. The complainant allegedly threatened by the petitioner to use an old cheque given by the complainant, in case any legal action is taken against him. According to the complainant, said cheque was handed over to the petitioner as surety against the borrowing by the complainant, but he had returned the entire borrowed money to the petitioner.

3. On the said allegation, it was alleged that the petitioner cheated cash Rs. 96,000/- and the gold ornaments of Rs. 50,000/-.

4. On the said allegation and after submissions of final report of the police, learned court below has taken cognizance for the said offences against the petitioner.

5. The petitioner has assailed the said order and the criminal proceeding against him on the ground that he is highly respectable person and that the complainant borrowed money from the petitioner, which has accumulated to the tune of Rs. 1,30,000/- and two cheques were issued by the complainant-O.P. No. 2 amounting to Rs. 30,000/- and Rs. 1,03,000/- but both the cheques were dishonoured. The same was informed to the complainant by letter dated 9.8.1991. The cheques have been brought on record as Annexures- 3 & 4 and the reply of the complainant is Annexure-6. The complainant subsequently gave a receipt promising to make payment of Rs. 1,33,000/- by 10.9.2003(Annexure-7) It has been stated that in order to defraud the said amount, the complainant filed the said frivolous complaint petition against the petitioner to create pressure. The petitioner, thereafter, lodged a complaint against the complainant-O.P. No. 2 under Sections 138 and 420 I.P.C.(Annexure-8). It has been stated that the complaint, in question, in which the cognizance has been taken by the impugned order is deliberately concocted and intended to put the petitioner to unnecessary harassment and humiliation. It has been stated that the dispute may give rise to a cause of action for civil suit. The offences alleged under sections 406 and 420 I.P.C. are not at all made out.

6. Notice was issued to the O.P. No. 2. He has appealed and filed reply contesting the petitioner's petition. It has been stated that the police investigated the case. It has come on record that the accused person had taken Rs. 96,000/- in presence of the witnesses. The investigation was supervised by the Deputy Superintendent of Police. Then; was material on record to constitute the offences under sections 406 and 420 I.P.C. against the petitioner. The learned court below, on perusal of the said materials on record, has taken cognizance of the said offences against the petitioner. The O.P. No. 2 produced an award of Panchayat bearing his signature as Annexure-C to his reply in order to show that in the award also some dues have been shown, payable by the petitioner to the complainant-O.P. No. 2.

7. Learned Counsel for the petitioner submitted that from the records, it is evident that the dispute arises out of a transaction between the parties. There is no clear material on record for taking cognizance u/s 406 and 420 I.P.C. If the allegations are accepted, the same give rise to the cause of action for a civil dispute. There is no ingredient for making

out the offences under sections 406 and 420 I.P.C. It has been submitted that the borrowing of money and subsequently accepting receipt, comes within the ambit of Negotiable Instruments Act. But the said aspect has not been taken into consideration by the learned Magistrate. Receipts and the cheques may give rise to the monetary claim against the complainant. The impugned order is, thus, wholly illegal and abuse of the process of law.

8. Learned Counsel appearing on behalf of O.P. No. 2; on the other hand, submitted that even if it is admitted that the transaction was civil in nature and if there is ingredient of the offences under sections 406 and 420 I.P.C., the order taking cognizance cannot be said to be bad in law. Learned Counsel submitted that the case in hand squarely comes within the definition of criminal breach of trust and cheating and the learned court below has rightly taken cognizance of the said offences against the petitioner. Learned Counsel referred to and relied on a decision of this Court in "AAkrit Singh v. State of Jharkhand" Cr. Misc Petition No. 106 of 2003, disposed of on September 17, 2004. Learned Counsel submitted that even punches of the Panchayat have awarded the amount to be paid by the petitioner. The petitioner, thus, cannot deny liability and in view thereof, there is no merit in this petition.

9. Having heard learned Counsel for the parties and perused the materials on record, I find that in the complaint, the complainant-O.P. No. 2 has mentioned about the two cheques, which, according to him, were given to the petitioner in good faith for purchasing the land. The complaint petition also discloses that the petitioner is a businessman and that the complainant has given all ornaments to him for keeping in safe custody. However, there is no mention of any receipt or any chit of paper. From the award of Panchayat, it appears that there is allegation and counter allegation regarding the dues. On the one hand, the petitioner has claimed dues against the complainant, on the other hand, the complainant has also claimed some dues against the petitioner. The same is also mentioned in the award of the punches, signed by the parties.

10. After going through the contents of the award, the complaint apparently appears to be concocted. This award has been brought on record by the O.P. No. 2. He has also admitted the signature. The contents made in the award falsify the allegation made in the complaint petition. Though the award provides for refund of Rs. 96,000/- and some ornaments by the petitioner, the same cannot be enforced through a criminal proceeding.

11. In view of the above discussion, the impugned order taking cognizance against the petitioner has no legal basis. Learned court below without considering the material documents and surrounding circumstances, has arbitrarily, illegally and mechanically passed the impugned order taking cognizance of the offences under sections 406 and 420 I.P.C. against the petitioner.

12. The impugned order of the learned court below is an abuse of the process of law and is unsustainable. The same is, hereby, quashed. This Cr.M.P. is, thus, allowed.