

(2012) 06 JH CK 0023

Jharkhand High Court

Case No: Criminal Miscellaneous Petition No. 4670 of 2001

Sandeep Boobna

APPELLANT

Vs

The State of Jharkhand and M/s.
Tata Iron and Steel Company
Ltd. Jamshedpur, East Singhbhu,
Jamshedpur

RESPONDENT

Date of Decision: June 14, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 142
- Negotiable Instruments Act, 1881 (NI) - Section 138
- Penal Code, 1860 (IPC) - Section 120B, 405, 406, 415, 420

Hon'ble Judges: Rakesh Ranjan Prasad, J

Bench: Single Bench

Advocate: S.D. Sanjay, for the Appellant; G.M. Mishra, Advocate, for the TISCO, for the Respondent

Final Decision: Allowed

Judgement

R.R. Prasad

1. Heard learned counsel appearing for the petitioner and learned counsel appearing for the State. This application has been filed for quashing of the entire criminal proceeding of C-1 Case No. 870 of 2000 including the order dated 22.11.2000 whereby and whereunder cognizance of the offences punishable under Sections 406, 420 read with Section 120B of the Indian Penal Code and also u/s 138 of the Negotiable Instrument Act has been taken against the petitioner.

2. Before advertng to the submissions advanced on behalf of the parties, the case of the complainant needs to be taken notice of.

3. The complainant-Opp. Party No. 2 filed a complaint, stating therein that the complainant-M/s Tata Iron and Steel Company Ltd. is engaged in manufacturing and sale of Iron and Steel products including STP Tubes.
4. Further case is that for the purpose of marketing of its product, the complainant-Company appointed M/s Suprabhat Pvt. Ltd., New Dak Bunglow Road, Patna as one of its Distributors to which this petitioner, at the relevant point of time, was one of the Directors, for dealing in the product of the complainant-Company". Accordingly, the complainant- Company through its Sale Officer used to provide STP Tubes to the petitioner on credit and also on making payment for its sale.
5. In course of time, outstanding payable to the complainant-Company by the accused company accumulated to the tune of Rs. 1,28,17,126.13 as on 29.05.2000.
6. Further case is that in order to make part payment, two cheques one of Rs. 40,000/- and other of Rs. 50,000/- both dated 07.06.2000 drawn on Bank of India, Main Branch, Patna were given to the complainant company. On deposit, it got bounced on 09.06.2000. On receipt of the information, the complainant-company immediately approached the accused, who requested the complainant to present the cheques again after a period of one month by giving assurance that the cheque would be encashed.
7. However, when it was deposited, it again got bounced back on 03.08.2000 whereby a memo was communicated by the Bank to the complainant- company with endorsement "Payment stopped by the Drawer", Thereupon, notice of demand dated 10th August, 2000 was sent under registered post on 12.08.2000, but the same was returned unserved. However, it has been alleged that the accused persons have had knowledge of preferring demand and in spite of that, the accused persons failed to give payment of the amount of Rs. 90,000/- to the complainant-company.
8. On such allegation, a complaint was lodged which was registered as C1 Case No. 870 of 2000 under Sections 406, 420 read with Section 120B of the Indian Penal Code and also u/s 138 of the Negotiable Instrument Act. On holding inquiry, the court, having found prima facie being made out, took cognizance of the offences punishable under the aforesaid Sections. That order is under challenge.
9. Mr. 5.D. Sanjay, leaned counsel appearing for the petitioner submits that taking the entire allegation made in the complaint to be true, no offence is made out either under Sections-406 or 420 of the Indian Penal Code, as the petitioner has never alleged to have induced the complainant dishonestly and fraudulently to part with the material for which no payment was allegedly made and, thereby, no offence is made out either under Sections 406 or 420 of the Indian Penal Code.
10. I do find substance in the submission made on behalf of the petitioner.

11. It be stated that the Hon"ble Supreme Court in a case of [State of Haryana and others Vs. Ch. Bhajan Lal and others](#), has been pleased to lay down certain categories of the cases by way of illustrations wherein inherent power u/s 482 of the Code can be exercised either to prevent abuse of the process of any Code or otherwise to secure ends of justice. One of such categories is:-

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.

12. In the context of the principle laid down, one needs to consider as to whether allegation made in the complaint does constitute offence of cheating or not ?

13. 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".

14. 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.

15. 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. At the same time, it has also been held by the Hon"ble Supreme Court in number of cases that deception should be right from the beginning of the contract.

16. Applying the principle in context of the allegation, it does appear that first element of deception constituting an offence of cheating is lacking as nowhere the

allegations made in the complaint do indicate about the complainant being deceived by the petitioner in any manner.

17. In a case of [Iridium India Telecom Ltd. Vs. Motorola Incorporated and Others](#), 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.

18. Similar proposition of law has been laid down by the Hon"ble Supreme Court in a case of [Indian Oil Corporation Vs. NEPC India Ltd. and Others](#). At the same time, it has also been observed in the said case by the Hon"ble Supreme Court 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

19. 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.

20. Thus, as I have observed earlier that there has been nothing in the entire complaint to show that the petitioner dishonestly and fraudulently induced the complainant to part with the material, no case of cheating is made out.

21. So far offence u/s 406 of the Indian Penal Code is concerned, that also does not appear to have been made out against the petitioner

22. The provision of criminal breach of trust has been defined in Section 405 of the Indian Penal Code which reads as under

405. Criminal breach of trust - Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust".

23. None of the ingredients required to constitute offence u/s 405 of the Indian Penal Code gets attracted even if entire allegations are accepted to be true. Accordingly, it is held that no offence is made out u/s 406 of the Indian Penal Code.

24. Learned counsel appearing for the petitioner submits that though cognizance of the offence u/s 138 of the Negotiable Instrument. Act has been taken against the

petitioner but on the allegation made in the complaint, the complainant cannot maintain prosecution u/s 138 of the N.I. Act for the reason that once on getting cheque dishonoured, notice of demand is put forth to the complainant, any complaint needs to be filed within the period of limitation as prescribed under the Act which will start running from the date of receipt of notice of demand.

25. In this respect, it was submitted that it is the case of the complainant that the cheques on deposited, got bounced back for the first time on 09.06.2000. Upon it, the petitioner on being approached, asked the complainant to deposit the cheque again. On its deposit, it again got bounced on 03.08.2000 but before it was deposited for the second time for its encashment, the notice of demand had already been given on 22.06.2000 and thereby, once notice was given, the limitation for bringing the complaint case as is there under the provision of Section 142 Cr.P.C. would start running from that date i.e. from 22.06.2000. Therefore, the complaint filed on 23.09.2000 cannot be maintained.

26. Mr. Mishra, learned counsel appearing for the Opp. Party No. 2 submits that no foundational fact with respect to, aforesaid submission has been placed and hence, the said submission is only to be noticed to be rejected.

27. Admittedly, the necessary pleadings with respect to aforesaid submission are not there and, therefore, the question raised, never warrants to be addressed with rather this issue and also other issues, which would be available to the petitioner, be raised before the court below an appropriate stage.

28. Accordingly, only that part of the order whereby cognizance of the offences under Sections 406 and 420 of Indian Penal Code has been taken against the petitioner, is hereby, set aside. In the result, this application is partly allowed.