
(2012) 01 JH CK 0038

Jharkhand High Court

Case No: Criminal Rev. 92 of 2004

Bapi Das Roy @ Bapi

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: Jan. 24, 2012

Acts Referred:

- Penal Code, 1860 (IPC) - Section 405, 406, 415, 420, 426

Hon'ble Judges: Rakesh Ranjan Prasad, J

Bench: Single Bench

Final Decision: Allowed

Judgement

R.R. Prasad

1. Under order dated 2.5.20-11, it has been recorded that notice be sent through ordinary process was received by the Security Guard, Tunnu Das and the case was posted for Admission, awaiting appearance meaning thereby the notice was taken to have been served upon opposite party No. 2. In spite of that opposite party No. 2 never chose to appear in this case. Accordingly, heard learned counsel appearing for the petitioner and learned counsel for the State.

2. This revision application is directed against the order dated 1.12.2003, passed by the then C.J.M., Ranchi in G.R. No. 1165 of 2002 (Lalpur P.S. Case No. 50 of 2002) whereby application filed for discharge from the accusation punishable under Sections 406 and 420 of the Indian Penal Code was rejected.

3. The case of the prosecution as has been made out in the F.I.R. is that the informant is the partner of firm, known as "At Glance" to which this petitioner is other partner who without the knowledge of the informant took the loan in the name of the firm from the Central Bank of India, Lalpur Branch, Ranchi.

4. Further it has been alleged that the petitioner had also taken loan from other borrowers. On such allegation a case was registered as Lalpur P.S. Case No. 50 of

2002, under Sections 426 and 420 of the Indian Penal Code.

5. The case was taken up for investigation. On completion of the investigation, charge-sheet was submitted upon which cognizance of the offences was taken under Sections 406 and 420 of the Indian Penal Code. Subsequently an application was filed for discharging the petitioner from the accusation punishable under Sections 406 and 420 of the Indian Penal Code on the ground that no material is there for constituting offence either u/s 406 or Section 420 of the Indian Penal Code, but that, prayer was rejected vide order dated 1.12.2003 by holding that sufficient materials are there on record to frame charge under Sections 406 and 420 of the Indian Penal Code and that charge can be frames even on the material on record capable of inferring strong suspicion about the commission of the offence. That order is under challenge in this application.

6. Having heard learned counsel appearing for the petitioner and learned counsel for the State, I do find that on an accusation that the petitioner being one of the partners of the firm took loan in the name of firm from the Bank and also from the other borrowers is being prosecuted for an offence under Sections 406 and 420 of the Indian Penal code, but no such offence is made out even if the allegations levelled against the petitioner are taken to be true. Definition of cheating has been given u/s 415 of the Indian Penal Code which reads as follows :-

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, of 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.

7. On bare perusal of the aforesaid provision, it does appear that the following ingredients be there for constituting offence of cheating.

(I) deception of a person either by making a false or misleading representation or by other action or omission.

(II) Fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person to do or omit to do Anything which he would not do of 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.

8. At this stage, I may refer to a decision rendered in a case of [Hridaya Ranjan Pd. Verma and Others Vs. State of Bihar and Another](#), wherein it has been held as under :

14. On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the

first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section 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 class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.

15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is, the time when the offence is said to have been committed. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is when he made the promise cannot be presumed.

9. In this case there has been absolutely no allegation that the informant by fraudulent and dishonest act induced the informant to deliver any property rather simple allegation is that the petitioner had taken loan in the name of firm from a Bank without giving knowledge of this fact to the informant and as such, no offence is made out. Similarly there does not appear to be any element for attracting offence of breach of trust as defined u/s 405 of the I.P.C. which reads as follows:-

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 wilfully suffers any other person so to do, commits "criminal breach of trust"

10. Admittedly it is never the case that the petitioner misappropriated the amount on being entrusted with the property by the informant.

11. Thus, the offence u/s 405 does not get attracted, but the court below did not consider all these aspects of the matter at the time of discharge and hence, the order dated 1.12.2003, in Lalpur P.S. Case No. 50 of 2002 corresponding to G.R. No. 1165 of 2002, passed by learned C.J.M., Ranchi suffers from illegality and accordingly, it is set aside.

12. Consequently, the, petitioner is discharged from the accusation punishable under Sections 406 and 420 of the Indian Penal Code. In the result this application

stands allowed.