

(2013) 08 JH CK 0032

Jharkhand High Court

Case No: Criminal M.P. No. 1140 of 2008

Mahadeo Prasad Baranwal

APPELLANT

Vs

The State of Jharkhand and
Another

RESPONDENT

Date of Decision: Aug. 7, 2013

Acts Referred:

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

Citation: (2013) 4 JLR 138

Hon'ble Judges: R.R. Prasad, J

Bench: Single Bench

Advocate: A.K. Kashyap, for the Appellant; Abhishek Kumar, Advocate for the O.P. No. 2, for the Respondent

Final Decision: Allowed

Judgement

R.R. Prasad, J.

Heard learned counsel appearing for the petitioner, learned counsel appearing for the State and learned counsel appearing for the Opp. Party No. 2. This application has been filed for quashing of the order dated 10.03.2008 passed in Deoghar (Town) P.S. Case No. 230 of 2007 whereby and whereunder, cognizance of the offences punishable under Sections 420 and 406 of the Indian Penal Code has been taken against the petitioner.

2. The case of the complainant is that he approached the petitioner, a leading land dealer, to purchase a piece of land from the portion of the land called "Uma Samittee". Since the petitioner was a leading land dealer, the complainant agreed to purchase a piece of land, measuring 870 sq. ft. @ Rs. 750 per sq. ft. and for that, a sum of Rs. 1,50,000/- was paid to the petitioner. Thereafter, when the complainant approached the petitioner to execute the sale deed, the petitioner avoided it on the pretext that he would be selling the entire land of "Uma Samittee" on the same day.

Whenever purchasers would be available, he would be informing him and on that day, he would execute the sale deed. Contrary to his promise, the complainant came to know that the said land has been sold to someone else and, therefore, the complainant did approach the petitioner to refund the money but the said money was not refunded.

3. On such allegation, the complaint was lodged as P.C.R. Case No. 277 of 2007. The said complaint was sent to the concerned police station for its institution and investigation. Accordingly, it was registered as Deoghar (Town) P.S. Case No. 230 of 2007 u/s 420 of the Indian Penal Code.

4. On submission of the charge sheet, the court took cognizance of the offence punishable under Sections 420 and 406 of the Indian Penal Code vide order dated 10.03.2008, which is under challenge.

5. Mr. A.K. Kashyap, learned Senior Counsel appearing for the petitioner submits that even accepting the entire allegation to be true, no case of either cheating or misappropriation is made out as the petitioner has never been alleged to have defrauded the complainant in any manner and thereby the court committed illegality in taking cognizance of the offence punishable under Sections 420 & 406 of the Indian Penal Code.

6. As against this, learned counsel appearing for the Opp. Party No. 2 submits that only on assurance given by this petitioner that he would be selling a piece of land, a sum of Rs. 1,50,000/- was given to the petitioner but the petitioner instead of selling that piece of land to the petitioner, sold it to other persons and even kept the money of Rs. 1,50,000/- with him and when the complainant did approach to the petitioner to refund the same, he flatly refused to return it.

7. At this stage, it was informed by the learned counsel appearing for the petitioner that a sum of Rs. 1,50,000/- has been deposited before the court pursuant to the order passed by this Hon"ble Court in anticipatory bail application and the petitioner is not going to claim that amount.

8. In the context of the submission, it has to be considered as to whether the allegation made in the complaint does constitute offence of cheating and misappropriation or not ?

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

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.

10. 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.

11. 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.

12. Here in the instant case, necessary ingredients of deception is lacking, which would be apparent from the averment made in para-3 of the complaint petition wherein it has been stated that since the petitioner was leading land dealer, the complainant agreed to purchase a piece of land for which, a sum of Rs. 1,50,000/- was paid. In that event, the petitioner can never be said to have deceived the complainant in any manner.

13. At this stage, I may refer to a decision rendered in the case of [Iridium India Telecom Ltd. Vs. Motorola Incorporated and Others](#), where the Hon"ble Supreme Court, taking notice of the provision as contained in 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. Thus, accepting the entire allegation to be true, no offence is made out u/s 420 of the Indian Penal Code.

14. Similar is the situation with respect to offence punishable u/s 406 of the Indian Penal Code as on the face of allegation made in the complaint, the said offence never gets constituted.

15. 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.

16. Here in the instant case, even if it is accepted that the petitioner has retained the money, he cannot be said to have dishonestly misappropriated as there was no intention right from the beginning to cheat or to misappropriate the amount, rather at best it does appear to be a case of civil dispute.

17. Having come to the conclusion that the allegations made in the complaint do not constitute offence of cheating and misappropriation, the entire criminal proceeding including the order dated 10.03.2008, taking cognizance is hereby quashed. In the result, this application is allowed.