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Jharkhand High Court

Case No: Criminal M.P. No. 630 of 2010

Manoj Ghosh Manoj Kumar Ghosh and Sachin Kumar Ghosh		APPELLANT
	Vs	
State of Jharkhand and Another		RESPONDENT

Date of Decision: Aug. 22, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3)
- Penal Code, 1860 (IPC) - Section 120B, 405, 406, 415, 420

Hon'ble Judges: Rakesh Ranjan Prasad, J

Bench: Single Bench

Advocate: I. Sinha, for the Appellant; R.S. Mazumdar for the O.P. No. 2, for the Respondent

Final Decision: Allowed

Judgement

R.R. Prasad

1. Learned counsel appearing for the petitioners and learned counsel appearing for the opposite party No. 2. This application has been filed for quashing of the entire criminal proceeding of Dhanbad P.S. Case No. 1125 of 2009 including the order dated 9.3.2010 passed by the then Chief Judicial Magistrate, In-charge, Dhanbad whereby and whereunder cognizance of the offences punishable under Sections 406, 420, 120B of the Indian Penal Code has been taken against the petitioners.

2. The case of the complainant in brief is that the petitioner No. 1 approached to the complainant and made request to provide him a friendly loan of Rs. 7.5 lacs and promised that the said amount will be repaid within three years. At that time, it was also communicated to the complainant that the matter may not be informed to the accused No. 2 (petitioner No. 2). When the payment was not made by the petitioner No. 1, the

complainant informed about it to the petitioner No. 2 (accused No. 2), who assured that the amount would be repaid but he also failed to repay the amount which had been taken by way of loan by the petitioner No. 1 and thereby it was alleged that the petitioners committed offence of criminal breach of trust and cheating. On the said allegation, a complaint was lodged which was sent before the concerned police station u/s 156(3) of the Code of Criminal Procedure for its registration and investigation. The police having investigated upon submitted charge sheet, upon which cognizance of the offence was taken, vide order dated 9.3.2010 which is under challenge.

3. Learned counsel appearing for the petitioners submits that accepting the entire allegation to be true, no offence is made out either of the criminal breach of trust or cheating.

4. As against this, learned counsel appearing for the informant submits that since the allegations are there of taking loan on the assurance that it would be repaid, the amount was never repaid rather the petitioners kept the amount with them and hence, offence of criminal breach of trust and cheating is made out.

5. In the context of the submission advanced on behalf of the petitioners, one needs to take notice of the provision as contained in Section 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.

6. 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.

7. 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.

8. Here in the instant case, nothing is there to show that the petitioner at the time of agreement fraudulently or dishonestly induced the complainant to part with the money and thereby no offence is made out u/s 420 of the Indian Penal Code.

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

10. On reading of the said provision it does appear that the following ingredients should be there for constituting the offence u/s 405 of the Indian Penal Code.

(a) person should have been entrusted with property or entrusted with dominion over property;

(b) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or willfully suffer any other person to do so;

(c) that such misappropriation, conversion, use or disposal should be in violation of any direction of laws prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.

11. Keeping in view the allegation made in the complaint, I do find that necessary ingredients to constitute offence of criminal breach of trust is also lacking.

12. Under the circumstances, the entire criminal proceeding of Dhanbad P.S. Case No. 1125 of 2009 including the order dated 9.3.2010 taking cognizance is hereby quashed. In the result, this application is allowed.