Hari Prasad Singhania Vs The State of Jharkhand and Others

Court: Jharkhand High Court

Date of Decision: July 30, 2003

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 202
Penal Code, 1860 (IPC) â€" Section 405, 406, 420

Citation: (2004) 2 JCR 105

Hon'ble Judges: Vikramaditya Prasad, J

Bench: Single Bench

Advocate: Kailash Prasad Deo, for the Appellant; Sadhna Kumar, for Opp. party No. 2, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Vikramaditya Prasad, J.
Heard both the sides.

This criminal miscellaneous application has been tiled for quashing the order dated 17.12.2002 paused by Shri Chamru Tanti, learned Additional

Sessions Judge, Dumka, in Cr. Rev. No. 79 of 2002/1 of 2002, whereby and whereunder the learned Additional Sessions Judge set aside the

order of taking cognizance dated 24.6.2002 passed by the Sub-Divisional Judicial Magistrate, Dumka, in P.C.R. Case No. 187 of 2002, of the

offence under Sections 420 and 406 of the Indian Penal Code by which the learned SDJM Dumka, issued process for appearance of the accused

of that case, who is opposite party No. 2, herein.

2. The short facts of this case are that the petitioner/complainant Hari Prasad Singhania has filed a complaint case against the opposite party No. 2

alleging therein that they were on friendly term and on the request of the opposite party No. 2, the petitioner handed over Rs. 53,000/- to him

which the accused/opposite party No. 2 undertook to return. On 12.10.1999 the opposite party No. 2 had also granted a hand receipt to the

complainant. When the opposite party No. 2 did not return the amount, the complainant approached him several times but the accused/opposite

party No. 2 delayed the matter on some pretext or the other and ultimately, on 15.5.2002 he refused to pay the amount. Thereafter the

complainant approached the concerned police Station but the police did not entertain the complainant then he filed the complaint case before the

Court and considering the evidence adduced on behalf of the complainant in course of enquiry u/s 202, of the Code of Criminal Procedure, the

Court issued summons against the opposite party No. 2 for his appearance.

3. In this criminal miscellaneous petition, the impugned order has been assailed on the ground that the order was an interlocutory one and

consequently the learned Additional Sessions Judge could not have entertained the revision and secondly, when the case was prima facie made out

disclosing the aforesaid offence, the order taking cognizance could not have been set aside.

4. The learned counsel for the petitioner relying on various decisions has argued that if there are criminal and civil remedy both available then the

existence of one remedy does not ban the right of the complainant to exercise the other remedy recording to his choice. He referred to a decision

reported in 2002 (3) JLJR 201 in this case. He also argued that when the prima facie case is made out and the witnesses who were examined u/s

202 of the Code of Criminal Procedure, have supported the case, then the right of the Magistrate is only to find out whether the offence as alleged

in the complaint is made out prima-facie, but at that stage the Magistrate had no Jurisdiction to write a judgment, therefore, order of the Magistrate

is correct which could not have been interfered with in revision.

5. In reply, the learned counsel for the opposite party No. 2 relying on various decisions reported in Sardar Singh Vs. State of Haryana, has

argued that when there is an agreement, there is no question of any cheating and the case pure and simple is a civil dispute then the continuance of

the criminal proceeding itself amounts to an abuse of the process of the Court and consequently, in revision the order taking cognizance can be set

aside.

6. From the facts of the case the following points will be evident:

(i) Both the complainant and the accused/opposite party No. 2 were on friendly term.

(ii) The complainant advanced money to the accused on his request.

(iii) The accused while taking money gave a hand receipt.

(iv) On the due date the accused did not return the money and ultimately refused to pay back the money.

7. In the complaint petition, which is Annexure-1 of this criminal miscellaneous petition, in every paragraph word ""entrustment"" has been written.

The learned counsel for the petitioner read out Section 405 of the Indian Penal Code to point out that it is a case of cheating. First part of the

offence under that section requires entrustment of property or with any dominion over property. Second part requires that the accused dishonestly

converts to his own use that property or dishonestly uses or dispossess 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 and thus there is a breach of trust. The petitioner says that had he known that the

accused would not return the money, he would not have handed over the money to him. In every case of loan the loanee is expected to ask for

loan and give undertaking to return the same. The learned counsel for petitioner is justified in saying that at the stage of cognizance, the Magistrate

has only to see whether the prima facie case is made out and he had no right to write the judgment. But undisputedly whether a prima facie case is

made out or not has to be examined. Meaning thereby that all the ingredients of a particular offence has to be found at the time of taking

cognizance. This aspect can be examined in revision. The Magistrate is also to go by the rulings of this Court. A decision of this High Court was

also circulated to all the Civil Courts, in which a clear mandate was given that in a case of purely civil dispute the cognizance cannot be taken.

8. In the aforesaid circumstances, when the Additional District Judge found that the ingredients of the offence under Sections 406 and 420 of the

Indian Penal Code arc not there and, therefore, the order-taking cognizance is bad. This order of the learned Addl. Sessions Judge is not illegal.

So far question of interlocutory order is concerned, this matter has not been very well discussed by the learned Additional District and Sessions

Judge and without going into the merit of the case it is held that the order of the Magistrate directing to issue process is not purely interlocutory

rather it becomes a final order. On this score also the learned Additional Sessions Judge is not wrong. Consequently, the impugned order docs not

suffer from either illegality or impropriety to require interference by this Court.

In the result I find no merit in this criminal miscellaneous application to admit it. It is accordingly dismissed at the stage of admission itself.