

(2012) 04 JH CK 0054

Jharkhand High Court

Case No: A.B.A. No. 782 of 2012

Ashish Kumar Jain

APPELLANT

Vs

The State of Jharkhand and
Prabhakar Patnaik

RESPONDENT

Date of Decision: April 27, 2012

Acts Referred:

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

Hon'ble Judges: Jaya Roy, J

Bench: Single Bench

Advocate: Mahesh Tewary and Sanjay Kumar, for the Appellant; Rahul Saboo, for the Respondent

Judgement

Hon"ble Mrs. Justice Jaya Roy

1. Heard the learned counsel for the petitioner, the learned counsel for the State and the learned counsel for the Opposite party no. 2. The petitioner apprehending his arrest in connection with Kotawali P.S. Case No. 937 of 2011 dated 11.10.11 corresponding to G.R. No. 5107/11 under Sections 420 / 406 / of the I.P.C.
2. The prosecution case in brief is that one Prabhakar Patnayak gave a written report addressed to office-in-charge, Kotwali P.S. Stating that the informant is working as Area Business Manager of M/s Bharat Biotech International Limited, Hyderabad and the company is a leading biotechnology company, manufacturing vaccines and bio-pharmaceuticals in India and is engaged in developing vaccines through innovative and collaborative research by spending several crores of rupees, The company is established with the help of the Department of Science and Technology and the company is also having collaboration with Bill and Melinda Gates Foundation for development various vaccines. As there is huge shortage of Anti-Rabies Vaccine in the country and the complainant company has entered into an agreement on 3.7.06 with M/s Srinath Distributors, a Partnership firm

represented by its partners Mr. Ashish Kumar Jain (petitioner), having its office at B-6, Prakash Bhawan, First Floor, Vishnu Talkies Lane, Main Road, Ranchi. The area of operation of the said firm as Consignee Sales Agent is the State of Jharkhand. The complainant company has got the rate contract with the Government of Jharkhand for supply of its Anti-Rabies Vaccine for the year 2008-2009. It is stated that the company has taken the-services of one Rahul Sales Corporation of Ranchi as its Liasioning Agent. It is further stated that the company has supplied its anti-Rabies Vaccine through its Distributor i.e. M/s Srinath Distributors to Rahul Sales Corporation a (sic) the rate contract fixed by the Government of Jharkhand and M/s Srinath Distributors used to collect the cheque in the name of Bharat Biotech International Limited (Complainant company) and used to deposit the same in the complainant company's bank account. The complainant company alleged that it has come to know that M/s. Srinath Distributors had deviated from the procedure and the complainant company has not received the amount and there is misappropriation of Rs. 80 lakhs by the petitioner company. It is further alleged that when the complainant company informed the matter to Ashish Kumar Jain (the petitioner), he gave written assurance by his letter dated 4.6.2010 in which he has mentioned in which he has agreed and mentioned the following things:

1. That we have made the payments in turn to the Company's Account through Bank from our collection as against the payments of M/s Rahul Sales, Ranchi to us. On verification we have noted this has not been credited to your account approximately Rs. 80, 00, 000/- (Eighty hundred thousand).
2. That at the current stage we have found round about Rs. 80, 00, 000/- (Eighty hundred thousand) has been manipulated by my employee, who has left the job about a month back without any notice it is a clear fraud on me by my person just because of my extra trust and confidence on him.
3. The complainant has further alleged in his complaint petition that he has given a demand draft Rs. 2, 50, 000/- on 5.6.2010 and Ten cheques drawn on Punjab National Bank, Raj Hospital, Main Road Ranchi, but waiting for long period as the petitioner had not remit any further amount to the informant company, the informant deposited the said cheques but the same were returned and dishonoured by the Bank.
4. Mr. Mahesh Tewary, the learned counsel for the petitioner has submitted that the petitioner is innocent and" he has been falsely implicated in this case. It is also submitted that basically it is a civil dispute and the petitioner deserves for anticipatory bail. It is also submitted that non-refunding of amount of advance would not constitute any criminal offence it may be breach of contract and thus, no case u/s 420 and 406 of the I.P.C. is made out against the petitioner.
5. Mr. Rahul Saboo, the learned counsel for the opposite party no. 2 has submitted that the letter dated 4.6.2010 sent by the petitioner clearly shows that the petitioner

has accepted that the aforesaid amount of Rs. 80, 00, 000/- has not been credited to the Account of the informant company and he has further accepted that the said amount has been manipulated by his employee. Thereafter, the petitioner has given a sum of Rs. 2, 50, 000/- in demand draft and Ten Cheques to the complainant company and assured him that he will remove the discrepancy. After waiting for long time and inspite of repeated demand when the petitioner did not pay the remaining amount, the informant deposited the said Ten cheques but those were dishonoured for insufficient of fund. Thus, the petitioner has intention to cheat the informant company and it cannot be said that the petitioner is not committed any criminal offence.

6. Earlier as both the parties had agreed to settle the dispute, I adjourned this case for number of times but the petitioner never agreed to give even a sum Rs. 25, 00, 000/- to the informant company. He is ready for only a sum of Rs. 5, 00, 000/- but the informant company did not agree to that amount. From the record, I find that the earlier also the court below asked the petitioner whether he is ready to pay of Rs. 80, 00, 000/- but the petitioner did not agree to pay any amount rather he has taken number of pleas and submitted that during the pendency of the case on direction of the informant, he has transferred some of Stocks to Patna and he has taken further plea that this is case of civil dispute. Considering all these aspect and considering that in the letter dated 4.6.2010. sent by the petitioner which he has not denied even before this court clearly shows that the petitioner has accepted that the aforesaid amount of Rs. 80, 00, 000/- has not been credited to the account of the informant company which is admittedly the informant company is entitled from the petitioner and further more the Ten Cheques given by the petitioner were dishonoured for insufficient fund and inspite the repeated demand, the petitioner is not ready to repay the amount to the informant company which clearly shows the petitioner's intention for cheating the informant I am not inclined to grant to anticipatory bail to the petitioner. Accordingly the prayer for anticipatory bail of the petitioner is, hereby rejected.