

Tarun Kumar Dutta and Gauranga Dutta Vs The State of Jharkhand and Md. Kalam Azad

Court: Jharkhand High Court

Date of Decision: July 29, 2009

Acts Referred: Negotiable Instruments Act, 1881 (NI) " Section 138
Penal Code, 1860 (IPC) " Section 406, 420

Hon'ble Judges: Prashant Kumar, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Prashant Kumar, J.

This is an application for quashing the entire criminal proceeding in connection with C.P. Case No. 494 of 2006

pending in the court of Sri Ramesh Chandra, Judicial Magistrate, Dhanbad including the order dated 11.8.2006 whereby and whereunder he took

cognizance of the offence u/s 406 of the IPC against the petitioners.

2. It appears that O.P. No. 2 filed a complaint alleging therein that in the year 2000, he took a shop on rent from petitioner No. 1 and 2 and

executed an agreement with regard to the same. It is further alleged that at that time he paid Rs. 1,20,000/- as advance, with stipulation that

petitioner will return the same at the time of termination of tenancy. It is further alleged that on 10.11.2005, the complainant vacated the shop

premises and the possession of the same was handed over to petitioner No. 1 and 2. It is further stated that after vacating the shop, complainant

requested the petitioners to return the advance money, but they did not return the same taking different plea and assured the complainant that

money will be returned in the month of December 2005. It is further alleged that in December 2005 petitioners told the complainant that he should

pay Rs. 10,000/- towards the maintenance of shop and then only advance money will be returned. It is stated that as instructed by the petitioners,

the complainant paid Rs. 10,000/- through cheque, but after receiving the said cheque the petitioners started misbehaving with the complainant and

they have said that they will not return the money. Thereafter the complainant sent a legal notice for return of the money but in spite of the same

they did not give any heed to the petitioner's request. Hence the present complaint has been filed.

3. It is submitted by the learned Counsel for the petitioner that present dispute arose between the parties out of an agreement of tenancy and

therefore the same is a civil dispute, which can be adjudicated by the civil court. Hence the order taking cognizance is an abuse of the process of

court; therefore, the same cannot be sustained by this Court. It is submitted that the present case has been filed as a counter blast of C.P. Case

No. 414 of 2006, filed by the petitioner No. 1 against the O.P. No. 2 u/s 138 of the N.I. Act and u/s 420 of the IPC, alleging therein that the

cheque issued by O.P. No. 2 has been dishonored by the bank concerned. Accordingly, it is submitted that the present criminal proceeding has

been instituted maliciously with an ulterior motive to put pressure on the petitioners to withdraw the aforesaid complaint petition. It is submitted that

on this ground also the present criminal proceeding is liable to be quashed by this Court.

4. On the other hand, learned APP submits that from the perusal of complaint petition, it is clear that the petitioners has taken advance of Rs.

1,20,000/- with a promise to return the same at the time of termination of tenancy. It is stated in the complaint petition that even the complainant

vacated the tenanted premises, the petitioners did not return the said money and therefore an offence of criminal breach of trust is made out against

the petitioners. Thus the court below had rightly took cognizance of the offence. It is further submitted that it is well settled that existence of an

alternative civil remedy would not be a bar in initiation of criminal proceeding. It is stated in the complaint petition that a lawyer's notice served

upon the petitioners for return of advance money as well as cheque on 2.1.2006, and the complaint petition was filed by the petitioners on

18.3.2006 i.e. after receipt of lawyer's notice, therefore, it cannot be said that the present complaint petition has been filed as a counter blast to

the said complaint petition. On the other hand it appears that the petitioners filed said complaint in retaliation of lawyer's notice.

5. Having heard the submission, I have gone through the records of the case. In the complaint petition, it is categorically mentioned that the O.P.

No. 2 paid an advance of Rs. 1,20,000/- to the petitioners at the time of entering into the shop as a tenant. It further appears that on 10.11.2005

the O.P. No. 2 vacated the said tenanted premises and requested the petitioners to return the said advance money. But, in spite of repeated

request, the petitioners did not return the same. Thus there is ample material in the complaint petition to show that advance of Rs. 1,20,000/- paid

to the petitioners and petitioners refused to return the same even on repeated demand. Aforesaid averments made in the complaint prima facie

shows that petitioners have committed criminal breach of trust. It has been held by their Lordships of Supreme Court in Ganpat Roy and Others

Vs. Additional District Magistrate and Others, that if from the allegation made in the complaint, prima facie offence u/s 406 of the IPC is made out

then the existence of alternate civil remedy would not bar criminal jurisdiction.

6. As noticed above, in the instant case, there is allegation of entrustment of Rs. 1,20,000/- to the petitioners and the petitioners were refusing to

return the same. Thus, in my view, justice demands that the complainant should be given an opportunity to prove his case at the trial and it is not

desirable to quash the entire proceeding at the threshold. It is of course open to the petitioners-accused to take defence at the time of trial, but this

is not the stage when the same is required to be considered for quashing the entire criminal proceeding.

7. So far the malice is concerned, it appears from the complaint petition itself that the advocate notice served upon the petitioners on 2.1.2006 for

returning the advance money as well as the cheque. It appears that petitioner No. 1 filed complaint case bearing C.P. Case No. 414 of 2006 in the

month of March 2006. Thus, whose allegation is correct it cannot be decided at this stage without appreciating the evidence adduced by the party

during trial. Moreover, I find that contention of petitioner that present complaint has been filed as counter blast of C.P. Case No. 414 of 2006 is in

the defence of accused petitioner and thus the same cannot be look into at this stage.

8. In view of aforesaid discussion, I find no merit in this application, the same is accordingly, dismissed.