

(2013) 1 AJR 184 : (2012) 4 JLJR 373

Jharkhand High Court

Case No: Criminal MP. No. 1078 of 2012

SMC Global Securities
Limited and Others

APPELLANT

Vs

State of Jharkhand and
Others

RESPONDENT

Date of Decision: Aug. 29, 2012

Acts Referred:

- Penal Code, 1860 (IPC) - Section 34, 406, 409, 420, 423

Citation: (2013) 1 AJR 184 : (2012) 4 JLJR 373

Hon'ble Judges: Rakesh Ranjan Prasad, J

Bench: Single Bench

Advocate: Bharat Kumar in 1078 of 2012 and Mr. Rama Kant Tiwary in 1340 of 2012, for the Appellant; Binod Singh for the O.P. No. 2 in 1078 of 2012 and Mr. Bharat Kumar for the O.P. No. 1 in 1340 of 2012, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

R.R. Prasad, J.

Since both the cases arise out of the same case, it were heard together and are being disposed of by this common order. One Sunil Kumar Agarwal, complainant (petitioner in Cr. MP. No. 1340 of 2012) by entering into an agreement dated 20.3.2010 opened a trading account with the Company, namely, SMC Global Securities Limited through its Managing Director, Subhash Chand Aggarwal and Manish Kumar, a Local Branch Manager of the Company to trade in equities (securities) or deal in its derivatives. Everything went on smoothly till 14.9.2010. Thereafter, it happened so that a cheque bearing no. 7952 of Rs. 70,000/- given by the complainant was first credited on 15.9.2010 but the same was debited on 1.10.2010 from the account of the complainant. Likewise, cheque no. 7953 of Rs. 71,000/- given by the complainant was first credited in the account on 21.9.2010 but it was debited on 19.10.2010, as a result of which the complaint

was forced to minimize his position of contract and thereby it suffered huge loss whereas the company was put to wrongful gain. On such allegation, complaint case bearing no. 590 of 2011 was lodged against M/s SMC Global Securities Limited, its Managing Director, Subhash Chand Aggarwal, Manish Kumar (petitioner in Cr. M.P. No. 1078 of 2010) and also against Rajesh Agarwal for commission of the offence under Sections 406, 409, 420, 423 and 424 of the Indian Penal Code. On such complaint, cognizance of the offence punishable u/s 406/34 of the Indian Penal Code was taken against Manish Kumar (petitioner no. 3) and one Rajesh Agarwal, vide its order dated 19.11.2011. Since cognizance of the offences was not taken against the Company and its Managing Director (petitioner nos. 1 and 2 of Cr. M.P. No. 1078 of 2012) of any of the alleged offences, the complainant preferred a criminal revision application before the learned Sessions Judge, Ranchi, vide Cr. Rev. No. 211 of 2011 whereas Manish Kumar (petitioner no. 3) and one Rajesh Agarwal being aggrieved with the said order under which cognizance was taken u/s 406/34 of the Indian Penal Code preferred a Cr. Rev. No. 13 of 2012.

2. Learned Sessions Judge, Ranchi having heard both the applications together did hold that the court below did commit illegality in not taking cognizance of the offence u/s 406/34 against the Company and its Managing Director (petitioner nos. 1 and 2 of Cr. M.P. No. 1078 of 2012). To that extent, Cr. Rev. No. 211 of 2011 was allowed whereas Cr. Rev. No. 13 of 2012 was dismissed.

3. Since cognizance of the offence was not taken mainly for the offence punishable u/s 409 of the Indian Penal Code, the complainant Sunil Kumar Agrawal has filed Cr. M.P. No. 1340 of 2012 whereas Cr. M.P. No. 1078 of 2012 has been filed not only by the Company and its Managing Director (petitioner nos. 1 and 2) against whom it was held that prima facie case is made out u/s 406/34 of the Indian Penal Code but also by Manish Kumar (petitioner no. 3) against whom cognizance of the offence has been taken by the court below. Under the circumstances, both the cases were heard together.

4. Learned counsel appearing for the petitioners submitted that it is true that a cheque of Rs. 70,000/- given by the complainant was first credited in his account on 14.9.2010 which was debited on 1.10.2010 but it was suppressed by the complainant in his complaint petition that the same was re-credited on 4.10.2010 after verification of the cheque. Likewise, cheque of Rs. 71,000/- credited on 20.9.2010 in the account of the complainant was debited on 19.10.2010 but again it has been suppressed that it was re-credited on 26.10.2010 after verification of the cheque and this was done as per the terms and condition of the agreement as debit and credit are subject to confirmation of the details pertaining to the cheque to be furnished by the client to the Company. Thus, verifications are done in routine manner to avoid any confusion relating to payment and that this system of verification is required to be undertaken as thousand of cheques of the various clients are being deposited at various locations of the country and if it is not resorted to, there is likelihood of mistake being committed whereby bona fide customer may suffer.

5. It was further submitted that since there has been delay of three days and seven days in re-crediting the amount of the cheques, this complaint has been lodged wherein allegation has been made of misappropriation, cheating on the premise that due to delayed re-crediting, the complainant has suffered loss of Rs. 5 lacs but the aforesaid fact would never give rise to the commission of offence of misappropriation or cheating.

6. In this regard it was further submitted that even the basic ingredients for constituting offence of misappropriation is lacking as it is never the case of the complainant that on account of fraudulent and dishonest inducement, the complainant did part with the money.

7. It was further submitted that for resolving this kind of disputes complete mechanism pertaining to share market is there under the provisions of the Securities and Exchange Board of India, the Securities Contract and Regulation Act and bye-laws of the National Stock Exchange of India and therefore, when grievance was raised by the complainant, the matter was referred to the Grievance Cell of the Exchange whereby no illegality was found on the part of the petitioners and the matter was closed which was intimated to the complainant, vide letter dated 3.5.2011.

8. Thus, it was submitted that whatever dispute was there, that related to executed agreement which if at all fasten any liability that would be of civil liability and not the criminal liability but the court below without taking into account all these aspects of the matter, did take cognizance of the offence punishable u/s 406/34 of the Indian Penal Code which is quite illegal and hence, the orders passed by the court below and also by the revisional court are fit to be set aside.

9. As against this, learned counsel appearing for the complainant submitted that it is true that amount of the two cheques which had been debited had been re-credited in the account of the complainant but there was no justification on the part of the petitioners to debit the account of the aforesaid two cheques as it was never the third party cheque and in similar situation, the company never proceeded with debiting the amount of the other cheques given by the complainant and thereby it can easily be said that there was criminal intent on the part of the accused persons to misappropriate the amount so as to put the complainant to loss and to wrongful gain to the company.

10. Under the circumstances, it was submitted that the court below should not have only taken cognizance of the offence u/s 406 but also for an offence u/s 409 of the Indian Penal Code.

11. Having heard learned counsel appearing for the parties, the only dispute upon which the complaint has been lodged is that cheques of Rs. 70,000/- and Rs. 71,000/- when were deposited with the Company, the amount was firstly credited in the account of the complainant and then it was debited which, according to the case of the petitioners, supported by the documents never disputed by the complainant were re-credited and

there was delay of 3 days and 6 days in re-crediting the amount and this delay did occur on account of verification being made which is being done in a routine manner in terms of the agreement and also in accordance with the guidelines issued by the Securities and Exchange Board of India (SEBI) so that there may not be any fault causing loss to any client.

12. However, it is the stand of the complainant that there was no justification on the part of the Company to debit the amount from the account so as to put the complainant to a great loss.

13. In this context, it is to be looked into as to whether any offence u/s 405 which is punishable u/s 406 of the Indian Penal Code is made out or not. 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 wilfully suffers any other person so to do commits "Criminal breach of trust".

14. On reading of the said provision, the following ingredients should be there for constituting offence u/s 405 of the Indian Penal Code.

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

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

(c) that such misappropriation, conversion, use of 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.

15. In the facts and circumstances as noted above, there does not appear to be any fraudulent or dishonest intention right from the beginning on the part of the petitioner to misappropriate the amount as it is the case of the complainant that after entering into an agreement transactions were made but no dispute was there till 14.9.2010.

16. Furthermore, the amount seems to have been debited as per the norms prevailing and also as per the agreement and as such, it can never be the case of dishonest misappropriation. Thus, the court below seems to have committed illegality in taking cognizance of the offence punishable u/s 406/34 of the Indian Penal Code.

17. Accordingly, the orders passed by the trial court and also by the revisional court whereby cognizance of the offences has been taken against the petitioners are hereby set aside. In the result, Cr. M.P. No. 1078 of 2012 is hereby allowed whereas Cr. M.P. No. 1340 of 2012 stands dismissed.