

(2014) 02 JH CK 0045

Jharkhand High Court

Case No: Cr. M.P. No. 1205 of 2013

Baleshwar Mishra

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision: Feb. 25, 2014

Acts Referred:

- Penal Code, 1860 (IPC) - Section 405, 406, 415, 420, 463

Citation: (2014) 3 JLR 313

Hon'ble Judges: Rakesh Ranjan Prasad, J

Bench: Single Bench

Advocate: Pandey Neeraj Rai, Rohit Ranjan Sinha and S. Pandey, Advocate for the Appellant

Judgement

@JUDGMENTTAG-ORDER

Rakesh Ranjan Prasad, J.

Heard learned counsel appearing for the petitioner and also learned counsel appearing for the State as well as learned counsel appearing for the opposite party No. 2. This application has been filed for quashing of the entire criminal proceeding including the FIR of Kanke P.S. Case No. 16 of 2013 registered under Sections 406, 420, 467, 468, 471 of the Indian Penal Code against the petitioner.

2. Before advertng to the submissions advanced on behalf of the parties, case of the complainant needs to be taken notice of.

3. It is the case of the complainant that he happens to be a member of Adarsh Grih Nirman Sahyog Samiti, a Society registered under the Societies Registration Act. The aforesaid Society had acquired a piece of land for the purpose of its allotment among the members. In between 1983-84, the complainant deposited amounts under different heads for the purpose of allotment of a piece of land bearing plot No. A/15, measuring 10 decimals. It was allotted. After the allotment, the

complainant invested huge money in raising boundary wall over the plot.

4. Further case is that the petitioner being the Honorary Secretary of the aforesaid Society after cancelling the allotment fraudulently deposited a sum of Rs. 1,97,216/- in the account of the complainant. Subsequent to that, the petitioner sent 20 Bank Drafts amounting to Rs. 9,89,000/- to the complainant under registered post. That amount, the petitioner had received as a sale price from a person, who was allotted "the same plot which had earlier been allotted to the complainant. On coming to know about this, the complainant made complaint before the District Cooperative Officer, Ranchi. When the complainant did smell some foul play on the part of the petitioner, the complainant returned back 20 Bank Drafts through registered post but the petitioner refused to receive that letter. Thus, it has been alleged that the petitioner had no jurisdiction to allot to other person the plot which had been allotted to the complainant and in this manner, the petitioner committed offence of forgery by creating document in the name of the Society only for its own personal gain and for cheating and deceiving the complainant.

5. On such allegation, a case was registered as Kanke P.S. Case No. 16 of 2013 under Sections 406, 420, 467, 468 and 471 of the Indian Penal Code. That FIR is under challenge.

6. Mr. Pandey Neeraj Rai, learned counsel appearing for the petitioner submits that accepting the entire allegation made in the FIR to be true, no offence is made out either of forgery or of cheating and also of criminal breach of trust as the petitioner has never been alleged to have defrauded the complainant in any manner. It is a simple case of the complainant that plot was allotted to him on deposit of certain amount. Subsequently, the amount deposited by the complainant was returned back to him when the said plot which had earlier been allotted to the complainant was allotted to third person and the reason being that certain terms and conditions which had been fixed at the time of allotment had not been fulfilled by the complainant but this is the defence of the petitioner and even if this defence is not taken, the point which is available to the petitioner, is that on the face of allegation made in the complaint, no offence either of forgery or criminal breach of trust or even cheating is made out.

7. As against this, learned counsel appearing for the opposite party No. 2 submits that the petitioner being Honorary Secretary was not competent to cancel the allotment and to reallocate it to third person and thereby the action of the petitioner was without any authority and in that event, it can easily be said that the petitioner did commit offence of forgery and cheating.

8. It was further submitted that power of canceling the allotment lies with the Managing Committee of the Society which needs to have its approval by the General Body but in the case no such procedure was adopted, rather the petitioner on its own has cancelled the allotment and thereby he can be said to have committed

offence of forgery. Moreover, the charge-sheet has already been submitted.

9. Thus, on one hand, the plea which has been taken on behalf of the petitioner is that accepting the allegations what have been made against the petitioner of canceling the allotment without there being any authority is accepted, no offence under which FIR has been registered is made out. On the other hand, the submission which had been advanced on behalf of the informant is that since the petitioner without having any authority has cancelled allotment of the petitioner the act of the petitioner does constitute offence of cheating.

10. Therefore, it is to be considered as to whether the allegations made in the FIR do constitute offences of cheating, criminal breach of trust or forgery or not?

11. The offence of cheating has been defined under 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"."

12. 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."

13. Thus, the first element necessary for constituting the offence of cheating is deception of the complainant by the accused. Unless there is deception, the offence of cheating never gets attracted. After deception has been practiced the persons deceived should get induced to do or omit to do something.

14. Here in the instant case, one can find that there is absolutely no allegation of any deception as it is simple case of the complainant that on deposit of money, he was allotted a plot. It has never been the case of the complainant that on being induced fraudulently or dishonestly, the money was deposited for allotment of the plot.

15. Thus, the first element of deception constituting offence of cheating is lacking and therefore, question of commission of offence of cheating does not arise.

16. So far as the offence under Section 406 of the Indian Penal Code 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".

17. On reading of the said provision, the following ingredients should be there for constituting the offence under Section 405 of the Indian Penal Code:--

"(a) 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."

18. In the background of the allegation made in the FIR, I do not find any of the ingredients mentioned above being fulfilled. Hence, it can easily be said that no offence of criminal breach of trust is made out.

19. Coming to other aspect of the matter, it be stated that forgery has been defined under Section 463 of the Indian Penal Code which does stipulate that making of false document is forgery. Section 464 speaks about making a false document. Following acts of a person would amount to making a false document:--

"The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a documents in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of:--

(a) unsoundness of mind;

(b) intoxication; or

(c) deception practiced upon him, know the contents of the document or the nature of the alteration.

In short, a person is said to have made a "false statement", if (i) he made or executed a document claiming to be someone else or authorized by some one else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practicing deception, or from a person not in control of his senses."

20. In other words, it can be said that where a person fraudulently or fraudulently (sic--dishonestly?) makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by authority of some other person, by whom or by whose authority he knows it was not made or executed, he can be said to have made a false document.

21. Further it does appear that where a person dishonestly or fraudulently, by cancellation or otherwise, alters a documents in any material part, without lawful authority, after it has been made or executed by either himself or any other person and further where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of unsoundness of mind, intoxication or deception practiced upon him, know the contents of the document or the nature of the alteration, still it would be a case of making false document.

22. Here, the allegation made in the complaint never fall in any of the category of making a false document. In that event, the question of commission of offence either under Sections 467, 468 or 471 of the Indian Penal Code does not arise.

23. Thus, I do find that the allegations made in the complaint do not constitute offence under which FIR has been registered.

24. Accordingly, FIR is hereby quashed. In the result, this application stands allowed.