

HIGH COURT OF JHARKHAND**Bench: Justice Sanjay Kumar Dwivedi****Date of Decision: 18 January 2024**

Cr.M.P. No. 360 of 2016

Kiran Kumar Petitioner**-- Versus --****The State of Jharkhand and Another Opposite Parties****Legislation:**

Sections 406, 420 of the Indian Penal Code (IPC)

Section 138 of the Negotiable Instruments Act

Section 156(3), 482 of the Cr.P.C

Subject: Petition for quashing the entire criminal proceeding arising out of Dhanbad (Dhansar) P.S. Case No.965 of 2014, G.R. No.4477 of 2014, including the order taking cognizance dated 24.07.2015 pending in the court of learned Judicial Magistrate, 1st Class, Dhanbad.

Headnotes:

Criminal Proceedings – Quashing – Cheating and Criminal Breach of Trust – Dispute of non-payment of bills under a contract – Allegations of issuing dishonored cheques – High Court quashes entire criminal proceedings including order taking cognizance, finding the dispute to be primarily civil in nature. [Para 10-11]

Intention to Cheat – Importance of intention in cases of cheating – No cheating if intention to deceive is not present from the beginning – Payment made through RTGS suggests absence of initial intent to

cheat – Relevance of subsequent conduct in determining intention.
[Para 10]

Negotiable Instruments Act – Dishonored Cheques – Reference to Section 138 for dishonored cheques – Complaint made under IPC sections 406, 420 instead of Section 138 of the Negotiable Instruments Act – Inherent power of High Court to quash criminal proceedings when dispute is essentially civil. [Para 10-11]

Judicial Discretion – High Court’s power under Section 482 CrPC – High Court’s discretion to quash proceedings to prevent abuse of legal process and ensure justice – Consideration of overall circumstances and motive behind the initiation of criminal proceedings. [Para 10-11]

Civil Nature of Dispute – Recognition of disputes as civil rather than criminal – Emphasis on the nature of the dispute being related to payment under a contract – High Court’s observation on misuse of criminal justice system for personal vengeance or civil disputes. [Para 13-14]

Decision – Quashing of Entire Criminal Proceeding – High Court exercised its inherent power under Section 482 Cr.P.C – Noted that any civil proceedings may continue unaffected by this order. [Para 11]

Referred Cases:

- Satish Mehra v. State (N.C.T of Delhi) and Another, (2012) 13 SCC 614
- Binod Kumar and Others v. State of Bihar and Another, (2014) 10 SCC 663
- Vir Prakash Sharma v. Anil Kumar Agarwal and Another, (2007) 7 SCC 373
- Haji Iqbal @ Bala through S.P.O.A. v. State of Uttar Pradesh and Others, 2023 SCC Online SC 946

Representing Advocates:

Mr. Deepak Kumar Sinha for Petitioner

Mrs. Priya Shrestha for the State

Mr. Deepankar Roy for the JUVNL

JUDGEMENT

6/18.01.2024 Heard Mr. Deepak Kumar Sinha, the learned counsel appearing for the petitioner, Mrs. Priya Shrestha, the learned counsel appearing on behalf of the respondent State and Mr. Deepankar Roy, the learned counsel appearing on behalf of the Opposite Party No.2.

2. This petition has been filed for quashing of the entire criminal proceeding arising out of Dhanbad (Dhansar) P.S. Case No.965 of 2014, G.R. No.4477 of 2014, including the order taking cognizance dated 24.07.2015 pending in the court of learned Judicial Magistrate, 1st Class, Dhanbad.

3. The complaint case has been filed which was sent under section 156(3) of the Cr.P.C. alleging therein that O.P.No.2 is a transporter carrying business of M/s Maa Biswanath & Co., Dhanbad. The O.P.No.2 was placed with an order by one M/s Jobby Infrastructure Pvt Ltd., Mumbai to employ 7 nos. of Hywa (Tata Tipper) from Dhori Kalyani Project, Bokaro through its General Manager on 1.10.2013. In response to the same, the O.P.No.2 deployed 7 nos. of Hywa in said work and agreed to pay Rs.1,45,000/- per Hywa. Those vehicles employed for transportation and work was only for six months. The petitioner being proprietor with criminal intent induced O.P.No.2 that the work order issued to M/s Jobby Infrastructure Pvt. Ltd. had left the said work 5 days ago without information. The petitioner in said letter wrote that even under this situation we have to maintain the continuity of work without any loss and time and without any apprehension of not getting the payment and stated that the petitioner made the payment for work executed by the said company till October, 2013 and the payment due or may be payable after Oct.2013, Nov.2013 and Dec.2013 shall also be made by the petitioner. On getting said assurance the O.P.No.2 has employed 7 nos. of Hywa in the work.

O.P.No.2 raised bills of Rs.64,12,747/- only from Oct. 2013 to March, 2014. Out of Rs.64,12,747/- the petitioner paid Rs.7,00,000/- on 27.12.2013 and Rs.9,00,000/- on 15.4.2013 through RTGS and total due amount is Rs.48,12,747/-. Petitioner took all responsibility in the said letter dated 22.3.2014 in respect of execution of the said work and the petitioner fraudulently knowing the fact regarding insufficiency of his fund in his bank account issued the three cheques being No.418111 dt. 10.05.2014 for Rs.15,00,000/-, No.418112 dt. 25.5.2014 for Rs.15,00,000/- and no.418113 dt.1.6.2014 for Rs.18,00,000/-.

4. Mr. Deepak Kumar Sinha, the learned counsel appearing on behalf of the petitioner submits that the matter is of the year 2016 and earlier the interim protection was there, however, the learned court has framed the charge. He submits that if the charge is framed and the case is not made out, the Court can interfere at any stage under section 482 Cr.P.C and to buttress his such argument he relied in the case of Satish Mehra v. State (N.C.T of Delhi) and Another, (2012) 13 SCC 614. Paragraph no.14 of the said judgment is quoted below:

14. The power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that in case the allegations made in the FIR or the criminal complaint, as may be, prima facie do not disclose a triable offence, there can be reason as to why the accused should be made to suffer the agony of a legal proceeding that more often than not gets protracted. A prosecution which is bound to become lame or a sham ought to be interdicted in the interest of justice as continuance thereof will amount to an abuse of the process of the law. This is the core basis on which the power to interfere with a pending criminal proceeding has been recognised to be inherent in every High Court. The power, though available, being extraordinary in nature has to be exercised sparingly and only if the attending facts and circumstances satisfy the narrow test indicated above, namely, that even accepting all the allegations levelled by the prosecution, no offence is disclosed. However, if so warranted, such power would be available for exercise not only at the threshold of a criminal proceeding but also at a relatively advanced stage thereof, namely, after framing of the charge against the accused. In fact the power to quash a proceeding after framing of charge would appear to be somewhat wider as, at that

stage, the materials revealed by the investigation carried out usually come on record and such materials can be looked into, not for the purpose of

determining the guilt or innocence of the accused but for the purpose of drawing satisfaction that such materials, even if accepted in their entirety, do not, in any manner, disclose the commission of the offence alleged against the accused.

5. Relying on the said judgment, he submits that at this stage if the case is not made out, the Court can interfere. He further submits by way of referring the complaint petition that the allegations are made of dishonestly three cheques issued by the petitioner, however, the case is tried to be made out under section 406, 420 of the I.P.C. By way of referring paragraph nos.12 and 13 of the complaint petition, he submits that the averments are there of attraction of section 138 of the Negotiable Instruments Act. However, only to make out the case as no case was filed by the O.P.No.2 under section 138 of the Negotiable Instruments Act the complaint case is filed and the learned court has been pleased to take cognizance under section 420, 406 of the I.P.C. He submits that there is admission that certain amount to the tune of Rs.7 lac and Rs.9 lac was paid through the R.T.G.S. He submits that in view of that the intention from the very beginning to cheat is not there. He submits that the allegations are made of not paying the bill amount raised by the O.P.No.2. He further submits that if any case is made out that is civil in nature and in view of that the entire criminal proceeding may kindly be quashed. To buttress his such argument, he relied in the case of Binod Kumar and Others v. State of Bihar and Another, (2014) 10 SCC 663. Paragraph nos.11, 14, 15, 18 and 19 of the said judgment are quoted below:

“11. Referring to the growing tendency in business circles to convert purely civil disputes into criminal cases, in paras 13 and 14 of Indian Oil Corpn. case [Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188] , it was held as under : (SCC pp. 748-49)

“13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately

protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In *G. Sagar Suri v. State of U.P.* [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] , this Court observed : (SCC p. 643, para 8)

‘8. ... It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.’

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings

are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may.”

14. At this stage, we are only concerned with the question whether the averments in the complaint taken at their face value make out the ingredients of criminal offence or not. Let us now examine whether the allegations made in the complaint when taken on their face value, are true and constitute the offence as defined under Section 406.

15. Section 405 IPC deals with criminal breach of trust. A careful reading of Section 405 IPC shows that a criminal breach of trust involves the following ingredients:

(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 wilfully suffer any other person to do so;

(c) that such misappropriation, conversion, use or disposal should be in violation of any direction of law 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 present case, looking at the allegations in the complaint on the face of it, we find that no allegations are made attracting the ingredients of Section 405 IPC. Likewise, there are no allegations as to cheating or the dishonest intention of the appellants in retaining the money in order to have wrongful gain to themselves or causing wrongful loss to the complainant. Excepting the bald allegations that the appellants did not make payment to the second respondent and that the appellants utilised the amounts either by themselves or for some other work, there is no iota of allegation as to the dishonest intention in misappropriating the property. To make out a case of criminal breach of trust, it is not sufficient to show that money has been retained by the appellants. It must also be shown that the appellants dishonestly disposed of the same in some way or dishonestly retained the same. The mere fact that the appellants did not pay the money to the complainant does not amount to criminal breach of trust.

19. Even if all the allegations in the complaint taken at the face value are true, in our view, the basic essential ingredients of dishonest misappropriation and cheating are missing. Criminal proceedings are not a shortcut for other remedies. Since no case of criminal breach of trust or dishonest intention of inducement is made out and the essential ingredients of Sections 405/420 IPC are missing, the

prosecution of the appellants under Sections 406/120-B IPC, is liable to be quashed.”

6. Relying on the above judgment, he submits that there is no criminal breach of trust and in view of that, the entire criminal proceeding may kindly be quashed. He further submits that the entire case is civil in nature and for that criminal case has been lodged, which is against the mandate of law. He further relied in the case of Vir Prakash Sharma v. Anil Kumar Agarwal and Another, (2007) 7 SCC 373. Paragraph nos.2, 7, 8, 9 and 12 of the said judgment are quoted below:

“2. The parties hereto entered into a contract for sale and purchase of welding rods. The appellant allegedly did not pay some amount due from him towards supply of the said article. He issued two cheques for a sum of Rs 3559 and Rs 3776 in the year 1983. The said cheques were dishonoured. Alleging that by reason of such act, the appellant has committed offences under Sections 406, 409, 420 and 417 of the Penal Code, a complaint petition was filed by the first respondent in the Court of Special Judicial Magistrate, Rampur which was marked CC No. 132 of 1986. The principal allegation made therein against the appellant reads as under:

“That the applicant, regarding these cheques and payment of money, wrote several times to the accused and also sent his representative. But he kept on making excuses in making payment. At last he told on 19-12-1985 that he had issued fabricated cheques knowingly with an intention to cheat him and grab his money. He would not pay his money, he is free to take any action, whatever he likes.”

7. The principle underlying exercise of jurisdiction by the High Court under Section 482 of the Code of Criminal Procedure is now well settled viz. that the allegations contained in the complaint petition even if given face value and taken to be correct in its entirety do not disclose an offence or not is the question.

8. The dispute between the parties herein is essentially a civil dispute. Non-payment or underpayment of the price of the goods by itself does not amount to commission of an offence of cheating or criminal breach of trust. No offence, having regard to the definition of criminal breach of trust contained in Section 405 of the Penal Code can be said to

have been made out in the instant case. Section 405 of the Penal Code reads, thus:

“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’.”

Neither any allegation has been made to show existence of the ingredients of the aforementioned provision nor any statement in that behalf has been made.

9. Ordinarily, bouncing of a cheque constitutes an offence under Section 138 of the Negotiable Instruments Act. No complaint thereunder had been taken.

12. In *Hridaya Ranjan Prasad Verma v. State of Bihar* [(2000) 4 SCC 168 : 2000 SCC (Cri) 786] this Court held: (SCC pp. 176-77, paras 14-15)

“14. On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.

15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the

beginning of the transaction, that is, the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.”

(See also Indian Oil Corpn. v. NEPC India Ltd. [(2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188])”

7. Relying on the above judgment, he submits that criminal breach of trust is not made out. He further submits that if any case is made out, that is under section 138 of the Negotiable Instruments Act and no complaint can be entertained under section 406, 420 of the I.P.C. Relying on the above judgments, he submits that the entire criminal proceeding may kindly be quashed.

8. Mr. Deepankar, the learned counsel appearing on behalf of the O.P.No.2 submits that the case is made out and the learned court has rightly taken cognizance. He further submits that earlier an agreement was entered, however, the petitioner was called upon to work and the O.P.No.2 has worked with the petitioner and the payment is not made and in view of that the case is made out.

9. Mrs. Nehala Sharmin, the learned counsel for the respondent State submits that the case is made out and the learned court has rightly taken cognizance.

10. The Court has gone through the contents of the complaint which was sent under section 156(3) of the Cr.P.C, and finds that there are allegations of agreement between the parties for certain work to be executed by the O.P.No.2 and it has been alleged that the bill has been raised and the entire amount has not been paid. At paragraph no.7, it is admitted that Rs.7 lac and Rs.9 lac has been paid through R.T.G.S to the O.P.No.2 which suggest that the intention of cheating from the very beginning is not there. It is well settled that if the intention from the very beginning is not there, the case of cheating cannot be made out. In paragraph no.9, three cheques numbers have been disclosed which further suggest that if any case is made out that is under section 138 of the Negotiable Instruments Act and it has been

tried to make out the case of cheating. In frivolous and vexatious proceedings the Court is posed with a duty to look into many other attending circumstances emerging from the case over and above the averments if need be with due care and circumspection try to read the things in between the lines because once the complainant decides to proceed against the accused with ulterior motive for wrecking personal vengeance etc. then he could ensure that the F.I.R /complaint is very well drafted with all necessary pleadings. The complainant would ensure that averments made in the complaint /F.I.R are such that they would disclose the necessary ingredients to constitute the alleged offence. Therefore, it is not just enough for the Court to look into the averments made in the complaint/ F.I.R to constitute the alleged offence are disclosed or not. The Court sitting under section 482 Cr.P.C and under Article 226 of the Constitution of India need not restrict itself only to the stage of the case but it is empowered to take into account the over all circumstances leading to the initiation of registration of the case as well as the materials collected in course of the investigation. A reference may be made to the case of Haji Iqbal @ Bala through S.P.O.A. v. State of Uttar Pradesh and Others, 2023 SCC Online SC 946. Coming to the present case, in paragraph nos. 12 and 13 of the complaint, it is clearly stated that the case is made out under section 138 of the Negotiable Instruments Act. However, it has been further tried to make out a case under section 420, 406 of the IPC. In paragraph no.9 of he complaint, three cheques numbers have been disclosed and the amount is also there. In view of that if any case is made out, that is under section 138 of the Negotiable Instruments Act, however, the learned court has taken cognizance under section 406, 420 of the IPC. Paragraph no.7 of the complaint speaks of paying a sum of Rs.7 lacs and Rs.9 lacs through R.T.G.S. which suggest that payment with regard to bill is there, however, the dispute is with regard to payment of further amount are there for which the bill has been raised by the O.P.No.2. Thus, there is no intention from the very beginning to cheat and no case under section 406, 420 I.P.C is made out. In view of the facts discussed hereinabove, the case of the petitioner is fully covered in light of the judgment of the Hon'ble Supreme Court in the case of 'Vir Prakash Sharma' and 'Binod Kumar and Others' (supra) relied by the learned counsel for the petitioner. In view of these facts, the Court can

exercise inherent power at this stage also as held by Hon'ble Supreme Court in case of 'Satish Mehra'(supra).

11. In view of the above reasons and analysis, entire criminal proceeding arising out of Dhanbad (Dhansar) P.S. Case No.965 of 2014, G.R. No.4477 of 2014, including the order taking cognizance dated 24.07.2015 pending in the court of learned Judicial Magistrate, 1st Class, Dhanbad are quashed.

12. This petition is allowed and disposed of.

13. It is made clear that if any civil proceeding is there, that will be decided in accordance with law without prejudice to this order as this order is passed only in light of the parameters of section 482 Cr.P.C which is meant for quashing of the entire criminal proceeding.

14. Pending petition if any also stands disposed of accordingly.

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