

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment reserved on: May 04, 2011
Judgment decided on: May 24, 2011

+ **CRL.M.C. 1490/2009**
M/S. INFOPAC SOFTWARE PVT. LTD. & ANR.

....PETITIONERS

Through: Mr. O.P.Aggarwal, Advocate with Mr.
Nirmal Mittal, Advocate.

Versus

M/S. ELOFIC INDUSTRIES LTD. RESPONDENT

Through: Mr. P.R.Sikka, Advocate with Mr.
V.K.Gupta, Advocate.

CORAM:
HON'BLE MR. JUSTICE AJIT BHARIHOKE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

AJIT BHARIHOKE, J.

1. M/s. Infopac Software Pvt. Ltd. and its Managing Director Shri P.R. Seshadri vide this petition under Section 482 Cr.P.C. are seeking quashing of the complaint No.36/1/2003 filed against them by the respondent alleging commission of offence under Section 403, 405, 415, 420 and 120B IPC pending in the court of ACMM, Patiala House Courts, New Delhi.

2. Briefly stated, facts relevant for the disposal of this petition are that M/s. Elofic Industries Ltd (respondent) filed above referred criminal complaint against the petitioners claiming that the petitioner No.1 is a

company dealing in the development and implementation of computer software and petitioner No. 2 is the Managing Director of petitioner No.1 company. Earlier, he was the Chief Consultant of the company. It is alleged in the complaint that the petitioners/accused persons contacted the respondent through its Hosur Office and thereafter submitted their request for consideration of their Enterprise Resource Planning (ERP) Software for implementation vide their letters dated 27th March, 1999 and 28th April, 1999. In the said letters, the petitioners have made a false and exaggerated picture of their expertise in the development of software and on being misled by said misrepresentation, the respondent company entered into a software supply and implementation contract with petitioner No. 1 company on 18th October, 1999. The contract was duly executed and signed on behalf of the petitioner company by petitioner No. 2.

3. It is alleged in the complaint that pursuant to their design to cheat the respondent/complainant, the petitioners sent their team to the respondent's location at Faridabad in early November, 1999 for commencement of the work of development of software. The staff of the petitioners interacted with each department of the complainant/respondent and formulated system design documents for each of the department. The work of development of software as per the system design documents commenced thereafter with regular meetings to review the progress of the project and update customization requirements. The main effort of the petitioners' team

was to develop the purchase, inventory and MRP-I Modules by April, 2000 with some work also to be put in for the development of sales, finance and excise modules. However, the team sent by petitioner No. 1 company though ostensibly engaged in the development of software as per contract but actually the team's commitment to do the software development work was lacking and they kept on misleading the complainant regarding the actual projects.

4. In the process, it is alleged that the petitioners managed to receive ₹ 5 lakhs from the complainant company out of the contract value of ₹ 7.8 lakhs, although not even a single module developed by the petitioners team was fully functional even six months after the commencement of development work.

5. It is also the case of the complainant that the petitioners were kept regularly informed about the problems and shortcomings in the various Modules so far development vide various letters and emails sent by the complainant. When the petitioners realised the futility of their dishonest design to extract further payments from the respondent complainant on the pretext of progress in completion of software, they withdrew their team from the complainant's location after mid June, 2000 on the pretext that they were required to attend a technical upgradation seminar as also to discuss the progress of all pending issues relating to the project. This withdrawal was done despite the

complainant's objection that the team should not be withdrawn without completion of software.

6. That a meeting was held in the petitioners office in Bangalore on 19.07.2000 and an MOU was signed between two parties regarding further development and completion of the contract and the payment schedule with special reference to the module wise final execution summary which contains a list of reports that were to be completed for implementation. The petitioners were informed of all the shortcomings in the software so far development vide complainant's letter dated 18th August, 2010.

7. That pursuant to the MOU, the petitioners sent two coordinators to the location of the complainant/respondent for implementation activities at Hosur. The said two coordinators, however, had to return after spending 22 days at the respondent's location without being able to assist in implementation of software at Hosur. Subsequently, after the repeated reminders, a representative of the petitioner visited the complainant's location at Faridabad in November, 2000 and signed minutes of meeting dated 10.11.2000 purportedly with a CD of software package for testing and implementation. The CD project by the representative of the petitioners was found to be awfully inadequate and not in conformity with the agreed customisation requirement. All the shortcomings in the CD was brought to the notice of the petitioner, but those were not corrected.

8. That team sent by the petitioners periodically worked at the respondent's location at Faridabad during year 2001, but to no advantage. On the aforesaid allegations, respondent claimed that the petitioners have cheated the respondent of ₹5 lakhs on the basis of false representation about their expertises in development of the software which the petitioner was not capable of developing.

9. Learned M.M. took cognizance of the complaint and after conducting preliminary inquiry issued process under Section 204 Cr.P.C. summoning the petitioners to appear and undergo trial for the offence punishable under Section 420 IPC.

10. Learned counsel for the petitioners has submitted that the above referred complaint No. 36/1/2003 pending in the court of ACMM, Patiala House Courts, New Delhi and the summoning order dated 04th March, 2009 issued by the concerned Magistrate against the petitioners are liable to be quashed for the reason that the allegations in the complaint disclose only a dispute of civil nature regarding which, admittedly, a suit for recovery has been filed by the complainant/respondent against the petitioner company and the allegations do not disclose commission of the offence of cheating. Learned counsel contended that Section 415 of the IPC defines the offence of cheating and one of the most essential ingredients of cheating is the dishonest intention, which is lacking in this case. Learned counsel argued that it would be evident from the allegations in

the complaint that the petitioners had every intention to fulfil their obligations under the contract and pursuant to their desire to do so, the petitioner company admittedly sent a team of workers to develop software programme, which continued to work for the respondent at their location at Faridabad initially for a period of about six months and even thereafter. This conduct of the petitioners, it is submitted, rules out any intention to deceive or cheat the respondent/complainant. Thus, learned counsel for the petitioners has strongly urged for quashing of the complaint, summoning order dated 04th March, 2009 and the subsequent proceedings.

11. Learned counsel for the complainant/respondent, on the other hand, has submitted that the allegations in the complaint do disclose the commission of offence of cheating as defined under Section 415 IPC. He contended that from the allegations in the complaint, it is obvious that petitioner company did not have the necessary expertise to develop the software programme as per the requirement of the respondent/complainant company. The petitioner company made exaggerated claim regarding their expertise which they did not have and this misrepresentation alone misled the respondent to enter into a contract with the petitioner company and part with a sum of ₹ 5 lakhs out of the contracted amount of ₹ 7.8 lakhs, which the respondent would not have done but for dishonest misrepresentation and exaggerated claim regarding expertise by the petitioner company as well as petitioner No. 2. Thus, learned counsel for the respondent has

strongly urged for dismissal of the petition. In support of this contention, respondent has relied upon **Adalat Prasad Vs. Rooplal Jindal & Ors.** (2004) 7 SCC 338, **Chand Dhawan Vs. Jawahar Lal,** AIR 1992 SC 1379, **Mrs. Dhanalakshmi Vs. R.Prasanna Kumar & Ors,** AIR 1990 SC 494 and **State of Madhya Pradesh Vs. Harsh Gupta,** 1999 CrI.L.J. 5011.

12. I have considered the rival contentions and perused the record.

13. The petitioners have been summoned to undergo trial for the offence of cheating punishable under Section 420 IPC. Cheating is defined under Section 415 IPC as under:

“415. 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 person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do 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".

Explanation.--A dishonest concealment of facts is deception within the meaning of this section.

14. From the aforesaid definition, it is apparent that to constitute the offence of cheating, there has to be deception, which precedes the fraudulent or dishonest inducement to the person deceived to part with the property or do or omit to do any act which he would not have done

or omitted to do but for the deception. The ingredients of the offence of cheating as required by the Section are:

- (1) Deception of any person.
- (2) (a) Fraudulently or dishonestly inducing that person
 - (i) to deliver any property to any person; or
 - (ii) to consent that any person shall retain any property;
or
- (b) intentionally inducing that person 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;

15. I have perused the judgments relied upon by the respondent. The judgment of Supreme Court in **Adalat Prasad Vs. Rooplal Jindal & Ors.**(supra) has no relevance to the facts of this case for the reason that in the aforesaid case the Supreme Court has dealt with the powers of the subordinate court to review its own order and held that Magistrate cannot review its own order. The present petition has been filed under Section 482Cr.P.C. conferring inherent powers on the High Court to do substantial justice and it is based on the allegations that the complaint filed by the respondent company does not disclose the commission of any offence and as such it is an abuse of process of law to continue with the complaint and put the petitioners to unnecessary rigors of trial. In the matter of **Chand Dhawan Vs. Jawahar Lal** (supra), the Supreme Court has dealt with the scope of powers of High Court to quash the complaint under Section 482 Cr.P.C. In the above

said case, it was held by the Supreme Court that the High Court can exercise its own inherent jurisdiction of quashing a criminal proceedings only when the allegations made in the complaint do not constitute an offence or that the exercise of the power is necessary either to prevent the abuse of process of the court or otherwise to secure the ends of justice. The Supreme Court also observed that no inflexible guidelines or rigid formula can be set out and it would depend upon the facts and circumstance of each case wherein such powers should be exercised. When the allegation in the complaint, prima facie, constitute the offence against any or all of the respondents, in absence of material on record to show that continuation of the proceedings would be an abuse of process of court or defeat the ends of justice, the High Court would not be justified in quashing the complaint. Similar view was taken by the Supreme Court in the matter of **Dhanalakshmi Vs. R.Prasanna Kumar & Ors**(supra).

16. There can be no dispute with the aforesaid proposition of law. Now the question for determination is whether the above referred ingredients constitute the offence of cheating are satisfied on prima facie reading of the complaint?

17. On reading of the complaint, it is apparent that after entering into the contract, the petitioner did send team of workers at Faridabad location of the respondent company for development of customised

software as per the requirement of the respondent/complainant company. Admittedly, aforesaid team worked for about six months at the location of the complainant company to develop the software modules. When the slow progress and unsatisfactory development of software was brought to the notice of the petitioners, they sent their co-ordinators and team to remove the snag. From this, it is evident that the petitioner company had no intention to deceive the respondent and it actually did whatever possible to perform its part of the contract. Further, the petitioners have placed on record Annexure 'A', a certificate purportedly issued by Lt. Col. N.K.Banerjee, Manager, Administration (ERP Co-ordinator), strongly recommending the petitioner No. 1 company's software to any industry, which reads thus:

"This is to confirm that our company, Elofic Industries Ltd., Faridabad, Haryana have entered into a contract with Infopac Software Ltd. having their registered office at 67 Rustam Bagh, Bangalore for implementation of Infopac ERP software, initially at our HO/factory premises, and subsequently, customisation of the same to all our depots located across the country.

As per the above contract terms, the Infopac team has developed the following modules of Phase-I, to our satisfaction, with all features and functions.

- *Purchase*
- *Inventory*
- *MRP I*

In addition, the Infopac team has achieved commendable progress in developing the following modules at our site, to our satisfaction, which they are likely to complete before the end of this month.

- *Excise*
- * Sales*
- *General Ledger*
- *Accounts Payable*
- * Accounts Receivable*
- * Multi-currency*

We hereby strongly recommend Infopac ERP Software to any industry".

18. On reading of this certificate, it is obvious that till 06th April, 2000, the respondent company was satisfied with the progress of development of software by the team sent by the petitioner company. Otherwise also, Manager, Administration (ERP Co-ordinator) of respondent company would not have recommended Infopac ERP Software to any other industry. This circumstance in itself rules out any fraudulent intention on the part of the petitioner company to deceive and cheat the respondent company. Thus, one of the most essential ingredients of the offence of cheating i.e. fraudulent or dishonest deception by the accused is missing in this case.

19. In view of the above, it is apparent that the dispute between the parties is a purely civil nature and the essential ingredients of the offence of cheating as defined under Section 415 IPC are not disclosed in the complaint. The complaint No.31/1/2003 titled M/s. Elofic Industries Ltd. Vs. M/s. Infopac Software Pvt. Ltd. & Others pending in the court of ACMM as also the summoning order under Section 420 IPC dated 12.05.2008 of learned ACMM are liable to be quashed.

20. Petition under Section 482 Cr.P.C. is accordingly allowed. The complaint as well as the proceedings initiated on the complaint are hereby quashed.

(AJIT BHARIHOKE)
JUDGE

MAY 24, 2011/akb/pst