

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 9814 of 2023

Petitioner :- Smt.Gunjan Sharma

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Santosh Kumar Pandey,Rajnish Kumar Pandey

Counsel for Respondent :- G.A.

Hon'ble Mrs. Jyotsna Sharma,J.

1. Heard Sri Santosh Kumar Pandey, learned counsel for the petitioner and learned A.G.A. for the State.

2. This petition has been filed with a prayer to set aside the order dated 31.05.2023, passed in Criminal Revision No. 75 of 2023 (Smt. Santosh Kumari Sharma and Another Vs. Smt. Gunjan Sharma), whereby the order passed by the learned trial court summoning the opposite side under section 406 I.P.C., was set aside.

3. The material facts are as below.

4. M/s Om Sai Ram Fire Safety Engineer firm, through its proprietor Gunjan Sharma, filed a complaint case against M/s Silso Food Industries, through proprietors Santosh Kumari Sharma and Shalini Sharma under section 420 and 406 I.P.C. alleging that the accused firm took services of the complainant with regard to fire safety works. The complainant performed and completed the assigned job. The accused paid Rs. 1,50,000/-. It is alleged in the complaint that the total payable amount was Rs. 3,53,114/-. Bills were submitted by the complainant. When the complainant firm demanded the remaining amount, the accused side kept avoiding the payment and in the end, they threatened the complainant firm and also declared that remaining amount of Rs. 2,03,114/- shall not be paid. The main allegation is that the firm, with a dishonest intention has usurped the remaining amount. The learned trial court proceeded to record the statements and on the basis of material on record, passed an order dated 17.11.2022 summoning Santosh Kumari and Shalini Sharma under section 406 I.P.C.

5. The summoned accused persons preferred a Revision No. 75 of 2023. Both the sides were heard, the learned revisional court took a view that matter is essentially a dispute of civil nature and therefore set aside the impugned orders. Now, the complainant is before this Court.

6. The submissions of the complainant are:- that from the evidence on record, this much is clear that the accused persons did not repay the remaining amount. There is evidence to show that an amount of Rs. 2,90,000/- was entrusted upon accused persons but due to dishonest intention, they misappropriated the same.. The offence under section 406 is clearly made out. The learned revisional court committed a grave error in setting aside the summoning order.

7. I went through both the orders, one passed by the learned trial court and other passed by the revisional court, and contents of the complaint as well as the material produced by the complainant in support of complaint case. From the papers on record, it is disclosed that this is not the case of the complainant that any amount was ever entrusted to the accused firm, hence, no question of adducing evidence arises. The only material allegation is that though, the accused firm obtained services (and also some material for the purpose) but did not pay the bills. Admittedly, the accused persons paid Rs 1,50,000/- as part payment.

8. The definition of criminal breach of trust has been provided in section 405 of I.P.C. Bare perusal of the definition makes is very clear that entrustment of property/with any dominion over property and dealing with property with a dishonest intention are two main ingredients for constituting the offence of criminal breach of trust. So far as the facts of the present matter are concerned, there is indisputedly no allegation as regard entrusting any property or using the same with dishonest intention. It may again be noted that when an act is done with the intention of causing wrongful gain to one person or wrongful loss to another, it is said that the thing is done dishonestly. Wrongful gain is gain by unlawful mean and wrongful loss is a loss by unlawful means.

9. If the above is kept in mind, there is nothing to show that any act was done with a dishonest intention with regard to any property which was ever entrusted to the accused person at some point of time. If the contents of the complaint are taken at face value, an indubitable inference is called for that the matter is falling within the arena of civil disputes.

10. Hence, in my view, the revisional court committed no illegality by giving finding that the dispute was essentially civil in nature. The finding of the revisional court is based on material on record and is not perverse. I do not find any good ground to interfere in the impugned order. The petition is liable to be dismissed, therefore it is hereby **dismissed**.

Order Date :- 7.11.2023

Sumit Kumar