

GAHC010235442013



2024:GAU-AS:11353

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./925/2013

SANJEEV KOHLI
S/O SRI R K KOHILI PROPRIETOR OF M/S KOHLI and COMPANY, T-5,
OKHLA INDUSTRIAL AREA, PHASE-II, NEW DELHI-110020.

VERSUS

THE STATE OF ASSAM

Advocate for the Petitioner : MR.A K SHARMA, MS.B SARMA,MR. M MORE

Advocate for the Respondent : PP, ASSAM, ,

BEFORE

HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

21-11-2024

- 1.** Heard Ms. B. Sarma, learned counsel for the petitioner and Mr. P. Borthakur, learned Additional Public Prosecutor, Assam for the State.
- 2.** The present application is filed for setting aside and quashing of charge-sheet

No. 157/2006 dated 17.06.2006 arising out of Dibrugarh Police Station Case No. 425/2000 registered under Sections 406/420 IPC corresponding to GR Case No. 1597/2000 registered under Sections 406/420 IPC pending in the Court of learned Judicial Magistrate First Class, Dibrugarh.

3. Initially the complainant filed a Complaint Case registered as Case No. 437/2000 and was subsequently registered as Dibrugarh P.S. Case No. 425/2000 on a direction passed by the jurisdictional Magistrate directing the jurisdictional police officer to investigate the case and file Final Form. The FIR discloses the following:-

- I. The informant/complainant was an authorized person to procure orders from the Government Department on behalf of the accused/petitioner under an authority letter dated 18.03.2000.
- II. According to the informant/complainant in terms of the aforesaid agreement, the accused/petitioner obtained supply order from the Government Department and as per the agreement, an amount of Rs. 87,744.23/- was due to him from the accused. However, the accused person had started neglecting to pay the same to the complainant.
- III. It is stated that the complainant innocently supplied orders and arranged it to send to the accused person. It is also alleged that on several occasions, the complainant requested the accused person to pay the sum due as he is duty bound to pay the same but the accused person had remained silent thereby making it clear that he is no longer interested to pay the same and thus, he has cheated the complainant by committing fraud and breach of trust.
- IV. It is also stated that in the aforesaid backdrop, the complainant, issued letters dated 25.07.2000, 10.10.2000 and 25.10.2000 to the accused person demanding the payment of the aforesaid amount but inspite of receipt of said letters, the accused person had remained silent making it clear that he has cheated the complainant fraudulently and dishonestly by

committing breach of trust.

4. Section 405 IPC defines the criminal breach of trust. A reading of the aforesaid provision of law, the essential ingredients of criminal breach of trust can be summarized as below:

A. There must be an entrustment of property or dominion over it upon the accused.

B. The accused upon whom such property is entrusted has dishonestly used or disposed of the property in violation of any provisions of law which prescribed the mode in which such trust is to be discharged or of any contract made defining the discharge of such trust.

5. In the case of ***R K Dalmia Vs Delhi Administration*** reported in ***1963 1 SCR 253***, the Hon'ble Apex Court held that the definition as given under Section 405 Cr.P.C. does not restrict the property to be movable or immovable one and the property used in the Cr.P.C. is having a much wider sense than expression movable property. Accordingly, the Hon'ble Apex Court in ***RK Dalmia (supra)*** concluded that there is no good reason to restrict the meaning of word 'property' to movable property only when it is used without any qualification under Section 405 IPC.

6. Section 415 IPC defines 'cheating'. The essential ingredients of cheating are that deception of any person, fraudulent and dishonest inducement with intent to deliver any property or to have consent to retain any property and also an intention whereby an inducement is made to a person to do or omit to do anything which he would not or omit if he was so deceived.

7. The Hon'ble Apex Court in the case of ***Hriday Ranjan Prasad Verma Vs. State of Bihar and Anr.*** reported in ***2000 4 SCC 168*** clarified that there is a very fine line while making a distinction between mere breach of contract and cheating, which is criminal one and breach of contract. Law is by now well settled that breach of contract cannot give rise to criminal prosecution of cheating until and unless the fraudulent or dishonest intention

of cheating is made out in the complaint itself.

8. Now coming to the case in hand, it is an admitted position that there was an agreement between the accused/petitioner and the informant under which the informant was to pay some commission/remuneration for obtaining orders from the government department and the accused obtained such orders from the Government Department but his commission/remuneration was not paid even after repeated demand. Such factum, at best, can be a breach of the agreement between the parties inasmuch as there is no whisper that there was dishonest inducement in entering into such agreement resulting in any transfer/delivery/ entrustment of property. There is nothing to suggest that there was fraudulent and dishonest inducement or initial deception.

9. From the reading of the FIR as discussed hereinabove, this Court is of the considered opinion that the informant though has been able to make out a case that there was an agreement under which certain amount is due but nothing is there to suggest either entrustment of property or dishonest inducement. Therefore, the grievance raised cannot be of any dishonest disposal of property, though there may be a civil dispute as regards non performance of a contract or resultant recovery of money which can be determined by a competent Civil Court.

10. This Court is unable to find out any statement or whisper, which shows that the accused was having an intention initially at the stage of entering into the contract to deceive the complainant. Therefore, in view of the aforesaid, this Court finds that no case under Section 406 IPC or Section 420 IPC is made out on a bare reading of the FIR. For the aforesaid reasons, this Court is also of the unhesitant view that the case of the informant may be a case of breach of contract and same cannot give rise to criminal prosecution for breach of trust and cheating in absence of any ingredients of fraudulent and dishonest intention of the petitioner being made out either in the FIR.

11. In view of the aforesaid and in view of the settled propositions of law as recorded hereinabove, this Court is of the view that if this criminal proceeding is allowed to be

proceeded, the same will be an abuse of the process inasmuch as no case under Sections 406/420 of IPC is made out.

12. Accordingly, this criminal petition is allowed by setting aside and quashing charge-sheet No. 157/2006 dated 17.06.2006 arising out of Dibrugarh Police Station Case No. 425/2000 registered under Sections 406/420 IPC, corresponding to GR Case No. 1597/2000 registered under Sections 406/420 IPC pending in the Court of learned Judicial Magistrate First Class, Dibrugarh. However, this order shall not preclude the complainant/respondent to obtain civil remedy, if so advised and if permissible under law.

13. LCR be returned back.

JUDGE

Comparing Assistant