AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr. M. P. No. 425 of 2014

Reserved on 19.09.2016

Delivered on 26.09.2016

M/s Moonka Rice Mills through the proprietor Ramgopal Agrawal, aged about 58 years, R/o Tilda, Neora, Tahsil Tilda, P.S. Neora, Civil and Revenue District Raipur (CG)

---- Petitioner

Versus

1. M/s Vivek Trading Company through proprietor Shanker Matani/ Ashok Matani, resident of Niwajganj, Jabalpur (MP)
2. State of Chhattisgarh through District Magistrate Raipur, District Raipur (CG)

---- Respondents

For Petitioner	:	Shri Vishnu Koshta, Advocate
For Respondent no.1	:	Shri D. N. Prajapati, Advocate
For Respondent no.2/State	:	Shri U. K. S. Chandel, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy

C A V O R D E R

The instant petition has been filed by the petitioner being aggrieved by the order dated 22.06.2013 passed by the JMFC, Tilda in an unregistered complaint case of 2011 whereby the learned Magistrate refused to register the complaint lodged by the petitioner-complainant against respondent no.1. The petitioner is also aggrieved by the order dated 05.02.2014 passed by the Special/Additional Sessions Judge, Raipur in Criminal Revision No. 303/2013 by which the Revisional Court while rejecting the revision petition upheld the order dated 22.06.2013 passed by the JMFC, Tilda.

2. Brief facts relevant for adjudication of the present petition are that the petitioner is a firm carrying on the business of paddy milling and trading. The petitioner is said to have on 02.04.2010 and 03.04.2010 as per the demand made by the respondent no.1 through a broker namely Santosh Kumar Jain sold 800 bags of broken rice valued at Rs.4,26,800/- to respondent no.1. However, the petitioner did not receive any payment against the said sale of 800 bags of broken rice. Thereafter, the petitioner sent a legal notice to respondent no.1 on 04.06.2010. On receipt of the said legal notice, respondent no.1 is said to have written a reply intimating the petitioner that on 30.04.2010 the respondent no.1 in lieu of the receipt of 800 bags of broken rice had made Rs.3,50,000/- by cheque to broker Santosh Jain. It was further intimated that Santosh Jain had withdrawn the said amount in his account maintained at Bank of Baroda, Right Town, Jabalpur on the same day i.e. 30.04.2016. In addition, it is said that respondent no.1 had also made payment of Rs.50,000/- by cash to the said Santosh Jain.

3. Later on, when the present petitioner is said to have gone to the broker Santosh Jain seeking for refund of the said money, it was informed that there has been an act of cheating on the part of respondent no.1 against the petitioner in as much as, the broker had not received any money from respondent No.1 for clearing the dues which he is otherwise entitled for. Later on an inquiry it was also found that respondent no.1 in fact had committed an act of cheating against the petitioner in as much as the said payment of Rs. 3,50,000/- by cheque and Rs.50,000/- by cash which the petitioner is said to have got by way of the sale of 800 bags of broken rice. It was also discovered in the course of a preliminary inquiry that the alleged payment of Rs. 3,50,000/- by way of cheque and Rs.50,000/- by way of cash was in fact got credited in the bank account maintained in the name of Respondent no.1 Shri Vivek Trading Company.

4. In spite of all these facts the JMFC, Tilda vide its order dated 22.06.2013 rejected the complaint lodged by the petitioner on the ground that the nature of dispute between the parties was more civil in nature and therefore, registration of the complaint was totally uncalled for.

5. In the course of the preliminary inquiry, the complainant's complaint was found to be true. Based upon this inquiry report, the trial Court ought not to have rejected the complaint case holding it to be a dispute of civil nature. Against the said order of the Magistrate, the petitioner preferred a revision petition before the Special/Additional Sessions Judge, Raipur which was also vide impugned order dated 05.02.2014 got rejected upholding the stand taken by the JMFC, Tilda.

6. The Revisional Court also vide its order dated 05.02.2014 held that the nature of transaction between petitioner and respondent no.1 was a commercial transaction and the basic grievance of the petitioner against respondent no.1 is that of non payment of the consideration of 800 bags of broken rice that the respondent no.1 had purchased from the petitioner. In the opinion of the Revisional Court also there was not sufficient material to prima facie convince the Magistrate in so far as the ingredients required for constituting the offence under Sections 406 and 420 of IPC leading to the rejection of the complaint case to which the Revisional Court also did not find any illegality and infirmity while rejecting the revision petition.

7. Assailing the said two orders passed by the JMFC, Tilda as well as by the Revisional Court counsel for the petitioner submitted that both the Courts below have miserably failed to appreciate the conduct of respondent no.1 and it is the conduct which would constitute an offence under Sections 406 and 420 of IPC. According to the counsel for the petitioner, both the Courts below have failed to consider the deposition of the bank officials who had been examined at the time of registration of the complaint where it has been clearly brought on record that in fact the respondent no.1 has cheated the petitioner by way of the alleged issuance of cheque (Rs.3,50,000/-) in favour of one Santosh Jain and the alleged payment of Rs. 50,000/- by cash to the same person. This money was towards clearance of dues payable to the petitioner against the 800 bags of broken rice purchased by respondent no.1. However, the said amount so made over to Santosh Jain subsequently at the behest of respondent no.1 again was credited back into the account of respondent no.1 M/s Vivek Trading Company.

8. According to the counsel for the petitioner, this conduct of the respondent no.1 makes out a case of criminal breach of trust as well the act of cheating calling for registration of the offence under Sections 406 and 420 IPC. According to the counsel for the petitioner, both the Courts below have not considered this aspect and only in a mechanical manner without going deep into the nature of allegations have taken into consideration the commercial relationship between the petitioner and the respondent no.1 and rejected the complaint case as well as the revision petition.

9. Counsel appearing for respondent no.1 though opposes the petition, he was not able to give a plausible explanation as to how the amount given to the alleged broker Santosh Jain for purchase of 800 bags of broken rice was got deposited back into the account of respondent no.1 M/s Vivek Trading Company. According to the counsel for respondent no.1, both the Courts below not once but twice have considered all the allegations and averments made in the complaint case and held that the dispute between the parties was more of a civil nature and rejected the complaint case as well as the revision petition. Counsel appearing for respondent no.1 further reiterated the fact that the admitted position in the instant case is the transaction between petitioner and respondent no.1 which was purely a commercial transaction. The grievance of the petitioner is that of non payment of the consideration of 800 bags of broken rice and this being a civil dispute, the appropriate remedy for the petitioner would be approaching the Civil Court for redressal of his grievance and the criminal case. In support of his contention counsel for respondent no.1 relied upon the decision of Dr. Basant Kumar Sahoo Vs. State of C.G. & Another[1] and thus, prayed for rejection of the present petition.

10. Having heard the rival contentions put forth by the counsel appearing on either side, for better understanding of the dispute, it would be relevant to appreciate the contents of Section 406 of IPC which provides punishment for criminal breach of trust. Criminal breach of trust has been defined under Section 405 of IPC which for ready reference is being reproduced hereunder:

> "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".

A plain perusal of the said Section clearly stipulates that whoever being in any manner entrusted with a property, dishonestly uses or disposes of that property or violates any of the legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person, commits a breach of trust.

11. If we read the said section and compare the same with the facts of the present case what has to be seen from the petitioner's point of view is that he had sold 800 bags of broken rice to respondent no.1. The receipt of which is not in dispute. The consideration for the said rice was to be made by respondent no.1 to the petitioner irrespective of the channel which is used for payment. But what is reflected from the record is that respondent no.1 is said to have made the alleged payment for the said rice to be paid to the petitioner through one Santosh Jain. However, at the same time, it has also come on

1 2012 (1) C.G.L.J. 185

record that the payment made to the said Santosh Jain which was further to be paid to the petitioner was in fact again deposited back into the account of respondent no.1 M/s Vivek Trading Company and there is no explanation whatsoever as to how these amount gone back to the account of respondent no.1. One can understand if the amount could have been siphoned off by Santosh Jain and one can even understand if the said amount would have gone to a different hand. Under the said circumstances, it could have been said that so far as respondent no.1 is concerned, he had discharged his liability of making the payment of the said rice. But in the instant case, as per the statement of the bank officials and also as per the statement of respondent no.1 M/s Vivek Trading Company, the amount of Rs. 4,00,000/- (Rs.3,50,000/- by cheque and Rs.50,000/- by cash) towards consideration of the rice purchased by respondent no.1 from the petitioner was made to one Santosh. But the money finally has been deposited back into the account of respondent no.1 M/s Vivek Trading Company which clearly depicts the mala fide and dishonest intention on the part of respondent no.1 towards a trust which has to be discharged as a result of which the petitioner has been made to wilfully suffer and it would prima facie fit in the definition under Section 405 IPC for Criminal breach of trust.

12. Similarly the definition of cheating as defined under Section 415 of IPC for ready reference is being reproduced hereunder:

> "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 or omit if he were not so deceived, an 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".

A plain reading of the said provision of law again would clearly reveal that so as to constitute an act of cheating there has to be an act of fraud and there has to be an act of dishonesty shown in inducing a person deceived to deliver any property to any person or an act which is likely to cause damage or harm to a person in body, mind, reputation or property, would fall within the ambit of cheating.

13. These ingredients if again is compared with the act on the part of respondent no.1, it would clearly reflect that there was an act of fraud and dishonesty shown on the part of respondent no.1 in firstly issuing cheque as well as making certain cash payment to one Santosh Jain and then in connivance with the said Santosh Jain they got the said entire amount deposited back into the account of Respondent no.1 whereas the said amount was meant to be paid to the petitioner. This aspect has also not been considered by the two Courts below.

14. So far as the offence under criminal breach of trust is concerned, some of the legal pronouncements of the Supreme Court in this regard are as under:

Examining the ingredients of offence of criminal breach of trust, the Supreme Court in the case of M/s. Indian Oil Corporation Vs. M/s NEPC India Ltd. & Ors.[2] 2006 (6) SCC 736: 2006 AIR SCW 3830, observed as below:

> "17……A careful reading of the section shows that a criminal breach of trust involves the follwing 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 willfully 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."…

The Supreme Court, in this case, also relied upon its earlier decision in the case of Chellor Mankkal Narayan Ittiravi Nambudiri Vs. State of Travancore, Cochin[3] , wherein, it held-

> "to constitute an offence of criminal breach of trust, it is essential that the prosecution must prove first of all that the acused was entrusted with some property or with any dominion or

2 2006 (6) SCC 736 : 2006 AIR SCW 3830

3 AIR 1953 SC 478

> power over it. It has to be established further that in respect of the property so entrusted, there was dishonest misappropriation or dishonest conversion or dishonest use or disposal in violation of a direction of law or legal contract, by the accused himself or by someone else which he willingly suffered to do."

It follows almost axiomatically from this definition that the ownership or beneficial interest in the property in respect of which criminal breach of trust is alleged to have been committed, must be in some person other than the accused and the latter must hold it on account of some person or it some way for his benefit.

The Supreme Court also relied upon in its earlier decision in the case of Jaswantrai Manilal Akhaney Vs. State of Bombay[4], wherein it was reiterated that the first ingredient to be proved in respect of a criminal breach of trust, is 'entrustment' and it was clarified as below:

> "…But when S.405 which defines "criminal breach of trust" speaks of a person being in any manner entrusted with property, it does not contemplate the creation of a trust with all the technicalities of the law of trust. It contemplates the creation of a relationship whereby the owner of property makes it over to another person to be retained by him until a certain contingency arises or to be disposed of by him on the happening of a certin event."

15. So far as the cheating is concerned, the Supreme Court in the matter of Inder Mohan Goswami & Another Vs. State of Uttaranchal & Others[5] (2008 (1) SCC (Cri.) 259, while considering whether a case for quashing FIR is made out in exercise of power under Section 482 of the Code. It was observed as under:

> "42. On a reading of the aforesaid section, it is manifest that in the definition there are two separate classes of acts which the person deceived may be induced to do. Int eh first class of acts he may be induced fraudulently or dishonestly to deliver property to any person. The second class of acts 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 need not be fraudulent or dishonest. 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 a fraudulent or dishonest intention

4 AIR 1956 SC 575
5 2008 (1) SCC (Cri.) 259

> at the time of making the promise. From his mere failure to subsequently keep a promise, one cannot presume that he all along had a culpable intention to break the promise from the beginning."

In the matter of Dalip Kaur and Ors. Vs. Jagnar Singh & Another[6] the Supreme Court had an occasion to examine the provision contained in Section 415 of the IPC which defines the cheating. It was observed as under:

> "8…An offence of cheating would be constituted when the accused has fraudulent or dishonest intention at the time of making promise or representation. A pure and simple breach of contract does not constitute an offence of cheating."

In the case of Inder Mohan Goswami (Supra), while examining whether a case of quashing FIR is made out or not, the question which the Supreme Court posed to itself was:

> "38. The question before us is – whether the case of the appellants comes under any of the categories enumerated in Bhajan Lal? Is it a case where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in entirety, do not make out a case against the accused under Sections 420, 467 and 120-B IPC? For determination of the question it becomes relevant to note the nature of the offences alleged against the appellants, the ingredients of the offences and the averments made in the FIR/complaint."

While undertaking similar examination in the matter of quashing of FIR, in the case of Dalip Kaur (supra) the Supreme Court stressed upon the approach required to be adopted by the High Court, in following words:

> "10. The High Court, therefore, should have posed a question as to whether any act of inducement on the part of the appellant has been raised by the second respondent and whether the appellant had an intention to cheat him from the very inception."…

16. In the light of the aforesaid decisions rendered by the Supreme Court in respect of Criminal breach of trust and cheating and also taking into account the manner in which respondent no.1 had issued the payment to Santosh Jain to be paid to the petitioner but later on got it deposited back in his own account depicts prima facie an act of criminal breach of trust and cheating.

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6 (2009) 14 SCC 696

17. Thus, in the opinion of this Court, the Magistrate Court at the first instance and the Revisional Court later on were not justified in passing of the two orders. Thus, the order dated 22.06.2013 passed by the JMFC, Tilda and subsequently the order dated 05.02.2014 passed by the Revisional Court are bad in law and deserves to be and is accordingly set aside. The matter is remitted back to the JMFC, Tilda for registering the complaint and for proceeding further with the case in accordance with law.

18. The Present CrMP stands allowed.

Sd/-
P. Sam Koshy
Judge

Bhola