IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.32652 of 2014

Arising Out of PS.Case No. -9 Year- 2011 Thana -BEGUSARAI COMPLAINT CSAE District- BEGUSARAI

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1. Avinash Vyas Son of Sri Ram Mohan Vyas AT present posted as Regional Collection Head, West Tata Motors Finance Limited At the relevant period posted as National Collections Manager TATa Motors Finance Limited Cyber Tech House, Thane (Maharashtra)
2. Raghav Chandra Son of Hriday Narayan Jha At present posted as State Collection Head Jharkhand, at the relevant time posted as State Head Collections, CV Finance, Tata Motors Finance Limited, Office No. 601-602 6th flor, Kashi Palace, P.S. Kotwali, Town & District Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. Jyoti Kumar Singh D/o Ajay Singh At Mosadpur, P.O. Tilrath, Begusarai -851101 Bihar

.... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Amaresh Kumar Sinha, Advocate
Mr. Dayanand Singh, Advocate
For the State : Mr. Jitendra Kumar Singh-I(App)

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL ORDER

4 25-08-2017 The petition under Section 482 of the Code of Criminal Procedure is for quashing the order taking cognizance dated 12.11.2013 passed by the Judicial Magistrate, Ist Class, Begusarai, in Complaint Case no. 9 C of 2011 against the petitioners under Sections 406 and 417 of the Indian Penal Code.

The complainant purchased a vehicle LPT1613 on loan from Tata Motors Finance Limited. An amount of Rs. 3 lacs was financed which was to be repaid in 29 instalments. It has been contended that even after paying the installments, they were illegally demanding Rs. 45,000/- for no dues certificate. Petitioner no. 1 Avinash Vyas is working as Regional Collection Head, West at Thane and he has no role whatsoever in connection with the said contract of the complainant or issuance of no dues certificate. Petitioner no. 2 Raghav Chandra is working as State Collection Head, Jharkhand, for Tata Motors Finance Ltd. at Jamshedpur and has no role whatsoever in connection with the alleged offence for issuance of no dues certificate.

The complainant was examined on solemn affirmation before the court below and in support of the complaint case two witnesses were also examined and also their documents relating to transactions and agreements were placed before the court below. On the basis of the complaint case, statement of complainant on solemn affirmation and examination of two witnesses, the court below took cognizance of the offence under Section 406 and 417 of the Indian Penal Code and issued summons for their appearance.

It has been submitted by the learned counsel for the petitioners that the order taking cognizance under Sections 406 and 417 of the Indian Penal Code is bad in law and also in fact. It has further been submitted that from perusal of the complaint petition it is apparent that no allegation has been levelled against the petitioners for cheating and criminal breach of trust. It has also been submitted that necessary ingredient for fastening the offence under Sections 406 and 417 against the petitioners is completely lacking and the entire dispute is of civil nature and at best breach of agreement does not make any criminal offence. It has further been stated that dispute between the parties has been referred to arbitration. The Apex Court in ***Pepsi Foods Ltd. Vs. Special Judicial Magistrate (1998)5 SCC 749*** held as,

> *"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."*

The Apex Court in ***Dalip Kaur and Others Vs. Jagnar Singh and Another (2009) 14 Supreme Court Cases 696*** held as,

> *"8. Sections 405 and 415 of the Penal Code defining "criminal breach of trust" and "cheating" respectively read as under :*
> *"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 willfully suffers any other person so to do, commits 'criminal breach of trust'.

* * *

415. Cheating.- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliber any property to any person, or to consent that any person shall retainany 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, 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'."

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 or cheating.

9. The ingredients of Section 420 of the Penal Code are :

"(i) Deception of any persons;

(ii) Fraudulently or dishonestly inducing any person to deliver any property; or

(iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit."

10. The High Court, therefore, should have posed a question as to whether any act or 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. If the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance the same would not constitute an offence of cheating. Similar is the legal position in respect of an offence of criminal breach of trust having regard to its definition contained in Section 405 of the Penal Code. (See Ajay Mitra v. State of M.P. (2003 3 SCC 11 : 2003 SCC (Cri) 703)

The Apex Court in ***Binod Kumar And Others Vs. State of Bihar and Another (2014) 10 Supreme Court Cases 663*** held as,

"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 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.

16. Section 406 IPC prescribes punishment for criminal breach of trust as defined in Section 405 IPC. For the offence punishable under Section 406 IPC, prosecution must prove:

(i) that the accused was entrusted with property or with dominion over it; and

(ii) that he (a) misappropriated it, or (b) converted it to his own use, or (c) used it, or (d) disposed of it.

The gist of the offence is misappropriation done in a dishonest manner. There are two distinct parts of the said offence. The first involves the fact of entrustment, wherein an obligation arises in relation to the property over which dominion or control is acquired. The second part deals with misappropriation which should be contrary to the terms of the obligation which is created.

17. Section 420 IPC deals with cheating. The essential ingredients of Section 420 IPC are:

cheating;

dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security, and

mens rea of the accused at the time of making the inducement.

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 utilized the amounts either by themselves or for some other work, there is 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".*

I have gone through the materials available on record and considering the arguments advanced by both the parties and mere perusal of the complaint petition show that there is no allegation against the petitioners constituting any criminal offence and dispute concerns Settlement of Accounts only, still they have been arrayed as accused in the complaint petition. I find no offence under Sections 406 and 417 of the Indian Penal Code made out against the petitioners and continuance of the present proceeding against the petitioners will amount to abuse of the process of the court and as such, the order dated 12.11.2013 taking cognizance against the petitioners in Complaint Case No. 09 C of 2011 under Sections 406 and 417 of the Indian Penal Code as well as the whole criminal proceeding arising out of the said Complaint Case is quashed as far as same relates to petitioners.

Petition stands allowed.

(S. Kumar, J)

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