IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No. 4063 of 2012 (O/M)
Date of decision : 11.10.2017

Pawan Chawla .... Revisionist

Versus

State of Haryana and another .... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Aman Pal and Mr. Anil Bhardwaj, Advocates, for revisionist.

Mr. R.K. Makkad, DAG Haryana.

Mr. Dheeraj Chawla, Advocate, for complainant.

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

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KULDIP SINGH J.

This is revision against the judgment dated 5.9.2012, passed by the learned Additional Sessions Judge, Faridabad, affirming the judgment of conviction dated 27.8.2010 and order of sentence dated 1.9.2010, passed by the learned Additional Chief Judicial Magistrate, Faridabad, whereby present revisionist Pawan Chawla was convicted under Section 420 IPC, and was sentenced to undergo rigorous imprisonment for one year and a fine of Rs. 1,000/-, in default thereof, to further undergo simple imprisonment for one month.

The facts of the case are that M/s Motley Industries Private Limited, of which present revisionist was one of the directors alongwith Smt. Veenu Chawla, Mimila Upadhayay and Ashutosh Upadhayay (co-accused) obtained equipment lease finance of Rs. 61.87 lacs from Haryana Financial Corporation, Faridabad. The lease agreement was executed on 20.2.1996. As per said lease agreement, the lessee was to acquire equipment from the supplier M/s Sun Therm Engineers, Janakpuri, New Delhi. An amount of Rs. 61,26,120/- was released in favour of supplier, vide demand drafts No. 085024 to 085030, dated 1.3.1996, drawn on Bank of Baroda, New Delhi. The demand drafts were released to Ashutosh Upadhayay. It is alleged that the lessee company, namely, M/s Motley Industries Private Limited did not purchase the machinery from supplier M/s Sun Therm Engineers, Janakpuri, New Delhi. Rather, fraudulently an account was got opened through one Somesh Mehta, an employee of the company, who was introduced by Pawan Chawla, in the name of M/s Sun Therm Engineers and demand drafts were credited in the said account and were later on fraudulently withdrawn. It is further alleged that Shri Kamlesh Ahuja, AGM of Haryana Financial Corporation, conducted the physical verification and found that machinery available at site was old one (second hand). The matter was verified from the supplier who reported on 31.1.1997 that the machinery was not supplied by them. It is alleged that M/s Motley Industries Private Limited submitted forged bills and fraudulently opened the account of supplier M/s Sun Therm Engineers and got released the entire amount. Accordingly, FIR No. 1413 dated 20.10.1997 under Sections 420, 467, 468, 406 IPC was registered against all the directors at Police Station Central Faridabad. Ashutosh Upadhayay died during the pendency of trial. The trial Court convicted only Pawan Chalwa under Section 420 IPC and acquitted him of the remaining charges. The remaining two accused were acquitted of all the charges.

I have heard the learned counsel for revisionist, the learned

State counsel and have also carefully gone through the file and the original lower Court file as well.

The learned counsel for revisionist has argued that the allegations proved against revisionist before the trial Court are that he had purchased old machinery in place of new machinery and, therefore, he has committed offence under Section 420 IPC. It is further contended that the charges under the other sections i.e. 467, 468, 471 IPC were not proved for want of evidence.

The perusal of the lower Court judgment shows that the trial Court took the view that there is no reference in the lease agreement that accused shall purchase only new machinery. However, it is also observed that there is no reference in the lease agreement that old machinery is to be purchased. Therefore, the presumption is that new machinery is to be purchased. Therefore, offence under Section 420 IPC is proved. It was also observed that the investigating officer was not examined, which is immaterial. The lower Court further held that offences under Sections, 419, 467, 468, 471 IPC are not proved. However, offence under Section 420 IPC is proved. In appeal, the learned Additional Sessions Judge, Faridabad, vide judgment dated 5.9.2012, observed that the directors of company had already paid Rs. 30 lacs. Besides this, the property of the company was already attached by HFC and proceedings are pending against them. The appellate Court also took the view that the loan was advanced to purchase new machinery but old machinery was purchased. It also observed that there is no evidence of fraud and forgery stating that there is no material on record that fictitious bills were presented to HFC and were prepared by accused. Revisionist has been convicted under Section 420 IPC only on the ground that the loan was obtained for new machinery, but old machinery was purchased on lease.

Cheating is defined under Section 415 of Indian Penal Code which reads as under :-

> "Section 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, 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"."

Therefore, the necessary ingredients of cheating are that :-

(i) accused fraudulently must deceive any person ;

(ii) accused must fraudulently induce a person so deceived to deliver any property to any person or to consent that any person shall retain any property ; or

(iii) accused intentionally induces the person so deceived to do or omit to do anything which he would not do or omit to do if he were not so deceived ; and

(iv) such act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

In order to examine whether there was any condition in the said lease agreement that only new machinery on lease will be purchased, this Court has to go through the lease agreement dated 20.2.1996 (Ex.PW4/H) between M/s Motley Industries Private Limited through its directors and the Haryana Financial Corporation (in short 'HFC').

The perusal of lease agreement shows that accused firm had, through its directors, approached HFC (called lessor) for acquiring equipment/machinery detailed below :-

"ASSETS
INDIGENOUS

1. Three Bowl Padding Mangle (one no.)
having 1600 mm useful width
1800 mm roller face with 10 tons
pressure arrangement, high entrance
feeding device with cloth guilders,
machine equipped with suitable DC
drive and synchronising arrangement
Stenter Machine

a) Infeed Device
Infrea Red type stenter
cloth feeding Device.

b) Chamber Accessories.

c) Knitting and Guming Device"

It was stipulated in the lease agreement that the lessee will utilize the said equipment on an irrevocable lease for the period of sixty months primary lease on the payment of rentals stipulated and detailed and upon terms and conditions contained therein. The abovenoted terms and conditions shows that equipment/machinery, as detailed above, was to be purchased. There was no specific stipulation that only new machinery will be purchased on lease which was for 60 months and for which rental was payable by lessee. The HFC was to get rental for the leased machinery for the said period of 60 months. Further Clauses 4(a), 4(i), 4(o), 9(a), 9(b), 9 (c), 9(d), 9(e) and 9(f) of said lease agreement are reproduced as under for ready reference :-

"4(a) The lessee has selected both i.e. equipment/machine and the supplier from whom the Lessor is to purchase the equipment and the same is Lessee's own judgment. Lessee takes the equipment "as is" and expressly disclaims any reliance upon any statement or representations made by the Lessor, Lessee agrees to execute an "acknowledgment of Delivery and Acceptance" upon receipt of equipment/machine. The Lessor makes no warranties express or implied as to any matter whatsoever including the condition of equipment/machine or its merchantability or fitness for any particular purpose. The Lessee understands and agrees that neither supplier, and no representation as to equipment/machine or any other matter by supplier shall in any way affect Lessee's duty to pay the dues/rentals and perform its other obligations as set forth in this lease agreement.

(b) to (h) xxxxxx xxxxxx xxxxxx xxxxxx

(i) The Lessee shall take delivery of the equipment at the place where the Lessor directs the Lessee to take delivery of the equipment. The lessee further agrees to deliver back the equipment to the Lessor at the expiry of the lease at their registered office situated at Bays 17, 18 and 19, Sector 17/A, Chandigarh or at such other place as the Lessor may require and to bear all the expenses in connection with transportation, freight, insurance and all other necessary expenses in respect of transporting the equipment from the place of taking delivery to the place where it is to be used by the Lessee and from such place to the registered office of Lessor at Bays 17, 18, and 19, Sector-17-A, Chandigarh or at such other place as directed by the Lessor on the expiry or termination of the lease.

(j) to (n) xxxxxx xxxxxx xxxxxx

(o) In case of variation of depreciation eligibility during the fixed period of lease, the Corporation would have the right to increase the rental to compensate for loss of depreciation.

9. The Lessee acknowledges and agrees with the Lessor :-

a) That the equipment is of size, design, capacity and manufacture selected by the Lessee.

b) That the Lessee is satisfied that the equipment is suitable for its purpose.

c) That the Lessor is not the manufacturer of the equipment nor a dealer in such equipment that having inspected the equipment the Lessee has signed this agreement relying entirely on its own judgment and not on any statements made by the Lessor or the agents or servants of the Lessor.

d) That no warranty of fitness or that the equipment/machine is merchantable, shall apply to this contract.

e) That the equipment is accepted by the Lessee with all faults and defects (if any), and delivery shall be conclusive evidence, that the equipment is in good condition and substantial working order and condition.

f) That the Lessor has not made and does not hereby make any representation or warranty with respect to the merchantability, condition, quality, suitability, use or operation of the equipment in any respect.

xxxxxx xxxxxx xxxxx xxxxx xxxxx"

The perusal of the abvoenoted clauses in the lease agreement make it clear that there was no stipulation that only new machinery is to be purchased. The loan was advanced for purchasing the machinery on lease, for which the HFC was to get rentals. It is not the claim of HFC that no rent was paid to them in terms of said lxease agreement. The machinery was purchased on 3.2.1996 through invoice/bill (Ex.PW4/I). Before the lower Court, the said invoice/bill was not proved to be false. The case is based upon the inspection report of Shri Kamlesh Ahuja, Senior Manager (L), H.O. Chandigarh (Ex.PW4/N) dated 19.8.1996 i.e. about six months after the said purchased machinery. It was observed in the verification of the security as under :-

"Verification of the Security. xxxx xxxxx xxxxx

3. Knitting and Guming Device

The Full set of machine appears to be second hand (old one). No doubt this machine has been despatched from Gujrat but the bill has been obtained from Delhi firm. There is no mention of Sales tax Number in the bill and other documents given by the Delhi agent, the signatures differ and resembles with one of the directors.

It is suggested that a team of Technical Personnels at least two to three may be deputed who may check the machinery.

The excuses given by the party regarding the machinery and its condition, do not appear to be correct and they are trying to prove their misrepresentation to be true.

Verification of the Security

the security is intact but as mentioned above the machine appears to be second hand and single machine amount to Rs. 61,26,120/-."

xxxxxx xxxxxx xxxxxx

Regarding the balance sheet of the party and depreciating working results, it was recorded as under :-

"(word not legible) balance sheet of the party indicating working capital

The party has given a balance sheet (provisional) as on 31.7.96. The results are encouraging the net profit has shown at Rs. 101 lacs against the sale of Rs. 1197 lacs including job work.

xxxxxx xxxxxx xxxxxx"

Admittedly, no technical personnel visited the spot. It was only the opinion of Shri Kamlesh Ahuja, Senior Manager (L), H.O. Chandigarh, that machinery appears to be second hand (old one). However, the technical personnel was to check the machinery and submit the report whether it was old one or not? Therefore, it is not proved that old machinery was purchased. Moreover, there was no stipulation in the lease agreement that only new machinery is to be purchased. The machinery was to be purchased for taking it on lease and accused firm was to pay rental to the corporation. Infact, the machinery was purchased and the firm was running into profit at Rs. 101 lacs against sale of Rs. 1197 lacs, including job work. Therefore, it cannot be said that revisionist intended to cheat the Corporation and deceived them to deliver the loan. From the loan, the machinery was purchased and accused firm had earned profit amounting to Rs. 101 lacs. In these circumstances, when it is not proved that old machinery was purchased and that old machinery could not be purchased, it cannot be said that offence of cheating as defined under Section 415 IPC and punishable under Section 420 IPC is proved. Accordingly, present revision is allowed and the judgment dated 5.9.2012, passed by the learned Additional Sessions Judge, Faridabad, and the judgment of conviction dated 27.8.2010 and order of sentence dated 1.9.2010, passed by the learned Additional Chief Judicial Magistrate, Faridabad, are hereby set aside. Revisionist Pawan Chawla stands acquitted of the charges framed against him. Bail bond and surety bond furnished by revisionist stand discharged. The fine, if any, paid by revisionist be refunded to him.

(KULDIP SINGH)
JUDGE

11.10.2017
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes