

Raman-teels (Tech) and Process Engineering Ltd. and ors. Vs. Howrah Industries and ors.

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Court : Andhra Pradesh

Decided On : Sep-28-1999

Reported in : 1999(2)ALD(Cri)846; 2000(1)ALT(Cri)148; 2000CriLJ603

Judge : Vaman Rao, J.

Acts : Negotiable Instruments Act - Sections 138; Code of Criminal Procedure (CrPC) , 1974 - Sections 415 and 482; Indian Penal Code (IPC) - Sections 415, 417 and 420

Appeal No. : Cri. Petn. No. 1387 of 1999

Appellant : Raman-teels (Tech) and Process Engineering Ltd. and ors.

Respondent : Howrah Industries and ors.

Advocate for Def. : V. Sankar Rao, Adv. (for No. 1) and ;Public Prosecutor (for No. 2)

Advocate for Pet/Ap. : Milind G. Gokhale, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Vaman Rao, J.

1. This petition under Section 482 of Cr. PC has been filed for quashing the proceedings in C.C.No. 12 of 1999 on the file of the XI Metropolitan Magistrate, Secunderabad wherein the petitioners are the accused and are prosecuted for the offence under Section 420 of IPC on the basis of the complaint filed by respondent No. 1 herein.

2. The relevant facts may be stated briefly : The complainant has been running the business in iron and steel at Boiguda. The complainant supplied stainless steel material worth Rs. 3,65,000/-. Towards part payment of the same, accused No. 2 who is the Managing Director of accused No. 1-M/s. Raman Tech and Process Engineering Limited issued a cheque for an amount of Rs. 2,50,000/-. After issuing of cheque, accused No. 2 made certain part payments towards remaining balance amount payable to the complainant. On being asked to do so by accused No. 2, the complainant presented the cheque in their Bank, namely, Vardhaman Mahila Co-operative Bank for realisation of the amount on 7-5-1997 and the said cheque has been sent back without realisation of the amount on the ground of 'insufficiency of funds' on 8-5-1997. The complainant got issued a legal notice as required under Section 138 of the Negotiable Instruments Act on 9-5-1997 which was received by the accused on 25-5-1997. But, neither amount was paid nor any reply was sent. Under these circumstances, the complainant filed a complaint for an offence under Section 138 of the Negotiable Instruments Act which was numbered as C.C.No. 105 of 1997.

3. However, during the continuance of those proceedings, the complainant and the accused entered into mutual settlement and an agreement was accordingly entered into between the first accused represented by the 2nd accused and the complainant firm on 27-10-1998 in the office of the first accused at Hyderabad. Thus, the accused are said to have induced the complainant to enter into that agreement. Under this agreement, the accused agreed to pay the amount due in 12 monthly installments at the rate of Rs. 20,000/- per month either in cash or in equivalent value of stainless steel pipes, sheets, shafts and the complainant in turn agreed to withdraw the case and accordingly withdrew the case. According to

the complainant, after this agreement, the accused dishonestly and fraudulently avoided the payment after withdrawal of the case from the Court. Thus, accordingly, the complainant had committed the offence under Section 420 of IPC and hence the impugned complaint.

4. The learned counsel for the petitioners Sri Milind G. Gokhale submits that the learned Magistrate erred in taking cognizance of offence under Section 420 of IPC as the facts disclosed do not attract the said provision. It is contended that there was no false representation on the part of the accused. If the accused had committed any breach of terms of the agreement, the complainant has a remedy under civil law based on the said breach of contract and under no circumstances can it be said that the offence under Section 420 of IPC has been made out.

5. On the other hand, the learned counsel for respondent No. 1 Sri V. Shankar Rao contends that the original promise made by the accused itself was fraudulent and dishonest which was never intended to be kept and that it is in pursuance of such dishonest misrepresentation that the complainant has foregone his right to continue the prosecution of the accused and withdrew the complaint which he would not have done but for such false representation. The further contention is that this in fact was confirmed by the breach of the agreement at the earliest inasmuch as the accused failed to pay even the first installment as agreed to under the said agreement. This however seems to be disputed question of fact inasmuch as on behalf of the accused it is stated that they were willing to pay the first installment by way of stainless steel material as provided for under the agreement and that it was the complainant who refused to accept the material.

6. The question for consideration is whether the allegations in the complaint broadly make out a case for an offence under Section 420 of IPC or not and whether it is a case where under Section 482 of Cr. P.C. the proceedings in the criminal case can be quashed?

7. The offence alleged against the petitioners (accused) in this case is that of cheating under Section 420 of IPC which reads as follows :

420. CHEATING AND DISHONESTLY INDUCING DELIVERY OF PROPERTY :-

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

8. For the offence under Section 420 of IPC, the following are the ingredients :

(i) The accused must have cheated and thereby dishonestly induced the complainant;

(ii) to deliver any property to any person or to make, alter or destroy whole or any part of the valuable security or anything signed or sealed which is capable of being converted into valuable security.

8A. Cheating has been defined in Section 415 of IPC. For cheating, there must be deceiving of any person and by so deceiving fraudulently or dishonestly inducing the person deceived (a) to deliver any property, or (b) to consent that person to retain any property, or (c) to do or omit to do anything which he would not do or omit if he were not so deceived and (d) which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

9. In this case it is alleged in the complaint that the accused has dishonestly or fraudulently represented and induced the complainant to enter into an agreement with false promise and thus retained dominion of an amount of Rs. 2,25,000/-. The sum and substance of the allegations against the accused in the complaint are that while the accused was facing prosecution for an offence under Section 138 of the Negotiable Instruments Act, he entered into settlement with the complainant and entered into an agreement promising to repay the amount due in installments. It is this promise, which induced the complainant to omit to prosecute the accused. As stated above, it is the case of the complainant that the representation of the accused that he will pay the amount in installments was made dishonestly and fraudulently.

10. Thus, it cannot be said by mere reading of the complaint and accepting the facts as they are that the element of cheating as defined in Section 415 of the IPC have not been made out.

11. It is a question of fact whether as asserted by the complainant, the accused had intentionally and dishonestly made false representation about payment of the amount due in instalments as a pretence for dropping of criminal proceedings against them or the original representation was not dishonest though it was subsequently breached. As alleged by the complainant, if the accused had dishonestly and fraudulently represented about the payment of the amount due by instalments and by making such representation induced the complainant from omitting to prosecute the accused for the offence under Section 138 of the Negotiable Instruments Act, which obviously he would not have omitted to do but for that representation, then the element of cheating as defined in Section 415 of Cr. P.C. prima facie can be said to be present.

12. It may further be pointed out that mere cheating itself is punishable under Section 417 of IPC which provides that whoever cheats shall be punishable for imprisonment of either description for a term which may extend to one year or a fine or both. Thus, as stated above, it is a question of fact which requires determination during the trial whether the representation of the complainant that he would make the payment' of the amounts due was dishonest and fraudulent from the inception as alleged by the complainant or whether the original representation was not so and subsequently there was mere breach of contract.

13. Similarly, whether the accused failed to pay the first instalment as alleged by the complainant or it was the complainant who refused to accept the material towards first instalment as stipulated under the agreement is also a question of fact which has to be gone into during the trial.

14. It is pertinent to note here that the act of withdrawal of the criminal proceedings for the offence under Section 138 of the Negotiable Instruments Act filed by the complainant against the accused in this case, prima facie falls within the meaning 'doing something or omitting to do something' as mentioned in Section 415 of IPC. The version of the complainant that the act of withdrawal of the complaint or

omission to prosecute the earlier complaint was induced by fraudulent and dishonest representation of the accused that the amount due would be paid by instalments requires determination in the light of the evidence produced before the trial Court.

15. It is not a case where it can be held that on the allegations as contained in the complaint, no case of offence of cheating has been made out. Further, it is for the trial Court to decide whether in the light of the evidence produced, an offence under Section 417 of IPC is made out or one under Section 420 of IPC is made out. I am not persuaded to hold that this is a case where extraordinary powers of the Court under Section 482 of Cr PC can be exercised for quashing the proceedings.

16. It is necessary to remind oneself that while proceeding under Section 482 of Cr PC, the allegations in the complaint cannot be subjected to meticulous and microscopic examination to ascertain whether every part of the ingredient of the offence alleged has been made out or not. If the broad allegations prima facie show the commission of an offence, this Court will be loath to interfere under Section 482 of Cr. P.C.

17. By way of caution, it may however be mentioned that the comments made in this order shall not be construed as any indication of findings on the question of fact which the trial Court will have to determine on the basis of the evidence produced during the trial.

18. In the results the petition is dismissed.