

Satya Narayan Mohapatra Vs. State of Orissa and anr.

Satya Narayan Mohapatra Vs. State of Orissa and anr.

SooperKanoon Citation : sooperkanoon.com/534574

Court : Orissa

Decided On : Oct-31-2003

Reported in : 2004CriLJ742; 2003(II)OLR629

Judge : A.S. Naidu, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 420; Code of Criminal Procedure (CrPC) , 1974 - Sections 202

Appeal No. : Cri. Misc. Case No. 3433 of 1999

Appellant : Satya Narayan Mohapatra

Respondent : State of Orissa and anr.

Advocate for Def. : Addl. Standing Counsel for No. 1

Advocate for Pet/Ap. : R. Das Mohapatra, ;J.D. Behera, ;S. Panda and ;S. Mohanty, Advs.

Disposition : Criminal misc. case allowed

Judgement :

ORDER

A.S. Naidu, J.

1. The order dated 19-6-1999 passed by the learned Judicial Magistrate, First Class, Bhubaneswar in I.C.C. No. 209 of 1997 framing charge under Section 420, I.P.C, against the petitioner is impugned in this case.

2. Opp. Party No. 2 filed a complaint petition alleging therein that it was a Dealer and Stockist of Sakura Watch having its Office-cum-Godown at Bhubaneswar. It deals with wrist-watches and supplies the same as per the requirements of other sub-dealers and retailers of different parts of Orissa. The petitioner being impressed by the quality and designs of Sakura watches placed orders with the complainant for several times and the usual mode of business was on the credit basis subject to repayment either through cheque or cash. The business between the complainant and accused started from 1995.

3. On 5-10-1996, the petitioner handed over a cheque drawn on Puri Urban Co-operative Bank, Puri for a sum of Rs. 12,942.75 paise towards the partial credit amount. The said cheque was returned with an endorsement that the signature of the petitioner appearing on the cheque differed. The complainant made bona fide and sincere inquiry about the whereabouts of the petitioner, but could not trace him out. The complainant felt cheated and was constrained to file the complaint petition. The said complaint petition was registered as ICC No. 209 of 1997 in the Court of the learned J.M.F.C., Bhubaneswar and cognizance of offence under Section 420, I.P.C. was taken. The petitioner appeared in Court and in spite of his protest that none of the ingredients of Section 420, I.P.C. was constituted, the Court below framed charge under Section 420, I.P.C. Being aggrieved by the said order, the petitioner has approached this Court.

4. On 2-8-99, this Court issued notice to the opp. parties and stayed further proceeding of the complaint case. Though notice was issued on several occasions, the same could not be served on the complainant-opp. party No. 2. Thereafter, this Court directed the petitioner to publish notice in a widely circulated Oriya newspaper. Accordingly, notice was published in 'Dharitri' on 31-3-2002. In spite of the publication, none appeared for opp. party No. 2.

5. In course of hearing, learned counsel for the petitioner forcefully submitted that the petitioner is ready and willing to clear up all his dues, but the complainant in

order to cheat the petitioner is demanding inflated amount. It is also submitted that in order to coerce the petitioner to continue business with the complainant, such a frivolous complaint petition has been filed. The transaction, if any, between the complainant and the 'petitioner, as has been admitted in the complaint petition, was in usual mode of business on credit basis subject to repayment. Thus, there was no inducement nor did the petitioner deceive the complainant to deliver any property and none of the ingredients of Section 420, I.P.C. is made out. Learned counsel for the petitioner also took the ground that the criminal proceeding pursuant to the complaint petition was initiated with an ulterior motive, thereby making gross abuse of the process of law and as such the proceeding should be quashed.

6. Learned counsel for the State contended that the assertions made in the complaint petition do constitute a cognizable offence and as such there was no error apparent on the face of the order passed by the Court below which does not call for interference at the very inception of the proceeding.

7. After hearing the learned counsel for the petitioner, I perused the complaint petition wherein it is stated as follows :--

'The accused being impressed by the quality and designs of 'Satuka Watches' has placed orders with the complainant for several times and usual mode of business is on credit basis, subject to repayment either through cheque or cash.'

8. Section 420 of the Indian Penal Code clearly stipulates that whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person shall be punished. The assertion made in the complaint petition as quoted above would clearly reveal that the mode of business was credit basis. Thus there was no inducement or deception to deliver any property. Thus the allegations made in the complaint petition, even taken on their face value, do not satisfy the ingredients of the offence alleged. At the other hand, the complaint petition manifestly indicates that the goods were supplied to the accused petitioner in due course of business. A reading of the complaint petition even otherwise reveals that the transaction was more of civil nature. If the complainant had any dues outstanding against the petitioner, it was open for him to realise the same resorting

to other provisions in law. In absence of any ingredients of Section 420, IPC, i.e. inducement or deceit before parting with the goods, the impugned order taking cognizance of offence under Section 420, IPC is vulnerable. According to me, issuance of process should not be mechanical nor should be made an instrument of operation for needless harassment. The responsibility and duties of magistracy lie in finding out whether the accused would be legally responsible for the offence charged with. The Court at that stage should be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration, lest it would be an instrumental in the hands of the private complainant as vendetta to harass a person needlessly. The view expressed by me is fortified by a decision of the Supreme Court in the case of Punjab National Bank v. Surendra Prasad Sinha, 1993 Supp (1) SCC 499 : (1992 Cri LJ 2916).

9. Considering the facts of the present case in the touchstone of the decision of the Supreme Court (*supra*) and the contentions raised by the learned counsel, and on examining the allegations made in the complaint petition, I am persuaded to accept the submission of the learned counsel for the petitioner and hold that necessary ingredients of the offence of cheating are not made out. At the other hand, the averments made in the complaint petition reveal what the complaint case was filed with an ulterior motive of satisfying the vendetta of the complainant and unless the impugned order is set aside and the criminal proceeding is quashed, the same would tantamount to abuse of the process of law.

10. In the result, the Criminal Misc. Case is allowed. The impugned order dated 19-6-1999 as well as the proceedings of ICC No. 209 of 1997 pending before the J.M.F.C., Bhubaneswar are quashed.

L.C.R. be sent back.