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Court : Jharkhand

Decided On : Jul-09-2015

Appellant : Surendra Kumar Singh

Respondent : State of Jharkhand and Anr.

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr. Revision No. 880 of 2005 ---------- Surendra Kumar Singh, son of Surya Narayan Singh Resident of Baraik Muhalla, Police Station- Gumla, District- Gumla ... ... Petitioner Versus 1. The State of Jharkhand 2. Bijay Kamal Kumar, son of Late Binod Kumar Resident of Baraik Muhalla, Police Station- Gumla, District- Gumla ... ... Opp. Parties ---------- CORAM: HON'BLE MR. JUSTICE RAVI NATH VERMA For the Petitioner : Mr. Sunil Kumar, Advocate For the State : A.P.P. For the O.P. No.2 : Mr. Mohit Prakash, Advocate ---------- C.A.V. ON:

12. 05.2015 PRONOUNCED ON:- 09/07.2015 Challenge in this revision application is to the order dated 28.02.2005 passed by learned Chief Judicial Magistrate, Gumla in G.R. No.40 of 2003 whereby and whereunder the petition filed by the petitioner under Section 239 of the Code of Criminal Procedure (in short the Code) for his discharge, has been rejected.

2. The petitioner has been made accused in connection with Gumla P.S. Case No.13 of 2003 instituted under Sections 406 and 420 of the Indian Penal Code on the basis of the complaint filed by the present opposite party no.2-Bijay Kamal

Kumar which was subsequently referred by the Chief Judicial Magistrate, Gumla under Section 156(3) of the Code to the concerned police station on the allegation that the present opposite party no.2, the complainant as well as the petitioner jointly purchased a 407 model truck from one Rajendra Mehta for a sum of Rs.1,50,000/- and both the petitioner and the complainant-opposite party no.2 shared 50% each of the consideration money and they started plying the said vehicle jointly and shared the profit, loss and liabilities. But on 21.06.2007, the petitioner and the present opposite party no.2 entered into an agreement that this petitioner will pay a sum of Rs.67,000/- to the opposite party no.2 within the period of nine months and the 2 Cr. Revision No.880 of 2005 vehicle was entrusted to the petitioner but with the clause that if he failed in payment of said amount, he will have to pay additional sum of Rs.5,000/- per month extra. However, if the petitioner feels any difficulty in payment of money he may sell out the vehicle to meet out the terms of the agreement and from the date of agreement dated 21.06.1997 the petitioner will be the actual owner and will bear all the liabilities of the vehicle like tax token, permit etc. It is also alleged that the terms of the agreement was not complied with by this petitioner whereafter a legal notice was sent to him but whenever opposite party no.2 requested the petitioner for payment, he tried to avoid by giving promise to pay the Amount. On 10.10.2002, when the opposite party no.2 visited the house of the petitioner and requested to obey the terms of agreement, he bluntly refused to pay the amount.

3. It appears from the record that the police after investigation submitted the charge-sheet under Sections 406 and 420 of the Indian Penal Code upon which the court took cognizance of the offence and send the case for trial in the court of Additional Chief Judicial Magistrate, Gumla. After appearance, the present petitioner filed the petition under Section 239 of the Code for his discharge but the court below rejected the said petition as indicated above holding that on perusal of the case diary it appears that there is enough evidence to frame charge against the accused as the informant entrusted the vehicle to the accused-petitioner with some condition but the petitioner deceived him by not paying even a single Paisa and further held that there is enough material on record for framing of charge against the accused under Sections 406 and 420 of the Indian Penal Code.

4. Learned counsel appearing for the petitioner while assailing the order impugned, seriously contended that even if accepting entire allegations in the application, no offence either under Section 406 or 420 I.P.C. is made out against the petitioner and that allegation of entrustment is essentially lacking. Even 3 Cr. Revision No.880 of 2005 according to the entire allegation in the complaint, in absence of entrustment of any property, no offence under Section 406 I.P.C. can be made out and the dispute being civil in nature relating to violation in terms of agreement, the criminal proceeding was not maintainable against the petitioner. It was also submitted that at best it being a contractual dispute, a civil remedy is available but the learned court below while passing order impugned has clearly displayed his non-application of judicial mind.

5. Contrary to the aforesaid submission, Mr. Mohit Prakash, learned counsel for the opposite party no.2 submitted that from mere reading of the complaint, a distinct case of commission of offence under Section 406 and 420 of the Indian Penal Code are made out as the petitioner has not paid even a single Paisa from the date of agreement. Though they entered into an agreement for payment of a fixed amount within a distinct period but violation of the terms of agreement clearly constitute an offence and that the intention of the petitioner from very beginning was to cheat the present opposite party no.2.

6. In order to bring home the charge of criminal breach of trust, as defined under Section 405 of the Indian Penal Code, the following ingredients must be present:- (i) Entrustment of property (ii) Dishonest intention or misappropriation or conversion of the property to his own use. (iii) Dishonest use or disposal of the property. If the dishonest intention is absent, a mere breach of contract from a breach of condition is not necessarily synonyms of criminal breach of trust and mere non-payment of installment as agreed could not be placed under the four corners of Section 420 I.P.C. Similarly, to bring a person within four corners of cheating, the following three ingredients must be present:- (i) Practice of deception by the offender. (ii) There must be fraudulent or dishonest inducement so as to make the person deceived to deliver any property. 4 Cr. Revision No.880 of 2005 (iii) By reason of delivery of the property, there must be causing or likelihood of causing of damage or harm to be deceived.

7. Apparently, in the instant case, the petitioner and the opposite party no.2 jointly purchased the truck and thereafter entered into an agreement and the petitioner promised to pay a sum of Rs.67,000/- to the opposite party no.2 and was plying the vehicle. There was a term in the said agreement that if the petitioner thinks, he may sell the vehicle to meet the terms of agreement but in violation of terms, nothing was paid to the opposite party no.2 though the vehicle in question was entrusted to the petitioner. It appears that there was a dishonest intention of the petitioner not to pay anything to the opposite party no.2. It further appears that there was dishonest inducement to the opposite party no.2 to enter into the agreement whereafter the opposite party no.2 delivered the vehicle to the petitioner so the deception is also there from the very beginning. In a case M. Krishnan Versus Vijay Singh; (2001) 8 SCC645it was noticed by the Honble Supreme Court that the High Court having been impressed by the fact of the said case that the nature of dispute was preliminary of a civil nature, held that the appellant was not justified in resorting to the criminal proceeding. The Honble Supreme Court observed that accepting such a general proposition would be against the provisions of law inasmuch as in all cases of cheating and fraud, in the whole transaction, there is generally some element of civil nature. In a criminal court, the allegations made in the complaint have to be established independently, notwithstanding the adjudication of a civil dispute by a civil court.

8. It is well settled principle of law that if on the basis of allegation made in the F.I.R. and the material collected during the investigation, the offence is made out against the accused, the accused cannot be discharged at the initial stage. There is a clear allegation of entrustment and misappropriation and the allegations made out against the petitioner, prima facie, discloses an offence 5 Cr. Revision No.880 of 2005 under Sections 406 and 420 of the Indian Penal Code and it cannot be said that it does not disclose the commission of any offence. The court below has also found sufficient material on record to proceed to frame charge against the petitioner.

9. In the result, without expressing any opinion on the merit of the case, I donot find any plausible ground to interfere in the order impugned. Accordingly, this revision application, being devoid of any merit is, hereby, dismissed.

10. The court below shall proceed with the matter in accordance with law with utmost expedition. However, it is made clear that the observation made above in this judgment be not taken as an expression or opinion of this Court on the merit of the case. (R.N. Verma, J.) Jharkhand High Court, Ranchi Dated, 9th July, 2015 Anit/N.A.F.R.

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