

Jagdish Chander Vs. State and Another

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Court : Delhi

Decided On : Apr-19-1999

Reported in : 1999IIIAD(Delhi)454; 1999(50)DRJ172

Judge : N.G. Nandi, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 120-B and 420

Appeal No. : Criminal Misc.(Main) 190/96

Appellant : Jagdish Chander

Respondent : State and Another

Advocate for Def. : Shri H.J.S. Ahluwalia, A.P.P.; Shri Sanjay Poddar, Adv.

Advocate for Pet/Ap. : Shri Rajat Aneja, Adv

Judgement :

ORDER

N.G. Nandi, J.

1. Petitioner-accused has been praying for the quashing of F.I.R. No.283/95 of Police Station Kashmere Gate, Delhi for the offences under Sections 420/120-B Indian Penal Code (for short 'IPC') by invoking the inherent jurisdiction of this

Court under Section 482 of the Criminal Procedure Code (hereinafter referred to as 'the Code').

2. The complainant-ISBT on 9.5.1995 filed a complaint for the offences under Section 420/120-B IPC against Jagdish Chander son of Puran Chand (present petitioner) alleging that the parking sites of ISBT, Kashmere Gate, Delhi were licenced to the accused as per the terms and conditions of the agreement whereunder the parking charges permitted to be charged were 50 paise per entry of cycle or Rs.10/- per month, for scooter or motor cycle Rs.2/- per entry or Rs.45/- per month, for cars Rs.4/- per entry or Rs.120/- per month and for helmet 50 paise per entry; that number of complaints against the accused were received from the public for over-charging of the parking rates; that the team of ISBT Officials during inquiry into the allegations made by the public, confiscated parking slips from one Suresh Kumar, an employee of accused Jagdish Chander. The rates printed on these parking slips were higher than the specified rates of licensee agreement; that the statement of said Suresh Kumar was recorded, which revealed that the rates charged were on the instructions of accused Jagdish Chander, licensee of the parking sites. Accused is, thus, alleged to have committed cognizable offence under Section 420 I.P.C. for cheating the public by over charging the rates.

3. It has been submitted by Mr.Rajat Aneja, learned counsel for the petitioner that the prosecution for the offences under Section 420 IPC is not maintainable and the prosecution is malafide; that the notice dated 28.2.1994 is prior in point of time to the present complaint and that is the reason why the complaint has been filed. By the said notice the petitioner called upon the complainant to get the site vacated from R.K.Carriers and the coolies (porters) and to restore the possession of the same to the petitioner and also to open all four gates so that public could have a free access from all gates to come and go for parking their vehicles in the public parking place; that no cause of action has accrued to the complainant for filing complaint for the offence under Section 420 IPC; that the remedy is by way of civil suit for the alleged breach of the terms of the agreement; that the license in favor of the petitioner is already terminated as the consequence of the alleged breach of the terms of the agreement; that the ingredients of Section 415 and 420 IPC are not attracted; that it is not the case of the complainant that the complainant is

cheated by the petitioner. As against this, it is submitted by Mr.H.J.S.Ahluwalia, learned APP for the State that the provisions of Section 418 IPC are clearly attracted; that the petitioner is found collecting parking charges more than the rates fixed with the petitioner in the agreement/licence; that number of complaints have been received against the petitioner alleging over-charging of the parking rates.

4. It may be appreciated that the license granting parking site at ISBT for the purpose of parking cycles, scooters, cars etc. was granted by the complainant-ISBT to the petitioner-accused. For the said purpose, an agreement was also entered into between the petitioner and the complainant. It is not in dispute that under the licensee agreement, permissible parking charges are: for cycle Rs.0.50 per entry or Rs.10 per month, for scooter or motorcycle Rs.2/- per entry or Rs.45/- per month, for cars Rs.4/- per entry or Rs.120/- per month and helmet Rs.0.50 per entry. It is also not in dispute that these rates were applicable for entry into the parking site for 12 hours from the time of parking of the vehicle and for its continuance beyond 12 hours, only single rates were to be charged. Thus, it will be seen that the rates fixed by the complainant for parking of the vehicles covered there under were not only for the safe keeping and convenience of the public at large who comes to ISBT with their vehicles, but also protecting them against exploitation by way of arbitrarily charging parking rates.

The copy of the FIR is at page 48. It is alleged therein that number of complaints were received from the members of public alleging over-charging of the rates by the accused. It is suggested that in order to investigate into the genuineness of the complaints, a team consisting of ISBT officials conducted a raid on 27.10.1994; that during the raid parking slips were confiscated from one Shri Suresh Kumar, an employee of accused Jagdish Chander and the rates printed on the parking slips were found higher than the specified rates of licensee agreement; that the statement of said Suresh Kumar was recorded, which indicated that the rates were being charged on the instructions of accused Jagdish Chander, the licensee of the parking site. The petitioner is, thus, alleged to have cheated by charging over rates for parking of the vehicles.

In the case of Peter Vs . S. Yesudhas (Madras High Court) it is held that 'a criminal prosecution for offence under Section 420 IPC, on the allegations that the accused entered into an agreement for sale of the property to complainant and allegedly receiving substantial amount by way of advance, would not be liable to be quashed under Section 482 of the Code simply because the complainant also filed suit for specific performance of the agreement.

In the case of V. Kothari And Ors. v. State of U.P. and Ors. (Allahabad High Court) it has been held, following the principle laid down in : (1996)5SCC714 , that 'mere filing of civil suit or pendency of arbitration proceedings can not absolve the responsibility of the criminal court to punish the guilty'.

5. On behalf of the petitioner, reliance is placed on the decision in the case of Hari Prasad Chamaria v. Bishun Kumar Surekha and Ors. : 1974 CriLJ352 , wherein it is held that 'in absence of the complaint suggesting that there was dishonest or fraudulent intention at the time money was parted with and the complaint also not indicating that there was any inducement by the accused which induced the complainant to pay money to the accused no criminal liability could be fastened under Section 420 IPC on the accused'. There can be no disagreement with this proposition of law.

In the instant case the alleged offence consists of cheating ISBT-the complainant and the general public by over-charging in breach/contravention of the licence, granted by the complainant to the petitioner. The facts of the present case being altogether different and the allegations being of not the complainant alone who is allegedly cheated but also the public at large, for whose benefit, facility and convenience the license was granted to the petitioner. In my opinion, the principle laid down in the case of Hari Prasad Chamaria v. Bishun Kumar Surekha and Ors. (supra) will be of no assistance to the petitioner.

6. Section 418 IPC deals with cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect. It provides :

'418. Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect. Whoever cheats with the knowledge that he

is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.'

As pointed out above, the license granted by the complainant ISBT in favor of the petitioner is in respect of the parking site of ISBT, Kashmere Gate, Delhi on the terms and conditions of the agreement which interalia provided the parking rates required to be charged there under as follows :

Cycle Rs.0.50 per entry Scooter/Motor cycle Rs.2.00 per entry Car Rs.4.00 per entry Helmet Rs.0.50 per entry

Keeping in view the above parking rates quoted/offered in the tender by the Petitioner, the complainant accepted the tender and fixed the license fee at Rs.2,55,560/- and required the petitioner to deposit four months' advance license fee amounting to Rs.10,22,240/-. Now, by charging more parking rates from public, than what has been accepted by the complainant, the petitioner prima-facie appears to have committed the offence falling under Section 418 IPC inasmuch as if higher rates were offered in the tender, then license fee at a higher rate would have been fixed by the complainant or the tender of some body else offering rates higher than the petitioner would have been accepted and license fee fixed accordingly and that is how wrongful loss to the complainant also besides general public whose interest is also required to be protected. Protecting the interest as contemplated under Section 418 IPC may not necessarily be financial interest only. The alleged act of over charging - cheating - relates to the transaction of grant of license to the petitioner, as stated above, and over charging of parking rates by the petitioner, will have the effect of adversely affecting the reputation/image of the complainant because the grant of licence, specifying the parking rates is by the licensor and the complaints from the public have been received by the complainant-licensor. And this is the wrongful loss to the complainant, whose interest also the petitioner is bound to protect by law and/or under the license Agreement. It needs no emphasis that anybody can set criminal into motion unless the Statute requires the filing of the complaint by a particular

person only.

7. As pointed out above, it is alleged in the complaint that during the raid parking slips were confiscated from Suresh Kumar, the employee of the petitioner licensee of the parking site at ISBT, Kashmere Gate, Delhi and on these parking slips the parking rates printed were higher than the specified parking rates of the licensee agreement and the statement of Suresh Kumar, as per the complaint, indicated that the higher rates were being charged on the instructions of Licensee accused Jagdish Chander.

8. In the case of State of Haryana & Ors. v. Ch. Bhajan and Ors. : 1992 CriLJ527 while considering the provisions contained in Section 482 of the Code the Supreme Court enumerated following categories of cases wherein the High Court may exercise its powers under Article 226 of the Constitution of India or Section 482 of the Code and may interfere in the proceedings relating to cognizable offences to prevent abuse of the process of any court or otherwise to secure the ends of justice but the powers should be exercised sparingly and that too in the rarest of rare cases. The categories of cases enumerated are :-

1) Where the allegations made in the First Information Report or the Complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2) Where the allegations made in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under S. 156(I) of the Code except under an order of a Magistrate within the purview of S. 155(2) of the Code.

3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under S. 155(2) of the

Code.

5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

p> 6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

9. Considering the fact that the license was granted to the petitioner for parking sites at ISBT, Kashmere Gate, Delhi for providing parking facility to public at large at the rates offered in the tender by the petitioner and accepted by the complainant and license fee fixed accordingly, specified in the licensee agreement, also keeping in view the protection to the public at large under the agreement, and the petitioner required to protect the interest not only of the complainant but also general public under the agreement, the allegations leveled against the petitioner in the complaint prima-facie suggest the commission of cognizable offence by the petitioner.

The above discussion would reveal that it can not be said that the facts alleged in the complaint do not constitute any cognizable offence or that the allegations are absurd and inherently improbable so as to call for exercise of powers under Section 482 of the Code.

10. In the above view of the matter the petition being devoid of merits is liable to be dismissed.

11. Order accordingly.

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