

Subodh Kumar Jain Vs. N.C.T. of Delhi and ors.

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Court : Delhi

Decided On : May-01-2008

Reported in : 2008(103)DRJ337

Judge : S. Muralidhar, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482; Indian Penal Code (IPC) - Sections 34 and 420

Appeal No. : Crl. M.C. 1372/2006

Appellant : Subodh Kumar Jain

Respondent : N.C.T. of Delhi and ors.

Advocate for Def. : Krishan Mahajan, Adv. for R-2 and ; Rohit Priya Ranjan, Adv. for R-3

Advocate for Pet/Ap. : Pravir K. Jain and; Rohit Priya Ranjan, Advs

Disposition : Petition allowed

Judgement :

S. Muralidhar, J.

1. These petitions under Section 482 of the Criminal Procedure Code, 1973 seek the quashing of Complaint Case No. 1814 of 1995 titled S.C. Gupta v. Subodh

Kumar Jain and Anr. pending in the Court of the learned Metropolitan Magistrate ('MM'), New Delhi under Section 420 read with Section 34 of the Indian Penal Code ('IPC') and all proceedings consequent thereto including the summoning order dated 22nd February, 2003 passed by the learned MM. The petitioner in Crl.M.C. 1372 of 2006 is Subodh Kumar Jain, who is Accused No. 1 in the Complaint. The petitioner in Crl.M.C. 4536 of 2005 is Paresh Kumar, who is Accused No. 2 in the Complaint.

2. The complaint states that the complainant S.C.Gupta is the Chief Accountant of the East West Medical Centre ('hospital') owned by Dr. N.P.S. Chawla. Accused No. 1 Subodh Kumar Jain is described as Director of Niryat San Apparels (India) Ltd. Accused No. 2 Paresh Kumar is stated to be 'in the employment of accused No. 1 as Translator of Korean language.' It is stated that on 15th July 1995 Accused No. 2 was sent by Accused No. 1 to Agra to accompany two Korean Engineers for sight seeing. Accused No. 2 was to assist them as Korean Language translator. Accused No. 2 and the two Korean engineers travelled in a DLY car driven by Pratap Singh Rana. While returning from Agra they met with an accident near Mathura. The driver and the occupants sustained injuries, some of them serious. They were initially admitted to a hospital in Mathura for treatment.

3. The complaint states stated that on 16th July 1995 Accused No. 1 Subodh Kumar Jain approached Dr.N.P.S. Chawla and requested him to send an ambulance to bring the above said injured persons from Mathura and to get them hospitalized and treated at the East West Medical Centre. It is stated that accused No. 1 gave his visiting card to Dr. N.P.S. Chawla to show that he was an exporter and manufacturer of woolen goods with foreign collaboration and lived just adjacent to the hospital. It is stated that the bills for the treatment of the two Koreans were paid by the company of which accused No. 1 was a Director. The bill of the driver was paid by M/s Hita International. Accused No. 2 Paresh Kumar remained admitted for further treatment up to 29th July 1995. Since he had suffered multiple injuries he was given blood transmission and operated upon for setting right the multiple fractures of the femur bones of the left and right legs.

4. According to the complainant, on 28th July 1995 Accused No. 1 Subodh Kumar Jain informed the hospital that he wished to remove accused No. 2 to a government hospital for further treatment. Accordingly, he asked for the final bill. Accused No. 1 is also stated to have deposited Rs. 15,000/- in cash on that day i.e. 28th July 1995 for being adjusted towards the dues at the time of discharge of Accused No. 2. The complaint states that total bill for hospitalization in the nursing home, including the professional fee of the doctors and the nurses for their medical services came to Rs. 1,06,251/-. Accused No. 1 paid Rs. 35,000 in three Installments: Rs. 10,000/- by cheque on 19th May 1995; Rs. 10,000/- in cash on 16th July and Rs. 15,000/- in cash on 28th July 1995. As regards the balance of Rs. 71,251/- a bill was presented to Accused No. 1 on 29th July, 1995 at the time of discharge of Accused No. 2. Thereafter in paras 14 and 15 of the Complaint it is stated as under:

14. That the accused No. 2 at the instance of accd. No. 1 lodged a report with the police that accd. No. 1, who got him admitted in the said nursing home now wants to shift him to government hospital and is not agreeing to pay the hospitalization bill (sic bill) of the said Nursing Home for his medical treatment. While in the beginning at the time of getting him admitted he agreed to bear each and every penny of medical treatment.

15. That on 29.7.95 a bill amount to Rs. 71,251.00 was presented to accused No. 1 at the time of discharge of accused No. 2, but he expressed his inability to pay the bill amount at that time and promised to pay the same by the evening on the same day.

Thereafter accused No. 1 did not come to pay the amount of the above said bill due from him for the medical treatment of the accused No. 2.

The complaint goes on to state that despite repeated requests by Dr. N.P.S. Chawla, and a legal notice sent to both Accused him, they did not make payment of the balance amount. In para 18 it is asserted that 'the accused right from the beginning had dishonest and malafide intentions to defraud and cheat' and that by 'not paying the charges' for the treatment they had 'caused a wrongful loss' to the hospital. The complaint was filed on 3rd June 1996. By the impugned summoning

order dated 22nd February 2003 both accused were summoned by the learned MM for the offence under Section 420 read with Section 34 IPC.

5. It is contended by Mr. Pravir Jain and Mr. Rohit Ranjan, learned Counsel for the petitioner Subodh Kumar Jain and Paresh Kumar respectively that the complaint on a perusal as a whole does not even prima facie make out a case against the said petitioners for the offence under Section 420 IPC. Mr. Jain points out that in para 13 of the legal notice dated 11th August 1995 sent on behalf of the hospital there was absolutely no allegation of cheating. Given the fact that Accused No. 1 had admittedly made part-payment of the amounts demanded it was clear that this was only a civil dispute. The filing of the criminal complaint was an arm-twisting tactic. The summoning order was passed almost 6-7 years thereafter and was nothing but a harassment of the petitioner. Paresh Kumar was not an employee of Accused No. 1 as claimed by the complainant and therefore Subodh Kumar Jain cannot be held liable for the payment of the expenses for medical treatment of Paresh Kumar. It is submitted by Mr. Ranjan learned Counsel for Paresh Kumar points out that the complaint read as a whole brings out no case of cheating against his client. In fact it acknowledges that when Accused No. 2 realised that the expenses for his continued treatment would not be borne by Accused No. 1, he volunteered to get discharged in order to seek treatment at a government hospital. therefore the complaint itself makes it evident that as far as Paresh Kumar was concerned, there was no intention to cheat the hospital.

6. Reliance by the counsel for the petitioners is placed on the judgment of the Supreme Court in *Vir Prakash Sharma v. Anil Kumar Aggarwal* (2007) 7 SCC 373 to contend that the basic ingredients of Section 420 IPC are not satisfied. They also refer to the judgments of the Supreme Court in *Alpic Finance Ltd. v. P. Sadasivan* : 2001 CriLJ1246 , *Ajay Mitra v. State of M.P.* : 2003 CriLJ1249 , *State of Haryana v. Bhajan Lal* : 1992 CriLJ527 and *Pepsi Foods Ltd. v. Special Judicial Magistrate* : 1998 CriLJ1 .

7. Appearing for the complainant, Mr. Krishan Mahajan learned Counsel submits that the complaint when read as a whole clearly makes out a case of cheating against the both accused who worked in tandem to ensure that the hospital home

was not paid the entire dues for the treatment. Between two of them they were passing the buck to one another and avoiding their liability. He submits that the pre-summoning evidence recorded of the witnesses of the complainant which according to him substantiate the complaint. He submits that this Court should not in exercise of its powers under Section 482 Cr PC interfere in the matter since the contentions of the parties could only be tested by way of evidence at the trial.

8. Considering the length of time for which the present proceedings had been pending and given the nature of the claim, this Court suggested that the parties should consider the possibility of settling their disputes. After orders were reserved, petitioner Subodh Kumar Jain filed an application in this petition offering to pay the entire amount principal amount to the hospital, without prejudice to his contentions in this petition. However, Mr. Krishan Mahajan, on instructions from the complainant Respondent No. 2 informed the Court that the complainant was not willing to accept the offer. The Court therefore proceeds with the merits of the case.

9. On reading the complaint as a whole as well as the pre-summoning evidence of the five witnesses for the complainant this Court finds that the dispute is essentially of a civil nature and not even a prima facie case for the offence under Section 420/34 IPC is made out against either of the accused. The averments in the complaint even taken on their face value to be correct only indicate that this was a case of avoiding the civil liability to pay the hospital dues with no manifest intention of cheating. Accused No. 1 had already paid Rs. 35,000/- as part payment and had in fact cleared the bills of the injured driver and the two Koreans. Since Paresh Kumar was not an employee of Accused No. 1, but engaged only for the translation services during the Agra trip of the two Koreans, Accused No. 1 did not want to accept the liability for the treatment of Accused No. 2. Although the complaint states at one place that Paresh Kumar was 'in the employment of' Accused No. 1, this has been denied by the petitioners. There appears to be no basis for the claim made by the complainant in this regard. On the contrary at the very first instance when a legal notice dated 13th August 1995 was sent to the two Accused on behalf of the hospital, there was no mention therein that Paresh Kumar was an employee of Accused No. 1. This appears to have been added in

the complaint with nothing to back up that claim. Further, the legal notice reads as a claim for money arising out of unpaid hospital bills.

10. As regards Paresh Kumar he appears to have proceeded on the basis that Subodh Kumar Jain would incur the expenses for his treatment. When he realized that this was not going to happen he sought discharge in order to avail of treatment at a government hospital. This is evident from reading of the complaint itself. This clearly reflects that there was no intention on the part of Paresh Kumar to cheat the hospital.

11. There was at the highest a case for a claim by the hospital against the accused in a civil court for recovery of money but not for the offence of cheating. The pre-summoning evidence also only makes out a case for breach by the petitioners of a promise to pay the balance amount for the services rendered by the hospital. The resort to the criminal law process in such instance has not been approved by the Supreme Court in the judgments referred to by learned Counsel for the parties, a position that has been reiterated in the recent judgment in *Didigam Bikshapati v. State of Andhra Pradesh* 2008 (1) JCC 258. In *Alpic Finance Ltd.* it was held that if 'having accepted the pecuniary advantage involved in the transaction' a person fails to pay his debt 'he does not necessarily evade the debt by deception.' In *Vir Prakash Sharma* it was held that 'non-payment or underpayment of the price of the goods by itself does not amount to the commission of an offence of cheating or criminal breach of trust.'

12. In the instant case, the claim of the hospital essentially was for non-payment of the balance of the charges for services rendered and nothing more. Resort to the device of a criminal complainant, without filing a civil claim, was only with a view to adopt coercive measures to get the petitioners to pay the amounts due. This is what has been held to be impermissible in the judgments referred to. The basic ingredients of the offence of cheating cannot be said to be even prima facie made out against either accused on the reading of both the complaint as a whole as well as the pre-summoning evidence led by the complainant.

13. For the aforementioned reasons Complaint Case No. 1814 of 1995 titled *S.C. Gupta v. Subodh Kumar Jain and Anr.* pending in the Court of the learned MM,

New Delhi and all proceedings consequent thereto including the summoning order dated 22nd February 2003 passed by the learned MM are hereby quashed.

14. The petitions are allowed. The applications are disposed of. A certified copy of this order will be sent by the Registry to the learned MM concerned immediately.

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