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Court : Rajasthan

Decided On : Mar-12-1986

Reported in : 1986WLN(UC)251

Judge : Kishore Singh Lodha, J.

Appeal No. : S.B. Criminal Misc. Application No. 325 of 1985

Appellant : Roop Kishore

Respondent : State of Rajasthan

Disposition : Application allowed

Judgement :

Kishore Singh Lodha, J.

1. The petitioner Roop Kishore has filed this application under Section 482 Cr. PC against the order dated 12-6-1985 of the Addl. Chief Judicial Magistrate No. 1, Jodhpur, by which a charge for offence under Section 420 IPC has been framed against the petitioner.

2. The facts giving rise to this application briefly stated are that on 30-7-1984, the complainant Vijai Kumar filed a complaint before the learned Additional Chief Judicial Magistrate No. 1, Jodhpur, alleging that the complainant was a dealer in stone, Bajri & etc. and its supply and transportation at Jodhpur and also takes

contracts for the same. He further alleged that the accused Roop Kishore called him in his office in the first week of July (1984) and told him that the accused had taken contracts on which lime, sand and bricks etc. have to be supplied and wanted the complainant to do that job and also gave two cheques to the complainant; one dated 16-7-1984 for a sum of Rs. 2,300/- and the other dated 24-7-1984 in a sum of Rs. 16,000/- and told him to proceed with the contracts. It is alleged that believing in the accused, the complainant supplied the goods but the cheques were dishonoured when they were presented on the due dates. So far as the cheque dated 16-7-1984 was concerned, it was returned with the remark 'payment stopped' and the other was returned with the remark referred to drawer. This according to the complainant, showed that the accused had no deposits in the Bank and he also was not in a position to arrange for the payment of these cheques. On the other hand, it appeared that the intention of the accused was to cheat the complainant and to obtain delivery of the aforesaid goods worth about Rs. 40,000/-. The case of the complainant further was that thereafter he had been asking the accused to pay the amount but he had been putting him off and, therefore, he was convinced that he has been cheated. Hence he filed the complaint on 30-7-1984. The complaint was forwarded to the police under Section 156(3) Cr.PC. The police after investigations, put up the challan for offence under Section 420 IPC against the accused and the learned Magistrate took cognizance of the offence, by his order dated 12-6-1985. Aggrieved of this, the accused Roop Kishore has come up before this Court.

3. I have heard the learned Counsel for the petitioner and the learned Public Prosecutor and have gone through the diary.

4. It is contended by the learned Counsel for the Petitioner that as a matter of fact, the complainant only wanted a coercive process against the accused in order to realise the amount of the cheques, otherwise it was only a case of civil liability in as much as according to the material on record, it is clear that there was a mutual open and current account between the parties much before July, 1984 when the complainant alleges that the accused had called him in office and had asked him to supply the goods. The cheques referred to in the complaint had been issued only in respect of the past dealings and not with the intention of keeping the goods

without payment and to cheat the complainant. The learned Counsel for the petitioner in this connection pointed out that when the matter was initiated against the petitioner, he had moved an application for anticipatory bail and in those proceedings, he had produced certain accounts, a part of which had been written by the complainant himself and the complainant admitted before the Court that they were so written by him. These documents would clearly go to show that the parties had dealings much before July, 1984 and the version of the complainant that goods were supplied on account of the post dated cheques issued by the accused is entirely wrong. He also urged that the circumstances of the case clearly go to show that initially intention of the petitioner was never to cheat the complainant but they had been transacting business for quite some time and cheques were issued in the course of the business, of course, they have not been honoured due to paucity of funds or on account of the petitioner's own instructions to the Bank. I have given my careful consideration to these contentions and I find considerable force in them. The learned Public Prosecutor has also not been able to controvert them.

5. It would appear from the documents, which had been filed by the accused in the course of the hearing of the application for anticipatory bail that transactions had been going on between the parties from a date much earlier than July, 1984. These documents are the statement of accounts which have been marked A and B respectively for the sake of convenience. The account marked A has entries dated 7-4-84, 9-4-84, 10-4-84 etc. and it also appears that there are some earlier entries also, which do not have a date against them. It is pertinent to note that these documents have an endorsement by the complainant Vijai Kumar himself. He had admitted that all the entries in these documents except those, which have been marked by a cross are in his handwriting and some of these entries clearly pertain to the month of April, 1984. The document marked B also discloses that a large number of transactions to the tune of thousands have been entered into by the complainant Vijay Kumar with the accused and these transactions do not relate to the supply of the goods referred to in the complaint. The matter does not rest here. During the course of the proceedings for anticipatory bail, Vijay Kumar himself is alleged to have filed the documents, the copies of which have been marked C-1 to C-6 and they also show that there had been transactions between

the parties much earlier to July, 1984. The document C-1 shows a cash advances by Vijay Kumar to Roop Kishore. The document marked C-2 relate to the amounts outstanding in the market through Roop Kishore and the account of the joint truck business. The documents marked C-3, 4 and 5 contain the details of the three entries shown in the document marked C-2 and the document C-6 contains the final account. These leave no room for doubt that the parties had accounts and dealings since before July, 1984 and it cannot be accepted that the cheques issued to the complainant on 16-7-1984 & 24-7-1984 were issued with the intention of obtaining the supply of goods without payment. The initial intention of the petitioner cannot be said to be dishonest and merely because the cheques had not been honoured, he cannot be held guilty under Section 420 CPC. Reference in this connection may be made to Jagdish Narain v. Shyam Sunder and Ors. 1984 RLR 839 and Bheru Singh v. The State of Rajasthan and Anr. 1985 Cr. LJ (Raj) 232.

6. I am, therefore, clearly of the opinion that the learned Magistrate was wrong in taking cognizance of the offence under Section 420 IPC against the petitioner. The order of the learned Magistrate dated 12-6-1985 therefore, quashed.

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