

Robin Thomas Vs. The State of Jharkhand and Anr

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Court : Jharkhand

Decided On : Oct-27-2016

Appellant : Robin Thomas

Respondent : The State of Jharkhand and Anr

Advocate for Pet/Ap. : Mr. Pratiush Lala

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr.M.P. No. 1040 of 2015 ---
Robin Thomas, Son of Othoma Thomas, Resident of at-PXL Enterprises 27
Nishyadhan Mukherjee Road, P.O. & P.S. Howrah, District-Howrah (W.B.).
.....Petitioner Versus 1. The State of Jharkhand.

2. Shyam Lal Yadav, Son of Badri Prasad Yadav, Resident of at Gandhi Road,
Raghuraj Tower, P.O. & P.S. Dhansar, District- Dhanbad, Jharkhand Opposite
Parties --- CORAM : HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY ---
For the Petitioner : Mr. Pratiush Lala, Advocate For the State : Mr. Rajneesh
Vardhan, A.P.P. For O.P. No. 2 : None --- 06/27.10.2016 Heard Mr. Pratiush Lala,
learned counsel for the petitioner and Mr. Rajneesh Vardhan, learned A.P.P. No
one appears on behalf of O.P. No. 2 in spite of valid service of notice. In this
application, the petitioner has prayed for quashing the entire criminal proceeding in
connection with C.P. Case No. 501 of 2014, including the order dated 19.12.2014,
passed by the learned Judicial Magistrate, Dhanbad, by which cognizance has
been taken for the offence punishable under section 420 of the Indian Penal Code.

A complaint case was instituted by the opposite party no. 2, in which it was stated that the complainant was having a family business of supply of building materials and since the petitioner had a construction Firm, the complainant was induced by the petitioner to work with him in the field of construction. It has been stated that a partnership deed was executed in the year 2008 between the petitioner and the complainant for performing construction work in Dhanbad district. Since the petitioner was facing financial difficulties and had earlier taken an investment from the complainant of Rs.94,90,500/-, the petitioner repeatedly induced the complainant to carry on the work at Dhanbad and make investment in the projects of Dhanbad. Further allegation is that an amount of Rs.32400000/-was due from the petitioner which he had acknowledged but later on refused to make payment of any amount to the complainant. Further allegation has been levelled by the complainant that although an assurance was given by the petitioner for clearing the entire dues but the same was never done and subsequently the petitioner refused to pay any amount to the complainant. -2- Based on the aforesaid allegation, C.P. Case No. 11823 of 2014 was instituted, in which after conducting an enquiry under section 202 Cr.P.C. by examining the complainant and one of his witness cognizance was taken on 19.12.2014 by the learned Judicial Magistrate, Dhanbad for the offence punishable under section 420 of the Indian Penal Code. Submission has been advanced by the learned counsel for the petitioner that the entire dispute is civil in nature as would appear from the complaint petition itself. It has been submitted that the petitioner and the complainant had entered into a partnership deed/agreement and on account of some monetary dispute arising out of the said business transaction which if the complainant was indeed aggrieved could have approached before the competent civil court but only to pressurize the petitioner, instant criminal case has been instituted. Learned counsel for the petitioner referred to solemn affirmation of the complainant and has submitted that the complainant himself has admitted that in earlier work which had taken place at Kolkata, the amount had been paid to the complainant. It has further been submitted that ingredient of cheating is not made out as there was no dishonest intention from the very inception on the part of the petitioner to cheat the complainant. It has also been submitted since the complainant wants to stop ongoing construction process of the petitioner-Firm, proceeding under section 144

Cr.P.C. had also been initiated at the behest of the complainant which subsequently was dropped, since the complainant himself did not take any interest in the said proceeding. Learned counsel therefore submits that the entire allegation levelled in the complaint petition and in view of the surrounding circumstances, continuation of criminal proceeding against the petitioner would be an abuse of the process of the court. Learned A.P.P. appearing for the State has submitted that the amount in question is to the tune of Rs.32400000/- and on the inducement of the petitioner, the complainant had to suffer such a huge loss and the same thus comes within the definition of cheating as envisaged under section 415 of the Indian Penal Code. It appears from the complaint petition that the dispute which had arisen between the petitioner and the complainant was with respect to the construction business, in which the petitioner and the -3- complainant had agreed to be partners. The relationship broke subsequently leading the complainant to file the complaint petition alleging therein that the petitioner had cheated the complainant of about Rs. 32400000/ approximately and in spite of repeated assurance, the said amount was not paid. In the solemn affirmation of the complainant, he has stated in detail about the partnership business between the petitioner and the complainant and it has been clearly stated that in earlier work which had taken place at Kolkata, the amount had been paid to the complainant by the petitioner. It further appears that a proceeding under section 144 Cr.P.C. was initiated at the behest of the complainant, in which the petitioner had submitted his show cause. The said proceeding was dropped after considering the show cause filed on behalf of the petitioner as also taking into consideration the fact that the complainant never made himself present before the Sub Divisional Magistrate, Dhanbad at the time of hearing of the application under section 144 Cr.P.C. The complaint petition along with solemn affirmation of the complainant do suggest apart from the absence of any criminal intent on the part of the petitioner the fact that the petitioner had made payment with respect to the work which was done at Kolkata to the complainant and which subsequently justifies the contention of learned counsel for the petitioner that there was no dishonest intention on the part of the petitioner to cheat the complainant. The entire allegations, which have been made in the complaint petition, at best can invite a civil consequence and in absence of any criminality on the part of the

petitioner, continuation of criminal proceeding as against the petitioner would be an abuse of the process of court. Accordingly, having found merit in this application, the same is allowed and the entire criminal proceeding in connection with C.P. Case No. 501 of 2014, including the order dated 19.12.2014, passed by the learned Judicial Magistrate, Dhanbad, by which cognizance has been taken for the offence punishable under section 420 of the Indian Penal Code, is hereby quashed and set aside. (Rongon Mukhopadhyay, J) Rakesh/

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