

S. Muthu Kumar Vs. the State

S. Muthu Kumar Vs. the State

SooperKanoon Citation : sooperkanoon.com/790381

Court : Chennai

Decided On : Mar-08-1994

Reported in : 1995CriLJ350

Judge : Pratap Singh, J.

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

Appeal No. : Criminal Original Petn. No. 1816 of 1992

Appellant : S. Muthu Kumar

Respondent : The State

Advocate for Def. : K. Raja, Govt. Advocate

Advocate for Pet/Ap. : S. Kanaga Sabai, Adv.

Judgement :

ORDER

1. The accused concerned in Cr. No. 404/91 of the respondent Police Station has filed this petition under section 482 Cr.P.C. Praying to call for the records in the above case and quash the same.

2. Short facts are :- One Devadoss gave the First Information Report before the respondent Police. The allegations in it are briefly as follows :-

The complainant is doing business under the name and style of Devadoss Family Aid Corporation at Tirunelveli. On 3-4-1991, the accused purchased goods for a sum of Rs. 68,224/-. In spite of the fact that he had not arranged for payment of as much amount, he issued cheque on 3-4-91, post dating it as 3-6-1991. Because of the false representation that the cheque will be honoured in due course, the complainant gave him goods on credit basis on 3-4-91. Thus the accused has fraudulently and dishonestly induced the complainant to deliver goods to him on the pretext of issuing the said cheque knowing fully well that cheque will not be honoured. The accused has committed an offence punishable under Section 420 I.P.C. This first Information Report given by the said Devadoss was registered in Cr. No. 404/91 of the respondent Police Station for offence under section 420 I.P.C. To quash the same, this petition is filed.

3. Mr. Kanagasabhai, learned counsel appearing for the petitioner, would submit that purchases were made on credit basis and the post dated cheque was issued and in the circumstances, no offence under section 420 can be spelt out and the registration of the case for offence under section 420 I.P.C. is not correct and liable to be quashed.

4. Per contra. Mr. Raja, learned Government Advocate would submit that the complaint alleges dishonest inducement to deliver goods to him under the pretext of issuing cheque knowing fully well that the cheque will not be honoured; the delivery of goods was on 3-4-91 and the issuance of the cheque was on the same day; that there are materials to register of case for offence under Section 420 I.P.C. and that it cannot be quashed at the threshold.

5. I have carefully considered the submissions made by learned counsels. Learned counsel for the petitioner would rely upon the decision in R. V. Jennison, (1862) 31 LJMC 146. In that case, one J who had a wife living, told the prosecutrix that he was unmarried, and, pretending that he intended to marry, induced her to give him Pounds 8 representing that he would furnish a house for living and would then marry her and after obtaining money, he went away and did not return. It was contended that money had been obtained by three representations that he was unmarried; that he would furnish a house, and that he would marry the prosecutrix;

and that only first representation has reference to an existing fact, while the others related to things to be done in future. It was held that inducement could not be maintained. With respect, I am unable to agree with the view of the learned Judge. In this case, when on such inducement, the complainant was made to part with some property and when such inducement was made dishonestly and fraudulently, simply because the promise was to do something in future. I am not prepared to hold that no offence under section 420 I.P.C. is made out. The requirement of the offence punishable under section 420 I.P.C. are that such a representation which the accused himself knew is false was made and if such representation was made with a dishonest intention and on such representation, the complainant was induced to part with the property, certainly offence is made out.

6. In *Shyam Sundar v. Lala Bhawan Kishore*, cheating was alleged with regard to return of post dated cheque, being dishonoured. The dishonest intention was absent even at the initial stage of the transaction and when the cheque was issued. So it was held that the accused was not liable for cheating and it is case of Civil liability.

7. In *Nagarajan v. Jinnah Saheb*, 1986 Cri LJ 483 , this court had occasion to consider the offence of cheating. In that case, the complainant had not alleged any loan, on account of the dishonouring of the cheque. On the facts of that case, cheating was not proved.

8. In this case, in that complaint it is specifically stated as follows :-

'Thus the accused has fraudulently and dishonestly induced the complainant to deliver goods to him on the pretext of issuing the said cheque knowing fully well that the cheque will not be honoured.'

On these allegations, the case has been rightly registered for offence under section 420 I.P.C. and hence it cannot be quashed at the threshold.

9. Since none of the submissions made by learned counsel for the petitioner finds acceptance with me, the inevitable result is this petition fails and therefore shall

stand dismissed.

10. Petition dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com