

Peddinti Padmaja and Another Vs.

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Court : Andhra Pradesh

Decided On : Oct-07-2010

Judge : Samudrala Govindarajulu, J.

Acts : Indian Penal Code (IPC) - Section 420,406,415; Negotiable Instruments Act - Section 138; Code of Criminal Procedure (CrPC) - Section

Appeal No. : Criminal Petition No.2982 of 2009

Appellant : Peddinti Padmaja and Another

Respondent : The State of Andhra Pradesh

Advocate for Pet/Ap. : Mr.S.Ashok Anand Kumar , Adv.

Judgement :

ORDER:

1. The petitioners 1 and 2/A-1 and A-2 are accused of offences punishable under Sections 420 and 406 I.P.C in Crime No.136/2009 of Gajuwaka Police Station, Visakhapatnam. On report given by the 2nd respondent/defacto- complainant, the police registered the said crime. It is alleged that the 2nd respondent deposited Rs.1,00,000/- in M/s.Velox Computer Services (P) Limited, Visakhapatnam, for his computer training under an agreement executed between them and that as per the agreement, if the Company removes the 2nd respondent during the training period of 18 months, then the Company has to pay back the deposit and that in pursuance of the said agreement, the Company removed the 2nd respondent

within 18 months of period of training by issuing a cheque for Rs.1,00,000/- to him and that when he presented the cheque, it was dishonoured for want of sufficient funds and that when he went to office of the Company, the Company was closed by locking it and without disclosing their address. The petitioners are promoters of the Company.

2) It is contended by the petitioners' counsel that the petitioners' Company was franchisee of M/s.Satyam Computers for imparting training for 18 months to the candidates and that due to global recession and due to Satyam crisis, the petitioners could not impart training to the 2nd respondent completely and that therefore, they issued cheque for Rs.1,00,000/- to the petitioner and that in case the cheque is dishonoured, then the 2nd respondent's remedy is elsewhere and not in the police station and that the case is one which is purely of civil nature and that there are no ingredients/statutory facts constituting offences punishable under Sections 420 and 406 I.P.C.

3) There is no dispute about the 2nd respondent giving Rs.1,00,000/- to the petitioners for imparting training for 18 months. There is no dispute about the petitioners not being able to impart training and committing default. There is also no dispute about the petitioners drawing cheque for Rs.1,00,000/- in favour of the 2nd respondent towards repayment of the deposit amount of Rs.1,00,000/- in terms of agreement between the parties. Thus, there is absolutely no dispute about entrustment of Rs.1,00,000/- by the 2nd respondent to the petitioners and about they appropriating the same for themselves. When there was no sufficient balance in their account, giving cheque for Rs.1,00,000/- in favour of the 2nd respondent should not have been resorted to and particularly when the petitioners knew about existence of global recession and Satyam crisis. No doubt, dishonour of cheque for Rs.1,00,000/- drawn by the petitioners in favour of the 2nd respondent, would lead to an offence punishable under Section 138 of the Negotiable Instruments Act. But, at the same time, it cannot be said that the 2nd respondent cannot resort to lodging report alleging offences under I.P.C also in case necessary statutory facts for prosecuting the petitioners exist.

4) In *Inder Mohan Goswami V. State of Uttaranchal*¹, the Supreme Court while reiterating ambit and scope of inherent powers of the High Court under Section 482 Cr.P.C cautioned the High Courts to exercise such powers sparingly, carefully and with great caution, in the following manner: "(23) THIS court in a number of cases has laid down the scope and ambit of courts' powers under section 482 Cr. P. C. Every high Court has inherent power to act *ex debito justitiae* to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under section 482 Cr. P. C. can be exercised:

(i) to give effect to an order under the Code;

(ii) to prevent abuse of the process of court, and

(iii) to otherwise secure the ends of justice. (24) INHERENT powers under section 482 Cr. P. C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute.

(27) THE powers possessed by the High Court under section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a *prima facie* decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material." While analysing offence of cheating defined under Section 415 I.P.C, it was further observed by the Supreme Court: "(42) ON a reading of the aforesaid section, it is manifest that in the definition there are two separate classes of acts which the person deceived may be induced to do. In the first class of acts he may be

induced fraudulently or dishonestly to deliver property to any person. The second class of acts is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but need not be fraudulent or dishonest. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had a fraudulent or dishonest intention at the time of making the promise. From his mere failure to subsequently keep a promise, one cannot presume that he all along had a culpable intention to break the promise from the beginning."

6) In the case on hand, there are two stages of making a promise by the accused. In the 1st stage, the accused entered into agreement with the 2nd respondent/defacto-complainant and received Rs.1,00,000/- thereunder with an intention to repay the said amount of security deposit of Rs.1,00,000/- in case the accused failed to impart training for 18 months. The said promise of imparting training for 18 months was broken by the accused admittedly. That is the reason why the accused kept up further promise by way of drawing a cheque for Rs.1,00,000/- in favour of the 2nd respondent. In the 2nd stage, the accused again promised to clear their previous obligation of returning the security amount of Rs.1,00,000/- and handed over the cheque for Rs.1,00,000/-. In that stage, the accused made promise of returning the amount and handed over the cheque, even though there was no sufficient balance in their account for discharging their liability. When the cheque was bounced, the 2nd respondent went to office of the accused, but to his surprise, office of the accused was closed by locking it and the accused had absconded from their place and business by closing the business itself. Irrespective of existence of fraudulent or dishonest intention for the accused in the 1st stage, it is evident from the allegations that the accused had such intention when they handed over cheque drawn in favour of the 2nd respondent without there being sufficient funds to honour the said cheque and further absconding by closing the business itself. It is not as if the accused had no knowledge about global recession and Satyam crisis when they handed over cheque drawn in favour of the 2nd respondent to the 2nd respondent. Therefore, it cannot be said that there is no prima facie case of offence under Section 420 I.P.C

in this crime. When investigation of this case is yet to make a beginning and when entire facts and evidence are to be collected by the investigating officer and when the picture is not clear and is hazy, this Court is of the opinion that it would be pre-judging the issue in the absence of entire facts and evidence before this Court.

7) The petitioners' counsel placing reliance on All Cargo Movers (India) Private Limited V. Dhanesh Badarmal Jain² of the Supreme Court contended that the case is one which is of civil nature and that no offence under Section 420 I.P.C is made out on face of the allegations contained in the report. In that reported decision, the complaint petition was filed about one year after filing of civil suit basing on the same cause of action. In Subodh S.Salaskar V. Jayprakash M.Shah³ of the Supreme Court, the accused issued post dated cheques and when the cheques were presented after the date, they were dishonoured on the ground of non-operation of the account. The Supreme Court held that if the accused closed account subsequently, intention of the accused to cheat the complainant right from date of issuance of cheque cannot be inferred in order to attract Section 420 I.P.C. As pointed earlier, in the case on hand, the accused gave cheque on even date without having sufficient balance in the account to honour the cheque. Having regd to the facts of the case on hand, this Court is of the opinion that this is not a fit case to intercept investigation of this crime at its threshold.

8) In the result, the petition is dismissed.

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