

CASE NO.:
Appeal (crl.) 1250 of 2007

PETITIONER:
Anil Ritolla @ A.K. Ritolia

RESPONDENT:
State of Bihar & Anr

DATE OF JUDGMENT: 18/09/2007

BENCH:
S.B. Sinha & Harjit Singh Bedi

JUDGMENT:
J U D G M E N T

CRIMINAL APPEAL NO. 1250 OF 2007
(Arising out of SLP (Crl.) No.1973 of 2007)

S.B. Sinha, J.

1. Leave granted.
2. Parties hereto admittedly had been carrying on commercial transactions. Appellant herein was an authorised dealer of Hindustan Lever Limited. In connection with the said business transactions, appellant allegedly was required to deliver to the second respondent Form IX-C prescribed in terms of Bihar Sales Tax Rules. The Second respondent herein filed a complaint petition alleging commission of offence under Section 427, 384 and 420/34 of the Indian Penal Code, inter alia, holding :
"That it is not out of place to mention here that the company at the time of agreement so took place between complainant and Hindustan Levar got signed of the complainant over certain plain and printed papers saying that there are the formality of the organization, which is required to be fulfilled as such if the company try to take any advantage from the said papers the same would not be binding upon the complainant, as the complainant was not made aware from the contents of the alleged documents and the signatures of the complainant do not come within the definition of execution.

That as per the requirement of the law stipulated by the rule 12 of sub-rule (2) (sic) of Bihar Finance Act, 1981 it is the obligatory duty of the selling dealer to furnish a declaration in writing to the purchasing dealer known as form IX-C obtained from prescribed authority for the exemption of the sales tax over the turn over of the purchasing dealer.

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That the conduct of the accused of this case put complainant in great inconvenience, mental agony and financial despair and caused damage to his business reputation.

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That the accused always kept proposal before the complainant to continue business with the company and as the complainant refused to join with them after 1999 and as such the accused did not supply the said form IX-C to the complainant only with the mala fide and dishonest intention which caused damage to the complainant."

3. A Judicial Magistrate, Madhepura, upon examining the complaint on oath and upon taking statements of the witnesses purported to have found existence of a prima facie case for taking cognizance under Section 420 of the Indian Penal Code against the appellants herein. Summons were directed to be issued. They filed an application for quashing of the said criminal proceedings before the High Court of Judicature at Patna in terms of Section 482 of the Code of Criminal Procedure. By reason of the impugned judgment, a learned Single Judge of the said Court dismissed the said petition opining :

"Admittedly, the petitioners were the carrying and forwarding agents of the Company and in that capacity they perhaps were instrumental in forwarding the articles to the complainant. They cannot escape from the liability of undergoing criminal proceedings.

So far as the Petitioners' contention on the dispute being a civil one is concerned, I am unable to agree with the assertions since from the facts made out a definite criminal liability is made out."

4. Mr. Siddarth Luthra, learned counsel appearing on behalf of the appellant in support of this appeal, submitted that no case for issuance of summons had been made out even if the allegations contained in the complaint petition are given their face value and taken to be correct in its entirety.

5. Mr. S.B. Upadhyay, learned senior counsel appearing on behalf of the second respondent, on the other hand, took us through the entire complaint petition and contended that from the statements contained in paragraph 14 of the complaint petition, it is evident that the appellants herein had intention to cause a wrongful loss to the complainant by practicing deceit within the meaning of Sections 23, 24 and 415 of the Indian Penal Code. Strong reliance in this behalf was placed on a decision of this Court in *Rajesh Bajaj v. State NCT of Delhi & Ors.* [(1999) 3 SCC 259].

6. It is not in dispute that the appellant is one of the Redistributors of Hindustan Lever Ltd. It is furthermore not in dispute that the parties had been carrying on commercial transactions for a long time. Till the financial year 1998-99 despite non-supply of Form IX-C prescribed under the Bihar Sales Tax Rules, the complainant raised no grievance. Only in paragraph 14 of the complainant petition, a purported statement had been made that the appellant compelled him to continue the business for the year 1998-99 despite non-supply of Form IX-C in the earlier years.

7. Payment of sales tax, admittedly, is governed by the provisions of Bihar Sales Tax Act and Rules framed thereunder. Rule 14 of the Rules prescribes procedure required to be taken in the event of non-receipt of Form IX-C. It is not in dispute that a dealer who had not been supplied with the prescribed form by the supplier may take recourse to the remedies provided for under the Rules.

8. Section 23, 24 and 415 of the Indian Penal Code read as under :

Section 23 \026 Wrongful gain

"Wrongful gain" is gain by unlawful means of property which the person gaining is not legally entitled.

"Wrongful loss".--"Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled.

Gaining wrongfully, losing wrongfully.--A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

Section 24 - Dishonestly

Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".

Section 415 - Cheating

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation,--A dishonest concealment of facts is a deception within the meaning of this section."

9. Ingredients of Section 420 of the Indian Penal Code are as under :

- i) Deception of any person;
- ii) Fraudulently or dishonestly inducing any person to deliver any property; or
- iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

10. The transactions between the parties were for supply of goods.

Admittedly, _____ and except supply of Form IX-C other terms and conditions of the contract had been complied with by them. Per se, supply or non-supply of Form IX-C of the Bihar Sales Tax Rules had nothing to do with the transactions for which the parties had entered into a contract. Non-issuance of the said form ex-facie cannot give rise to commission of any offence. If the appellant or their principal were obligated to act under a statute and failed to perform their duties as indicated hereinbefore, as the statute itself provides for a remedy, ordinarily the same is required to be taken recourse to. In any event, the second Respondent could have filed a suit for damages.

There cannot be any doubt or dispute whatsoever that an offence can be committed even if the parties had entered into a commercial transaction. In *Rajesh Bajaj (supra)* this Court held so. But it is equally well settled that the allegations contained in the complaint petition must, prima facie, show inducement of the victim by the accused by making a representation. In a case of this nature, we are of the opinion that no case has been made out to form an opinion that the appellant had the requisite intention.

11. The question came up for consideration before this Court recently in *Indian Oil Corporation v. NEPC Indian Ltd. & Ors.* [(2006) 6 SCC 736] wherein, upon consideration of a large number of decisions, it was held :

"The essential ingredients of the offence of "cheating" are : (i) deception of a person either by making a false or misleading representation or by other action or omission, (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body,

mind, reputation or property."

It is not a case where the appellants can be said to have induced the respondent to enter into a transaction so as to deceive them with a view to cause unlawful losses to them and to make unlawful gain for themselves.

12. For the reasons aforementioned, in our opinion, the High Court has committed an error in not interfering with the order of the learned Magistrate taking cognizance of the offence. The impugned judgment cannot be sustained. It is set aside accordingly. The appeal is allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

JUDIS