

2022 LiveLaw (SC) 519

IN THE SUPREME COURT OF INDIA

INDIRA BANERJEE; C.T. RAVIKUMAR, JJ.

Special Leave to Appeal (Crl.) No(s). 5485/2021; 12-05-2022

GURUKANWARPAL KIRPAL SINGH Versus SURYA PRAKASAM & ORS.

Indian Penal Code, 1860; Section 405, 406 - The sine qua non for attracting the provision is the entrustment of the property with the accused persons.

Indian Penal Code, 1860; Sections 416, 420 - Essential ingredients of the offence of cheating are deception on the part of the accused or dishonest inducement by them, resulting in any person delivering any property to such accused or alteration or destruction of whole or any part of valuable security.

Indian Penal Code, 1860; Section 285 - Essential requirement of Section 285 of IPC was that the accused must have done something with fire or any combustible matter in a rash and negligent manner to endanger human life.

Code of Criminal Procedure, 1973; Section 482 - The circumstances in which power to quash an FIR could be exercised - Referred to State of Haryana vs. Bhajan Lal (1992) Supp. 1 SCC 335.

(Arising out of impugned final judgment and order dated 28-01-2021 in CRLWP(ST) No. 4298/2020 passed by the High Court of Judicature at Bombay)

For Petitioner(s) Mr. Abhay Anil Anturkar, Adv. Mr. Vaibhav Kulkarni, Adv. Ms. Bhavya Pandey, Adv. Mr. Dhruv Tank, Adv. Mr. Harshvardhan Suryavanshi, Adv. For M/S. Dr. R.R. Deshpande And Associates, AOR

For Respondent(s) Mr. R. Basant, Sr. Adv. Mr. Akshay Sahay, Adv. Ms. Shweta Bharti, Adv. Ms. Aayushya Aankul, Adv. Ms. S. Akshata, Adv. Mr. Digajman Mishra, Adv. Mr. Anil Jiwari, Adv. Mr. Amit Pawan, AOR Ms. Anisha Mathur, Adv. Mr. Rahul Chitnis, Adv. Mr. Sachin Patil, AOR Mr. Aaditya A. Pande, Adv. Mr. Geo Joseph, Adv. Ms. Shwetal Shepal, Adv.

ORDER

This special leave petition is against a judgment and order dated 28.01.2021 passed by the High Court of Judicature at Bombay allowing Criminal Writ Petition(ST)-4298-2020 and quashing the FIR dated 03.03.2020 in exercise of the power under Section 482 of the Criminal Procedure Code for having committed offences under Section 285, 406, 420 and 427 read with Section 34 of the Indian Penal Code (IPC).

The Respondent Nos. 1 to 4 are the Directors of M/s Ramkey Reclamation and Recycling Private Limited, a company within the meaning of the Companies Act, 2013 engaged in the business of environment management services and hereinafter referred to as the "Company".

The company has floated a tender inviting bids for recycling of plastics. The petitioner submitted his bid through his company M/s JK Waste Recycling Private Limited. It is not necessary to set out the terms and conditions of the tender. Suffice it so note that the petitioner lodged an FIR against Respondent Nos. 1 to 4 making the allegations set out hereinbelow for convenience :-

"1, Gurkanwarpal Kirpal Singh, Age 68 years, Occupation Company-Director, R/o 3 Monarchy Palace Orchid NIBM Road, Undri, Pune, Mob. No. 8805025200, give statement in person in Khandala Police Station that I live along with family at the above-said place. We have a Plant for manufacturing paralysis oil by recycling the plastic in our Company – J.K. Waste Recycling Pvt. Limited and for that we receive waste plastic material from different companies and it is processed in our company. In the Month of June 2019 Satish Chetty and Surya prakashan. Managers of Ramky Reclamation and Recycling Pvt. Ltd. Hyderabad, Telangana State, contacted our company through email and informed to give us order for recycling of waste material in their company for which you will have to first conduct testing of our material in your company and if it is conducted well, we will purchase three plants from you. As the said Company is a reputed Company we believed them and informed them our consent by email for conducting recycling test. At that time I came to know to the above mentioned representatives of the said company. Then after, in the Month of September 2019 the company sent its representatives Animesh Roy and Vyankatesh and six ton material plastic composite material for conducting testing of the said material. Then after, Director of our Company Kanwaljit Singh after talking to representatives of the said Company decided to conduct the said testing into two phases of three tons each. Animesh Roy and Vyankatesh conducted testing of the said material on dt. 15/09/2019 and dt. 19/09/2019 and sent report to Ramky Company. Then after, Ramky Company sent email to our company and informed that the testing conducted in your company is successful and we are satisfied regarding it, however, we have to conduct one more testing; and believing them we showed our readiness for conducting third testing also. Then after, again in the month of (October 2019 Ramky Company sent its plastic composite material and its representatives Animesh Roy and Vyankatesh for testing. At that time our Director Kanwaljit, looking at their material told them that this material is wet and has smell of different type and this material seems different than the earlier material. To this they told not to worry of it and believe us. Believing on them testing process of the said material began in our Plant on dt. 11/10/2019. At that tune, nut of the plant machinery came out and pipe began to crank and by formation of different kinds of acids, vacuum purnp, condenser, reactor oil tank got brokedown and failed to work and to avoid fire in the Company because of it, we stopped the said process and therefore loss of lives and damage to the Company was averted. In the said recycling test, as our Company sustained a loss of about Rs. 62,00,000/- when we contacted Ramky Company by email and informed them of the incident that took place, they informed us to come to Hyderabad to find out soome way and so myself and my wife Sou Kanwaljit Singh went to Hyderabad and met Satish Shetty G Rameshwar and Suryaprakashan of Ramky Company and asked for the damages and compensation of the testings. They gave us evasive replies saying that our company is not at fault and we had sent our representatives then, after returning back, we time and again tried to contact them by email and over telephone but they have not responded to our emails or phone calls. Then after we sent the composite material sent to us for testing received dt. 24/11/2019 it was concluded that there was hazardous and injurious sulfuric chemicals in the said material. We informed Ramky Company about the said report by email, but they did not respond to us of any kind and from this we came to know that above mentioned representatives and Director of Ramky Company have cheated us after inducing us to believe then u then after taking legal advice and thinking over it, I have come today to lodge a complaint. Therefore, during the month of June 2019 to dt. 11/10/2019 in our Company J.K. Waste Recycling Pvt. Ltd., within the limits of village Ghatdare, Tal. Khandala I) Satish Chetty 2) Suryaprakashan, 3) Aminesh Roy, 4) Vyankatesh all R/o Ramky Pvt. Ltd., Hyderabad, Telangana State, have successfully got conducted testing of first two phases of good quality material on the pretext of giving our Company order of recycling and also of purchasing three Plants from us and induced us to trust them and despite of having a knowledge that the third phase testing composite material contains injurious and hazadous and volatile sulfuric chemicals and it causes damages and injury to any living being by acting negligently conducted the testing of that material in our Plant and thereby vacuum pump. Condenser, reactor oil tank of our recycling plant got damaged and broke-

down and sustained damages of about Rs. 62,00,000/- to us and cheated us and therefore, I have complaint against them, I have read my statement typed on computer and after verification of it being true as told by I signed it. Signed this statement before Police Station Officer, Khandala Police Station.”

The High Court after hearing the contentions of the respective parties proceeded to examine whether the materials on record indicated that ingredients of the offences alleged against the petitioners had even prima-facie been made out. The High Court referred to the judgment of this Court in ***State of Haryana vs. Bhajan Lal*** reported in **(1992) Supp. 1 SCC 335**, wherein this Court considered the circumstances in which power to quash an FIR could be exercised. The relevant portion of the said judgment is extracted hereinbelow :-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

As observed by the High Court, a criminal breach of proceeding 6 is defined in Section 405 of the Indian Penal Code and punishment for the same is prescribed in Section 406 thereof.

Section 405 of the Indian Penal Code reads as hereunder :-

“405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.”

The High Court rightly held that the said provision would be attracted where the accused person had been entrusted with property, and such property had dishonestly been misappropriated or converted by him to his own use. The provision would also be attracted if the accused person dishonestly used or disposed of such property in violation of any direction of law. The High Court rightly found that the sine qua non for attracting the said provision was the entrustment of the property with the accused persons.

In this case, the petitioners had handed over waste plastic material to the concerned respondent and the respondent had processed the same and made the same over to the petitioners.

The High Court also referred to the definition of cheating in Sections 416 and 420 of the Indian Penal Code, which read as hereunder :-

“416. Cheating by personation.—A person is said to “cheat by personation” if he cheats by pretending to be some other person, or by knowingly substituting one person for or another, or representing that he or any other person is a person other than he or such other person really is.

420. Cheating and dishonestly inducing delivery of property.— Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine”

The High Court found that the operative words and the essential ingredients of the offence of cheating are deception on the part of the accused or dishonest inducement by them, resulting in any person delivering any property to such accused or alteration or destruction of whole or any part of valuable security.

Referring to the judgment of this Court in *Dalip Kaur & Ors. vs. Jagnar Singh & Ors.* reported in **(2009) 14 SCC 696**, the Court found that even prima-facie the basic ingredients of offence of cheating were absent.

The High Court further held that the essential requirement of Section 285 of IPC was that the accused must have done something with fire or any combustible matter in a rash and negligent manner to endanger human life.

The FIR in the present case does not show anything done by the accused with fire or any combustible matter. The act of recycling plastic waste material or supply of plastic

waste material for recycling by the Petitioner No. 2 could not be said to be an act done with fire or any combustible matter.

The act of the respondents of supplying material for testing and the recycling plant could not be said to be a negligent or rash act done to endanger human life. Thus, the essential ingredients of the offence were absent.

In our considered opinion, the well reasoned and well considered judgment of the High Court does not call for interference, more so, when the High Court has made it clear that the order would not come in the way of the Respondent No. 2 in instituting any civil proceedings against the petitioner in respect of any grievance, if permissible in law, which would then be considered and decided in accordance with law.

The special leave petition is, therefore, dismissed.

Pending applications, if any, shall stand disposed of.

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