

Cr. M. P. No.4625 of 2001

In the matter of an application under Section 482 of the Criminal Procedure Code.

1. Manoj Kumar Punoriya @ Babu
2. Smt. Kosaliya Punoriya
3. Bimal Sinha Petitioner(s)

Versus

1. The State of Jharkhand
2. Md. Khalil Opp. Party(s)

For the Petitioner(s) : M/s A. Banerjee, Advocate.
For the State of Jharkhand : M/s K. K. Mishra, A.P.P.
For the O.P. No.2 : Mr. P.C. Roy, Advocate.

P R E S E N T
HON'BLE MR. JUSTICE R. R. PRASAD.

By Court: Heard learned counsel appearing for the petitioners and learned counsel for the opposite parties.

This application has been filed for quashing of the Complaint Case No.36 of 2000 (T.R. No.834 of 2001), including the order taking cognizance dated 14.12.2000, whereby and whereunder, learned Sub Divisional Judicial Magistrate, Bermo at Tenughat, took cognizance of the offences, punishable under Sections 406 /504/34 of the Indian Penal Code against the petitioners.

The case, as has been made out in the complaint petition is that the petitioner was running a shop in a house belonged to the complainant. In the year 1998, when there was an anti-encroachment drive, shop owned by the complainant, in which the petitioner was running shop was demolished and at that time, the petitioners, on demolition of the shop, took away the iron-gate by making promise to the complainant that whenever, a shop would be constructed, he would be taking the shop, on rent and will be providing the gate for its fixation, but the petitioners never gave that iron-gate to the complainant in spite of demand being made.

Further allegation is that when the complainant came to ask for the gate from the petitioners, the petitioners abused the complainant. On such complaint, cognizance of the offences was taken under Sections 406 /504/ 34 of the Indian Penal Code

vide order dated 14.12.2000, which is under-challenge in this application.

Having heard learned counsel appearing for the parties, it does appear that the gate of the shop owned by the complainant, but was being run by the petitioners was taken away by the petitioners when the shop was demolished during anti-encroachment drive but it was never returned. On this allegation, question does arise as to whether any offence is made out under Section 406 of the Indian Penal Code.

So far offence under Section 406 of the Indian Penal Code is concerned, that does not appear to have been made out against the petitioners. Criminal breach of trust has been defined under Section 405 of the Indian Penal Code which reads as follows :

"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"

On reading of the said provision, the following ingredients should be there for constituting offence under Section 405 of the Indian Penal Code.

(a) a person should have been entrusted with property or entrusted with dominion over property;

(b) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or willfully suffer any other person to do so;

[c] that such misappropriation, conversion, use or disposal should be in violation of any direction of laws prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust."

In the background of the allegation, no allegation is there that by making inducement fraudulently and dishonestly, the gate was taken by these petitioners and in that situation, if the gate was not returned back, the petitioners cannot be said to have misappropriated the gate dishonestly rather in the facts and

circumstances of the case, the case would be of simple breach of contract and not criminal breach of contract.

Accordingly, case never seems to be made out under Section 406 of the Indian Penal Code.

Further, no offence seems to have been made out on the allegation under Section 504 of the Indian Penal Code as it is never the case of the complainant that the petitioners insulted the complainant for provoking him to break the public peace or to commit any offence. The allegation appears to be simply that of hurling, abuse.

Under this situation, no offence is also made out under Section 504 of the Indian penal Code.

Accordingly, the entire criminal prosecution including the order dated 14.12.2000, under which cognizance was taken against the petitioners in Complaint Case No.36 of 2000 (T.R. No.834 of 2001), is hereby, quashed.

(R. R. Prasad, J)

JHARKHAND HIGH COURT, RANCHI
DTD. 19.04.2012 / N.A.F.R.

Sandeep/