Ajay Mitra vs State Of M.P. & Ors on 28 January, 2003

Equivalent citations: AIR 2003 SUPREME COURT 1069, 2003 (3) SCC 11, 2003 AIR SCW 592, 2004 (3) KCCR 2043, 2003 (1) LRI 546, 2003 (2) CHANDCRIC 261.2, 2003 (1) SCALE 487, 2003 (2) JKJ 1, 2003 SCC(CRI) 703, 2003 (4) SRJ 47, 2003 (1) ACE 624, 2003 (1) SLT 672, 2003 CRILR(SC MAH GUJ) 392, (2003) 1 SCR 622 (SC), (2003) 4 ALLINDCAS 602 (SC), (2003) 3 KCCR 2043, (2003) 1 CGLJ 351, (2003) 2 JCR 42 (SC), 2003 CRILR(SC&MP) 392, (2003) 1 JT 418 (SC), (2003) 1 RECCRIR 674, (2003) 1 CURCRIR 306, (2003) 2 CRIMES 196, 2003 CHANDLR(CIV&CRI) 703, (2003) 1 JAB LJ 325, (2003) 1 SCALE 487, (2003) 2 EASTCRIC 255, (2003) 4 MAH LJ 627, (2003) 3 MPLJ 49, (2003) 25 OCR 226, (2003) 2 SUPREME 602, (2003) 2 ALLCRIR 1173, (2003) 1 UC 652, (2003) 2 JLJR 62, (2003) 2 INDLD 1160, (2003) 46 ALLCRIC 592, (2003) 2 CHANDCRIC 261(2), (2003) 2 ALLCRILR 121, 2003 (1) ALD(CRL) 644

Bench: S. Rajendra Babu, Brijesh Kumar, G.P. Mathur

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           CASE NO.:
Appeal (crl.)  129 of 2003

PETITIONER:
Ajay Mitra

RESPONDENT:
State of M.P. & Ors.

DATE OF JUDGMENT: 28/01/2003

BENCH:
S. Rajendra Babu, Brijesh Kumar &  G.P. Mathur.

JUDGMENT:
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JUDGMENT (Arising out of S.L.P.(Crl.) No.914 of 2002) With Crl. Appeal Nos.130-132 of 2003 (Arising out of S.L.P. (Crl.) Nos.1710-1712 of 2002) Mathur, J.

Leave granted.

These appeals by special leave are directed against the judgment and order dated January 16, 2002 of High Court of Madhya Pradesh, by which three Petitions filed by the appellants under Section 482 Cr.P.C. were dismissed.

M/s Cadbury Schweppes Beverages India Private Ltd. entered into three identical Bottling Agreements with the complainant, Sanjiva Bottling Company Private Limited on March 1, 1996

pursuant to a Master Trademark License entered into by associate companies of Cadbury Schweppes plc. United Kingdom and Cadbury Schweppes Beverages India Private Limited. In terms of these three agreements, M/s Sanjiva Bottling Company was authorised to manufacture and sell certain specified beverages under specified trademarks owned by Cadbury Schweppes plc. U.K. or its associate companies. The agreements contained identical clauses with regard to their respective terms and conditions and provided that they shall continue for an initial term of five years and for further successive period of five years, unless terminated by either party by giving to the other not less than 12 calendar months notice in writing to terminate the agreement. On July 29, 1999, Atlantic Industries (a wholly owned indirect subsidiary of The Coca-Cola Export Corporation, USA) purchased about 3500 trademarks in 155 countries from Cadbury Schweppes plc., upon which the bottling agreements between Cadbury Schweppes Beverages India Pvt. Ltd. and Sanjiva Bottling Company were duly assigned to Atlantic Industries and an information regarding the same was given to Sanjiva Bottling Company in writing. On February 14, 2000, Atlantic Industries gave notice in writing to the complainant, Sanjiva Bottling Company that the bottling agreements shall not be renewed after their expiry on February 28, 2001.

Sanjiva Bottling Company through its Director, Rajiv Mehta filed a criminal complaint against 11 accused including the appellants in the Court of Judicial Magistrate, First Class, Bhopal on July 24, 2000 for their prosecution under Section 420 read with Section 511 IPC. The accused no.1 arrayed in the complaint is Cadbury Schweppes Beverages India Pvt. Ltd. (A-1) and accused nos.2 to 5 are Chairman, Managing Director and Finance Director etc. of the said Company. Besides them, Coca Cola India (A-6), Alex Von Behr, President and Chief Executive Officer (A-7). Nitin Dalvi, Vice-President, Strategic Business, Planning and Information Services (A-8) and Samip Shah, Vice-President, Business Development of Coca Cola India, (A-8) Ajay Mitra, Regional Operational Director, Hindustan Coca Cola Beverages Pvt. Ltd. (A-10) and Steve M. Whaley, Vice-President and General Tax Counsel, Atlantic Industries (A-11) have been arrayed as accused nos. 6 to 11. The case set up in the complaint is that the complainant is engaged in the business of bottling soft drinks since 1983 at Bhopal. The complainant was approached by A-1 in 1995 to discontinue its competing brand 'Sprint' and a Memorandum of Understanding was signed on October 9, 1995. Thereafter, an agreement was entered into between the complainant and A-1 on March 1, 1996 by which the complainant became one of the bottlers of A-1, made investments in the bottling plant and also promoted the sales of A-1 in its area. By a letter dated July 29, 1999, A-1 informed the complainant that the brands Schweppes, Crush and Canada Dry and associated brands in India would be acquired by a member of the Coca Cola group of companies. A-1 had 19 bottlers in the year 1997 but Coca Cola India (A-6) had reduced them to 7 and is installing its own bottling plants in different places. The case of the complainant further is that by the letter dated February 14, 2000, A-6 informed the complainant that they would not renew the agreements on their expiry on February 28, 2001. In paras 47 and 48 of the complaint, it is alleged that A-6 is adopting all sorts of unfair trade practices and that it has made wrongful gain of over Rs.100 crores. In para 50, it is alleged that A-1 and A-6 have not replied properly to the letters of the complainant and the accused have, therefore, cheated the complainant by making false representation.

The learned Magistrate before whom the complaint was filed passed an order under Section 156 (3) Cr.P.C. on July 27, 2000 directing the police to investigate the offence as the same was cognizable

offence. The police thereafter submitted a report on October 31, 2000 which reads as under :

> "After the entire inquiry it appears that the Cadbury Schweppes Company and Coca Cola Company have violated the terms and conditions of Business Agreement, as a result, the complainant has suffered financial loss. The complainant was kept in darkness and supplied confusing information, consequently, Complainant suffered economic loss. Prima facie a case of business competition and violation of Agreements is made out and the complainant is advised to approach the Civil Court."

After consideration of the report the learned Magistrate was of the opinion that the police had not submitted the same in accordance with Section 173(2) Cr.P.C. and also in the proforma prescribed in the Rules framed by the State Government as the same had been submitted on plain paper. The SHO, PS Govindpura was accordingly directed on November 16, 2000 to submit a report in the prescribed proforma.

On January 11, 2001, the Police submitted a report that on the basis of the complaint, Case Crime No.5 of 2001, Case Crime No.13 of 2001 and Case Crime No.18 of 2001 has been registered under Section 420, 120-B, 34 IPC. On the same date, the learned Magistrate passed an order that the Police had registered the offence and investigation is being carried on and, therefore, the complainant should make available Hindi translation of the documents and fixed January 30, 2001 as the next date. Thereafter, the appellants filed three Criminal Miscellaneous Petitions under Section 482 Cr.P.C. before the High Court for quashing of the FIR and the proceedings of the case before the learned Magistrate. After hearing the parties, the High Court held that the investigation had not yet commenced in connection with the FIRs which had been registered at the Police Station and, therefore, the Petitions were pre-mature and accordingly all the three Petitions were rejected.

Shri F.S. Nariman, learned senior counsel for the appellants has submitted that M/s Cadbury Schweppes Beverages India Pvt. Ltd. (A-1) had entered into bottling agreements with the complainant Sanjiva Bottling Company on March 1, 1996 and the said agreements were to continue for a term of five years. It also contained a clause that either party could terminate the agreement at the end of initial term by giving to the other side not less than 12 calendar months notice in writing. Subsequent to the execution of the agreement, Atlantic Industries (a wholly owned indirect subsidiary of The Coca-Cola Export Corporation, USA) purchased the trademarks from Cadbury Schweppes plc. on July 29, 1999, upon which the bottling agreements between the complainant, Sanjiva Bottling Company were duly assigned to Atlantic Industries and information regarding the same was also given to the complainant. Atlantic Industries thereafter gave notice to the complainant on February 14, 2000 not to renew the bottling agreements which were to expire on February 28, 2001 and the agreements with the complainant came to end on the said date. The learned counsel has further submitted that there is absolutely no allegation in the complaint that the appellants (A-7 to A-11) had at any time made any kind of mis-representation to the complainant or had asked it to do or omit to do anything and as such no offence under Section 420 IPC is made out against them. It has thus been urged that the allegations made in the complaint, even if accepted at their face value, do not disclose commission of any offence by the appellants and, therefore, the proceedings of the complaint case and also the FIRs lodged against the appellants are liable to be

quashed.

The learned Advocate General for the State of Madhya Pradesh has submitted that as per the order of the learned Magistrate dated July 27, 2000, the Police had submitted a report that prima facie it was a case of violation of agreement for which the complainant could seek relief from the Civil Court. However, in view of subsequent order passed by the learned Magistrate on November 16, 2000 a case had been registered at the Police Station and the matter was being investigated.

Shri Sushil Kumar, learned senior counsel for the complainant has submitted that the allegations made in the complaint disclose commission of an offence under Section 420 IPC by the accused persons and a case has been registered at the Police Station and investigation is being carried out. Learned counsel has further submitted that the High Court rightly took the view that the Petitions filed by the appellants for quashing of the proceedings were pre-mature and the said order does not suffer from any error of law.

We have given our careful consideration to the submissions made by learned counsel for the parties. It may be stated at the very outset that the main allegation made in the complaint is against M/s Cadbury Schweppes Beverages India Pvt. Ltd. (A-1). It is stated in para 5 of the complaint that the Technical Directors of A-1 approached the complainant and a Memorandum of Understanding was signed on October 9, 1995 and the complainant was asked to discontinue competing brand 'Sprint' within six months of the introduction of 'Canada Dry' and it was also asked to carry out certain jobs at its bottling plant. The complainant thereafter modernised its bottling plant as per the requirement and satisfaction of A-1. Thereafter, the bottling agreements were executed between the complainant and A-1 on March 1, 1996. Coca Cola India (A-6) came into picture for the first time when Atlantic Industries (a wholly owned indirect subsidiary of The Coca-Cola Export Corporation, USA) purchased 3500 trademarks in 155 countries from Cadbury Schweppes plc. on July 29, 1999, upon which the bottling agreements between A-1 and the complainant was assigned to Atlantic Industries. A-1 also informed the complainant in writing on July 29, 1999 that the brands Schweppes, Crush and Canada Dry and associated brands in India will be acquired by a Member of the Coca Cola Group of Companies and the bottling agreements will be assigned to Atlantic Industries. Clause 19 of the Agreement which was executed between the complainant and A-1 on March 1, 1996 reads as under:-

> "This Agreement shall come into operation on the Effective Date and subject to the terms herein contained shall continue for a term of 5 (five) years therefrom (the "Initial Term") and thereafter provided that the Company has complied with the conditions set out below shall continue in force for further successive periods of 5 (five) years unless and until terminated by either party giving to the other not less than twelve calendar months notice in writing to terminate the same expiring at the end of the Initial Term or any such subsequent period, the said conditions being :
>
> (i) that the Company has complied with its obligations during (as the case may be) the Initial Term or the relevant subsequent period (including without limitation its obligations pursuant to Sub-

clause 7.1) and

(ii) prior agreement of the parties in writing on the Base Plan to come into effect at the start of such subsequent period and as to the levels of Annual Minimum Aggregate Sales which shall apply during such subsequent period."

Thereafter on February 14, 2000 a notice was given jointly by Atlantic Industries, Canada Dry Corporation Limited and Cadbury Schweppes Beverages Ltd. to the complainant, Sanjiva Bottling Company and it reads as under :

> "We refer to Agreements (to include any addenda entered into subsequently) entered into between yourselves ("the Company") in relation to the production, sale and distribution of "Crush", "Canada Dry", "Schweppes", and "Sport Cola" Products with an Effective Date of 01 March 1996 ("called the Agreement"). All defined terms used in the Agreement shall have the same meaning prescribed in this letter, save as expressly stated otherwise.
>
> Please take this letter as the required 12 months notice, pursuant to clause 19 of our intention not to renew this Agreement on expiry on 28 February 2001 ("the Expiry Date"). We would however, require that you continue to fully carry out all obligations under the terms of your Agreement until the Expiry Date."

The agreements executed between the complainant and A-1 on March 1, 1996 were for a period of five years. Though the same could continue for a further successive period of five years, but either party to the agreement had a right to terminate the same expiring at the end of the initial term by giving not less than 12 calendar months notice in writing. The initial period of five years would have come to an end on February 28, 2001 but on February 14, 2000, notice was given to the complainant that the said agreements would not be renewed after expiry of the initial period i.e. after February 28, 2001. Even when the agreements were executed in March, 1996, the complainant was fully aware that the same may not be renewed further after expiry of the initial term of five years.

According to the allegations made in the complaint, it was the Technical Directors of A-1 who had approached the complainant and a Memorandum of Understanding was signed on October 9, 1995. The modernisation of the bottling plant was done by the complainant as per the requirement and satisfaction of A-1 and thereafter the agreements were executed between them (Complainant and A-1) on March 1, 1996 in pursuance whereof the complainant claims to have spent considerable amount of money in improvement of the bottling plant. There is no allegation in the complaint that A-6 to A-11 or anyone on their behalf ever met the complainant or asked it to invest any money or to do anything for improvement of the bottling plant. In fact there is absolutely no reference to A-6 to A-11 in the complaint except that A-6 is installing its own bottling plants and that A-6 gave notice to the complainant not to renew the agreements after expiry of the initial term. In paras 33 and 34 of the complaint, the entire allegations are made against A-1 and it is said that A-1 was actuated by dishonest intention to cheat the complainant and that A-1 has committed the offence of cheating. In

para 47 of the complaint it has been alleged that A-6 is adopting all sorts of unfair trade practices.

Section 420 IPC says that "Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person shall be punished with imprisonment "

> Cheating has been defined in Section 415 IPC and it says that "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"."

A guilty intention is an essential ingredient of the offence of cheating. In other words 'mens rea' on the part of the accused must be established before he can be convicted of an offence of cheating. (See Jeswantrai Manilal Akhaney v. The State of Bombay AIR 1956 SC 575). In Mahadeo Prasad v. State of West Bengal AIR 1954 SC 724, it was held as follows :

> "Where the charge against the accused is under S.420 in that he induced the complainant to part with his goods, on the understanding that the accused would pay for the same on delivery but did not pay, if the accused had at the time he promised to pay cash against delivery an intention to do so, the fact that he did not pay would not convert the transaction into one of cheating. But if on the other hand he had no intention whatsoever to pay but merely said that he would do so in order to induce the complainant to part with the goods then a case of cheating would be established."

In Hari Prasad Chamaria v. Bishun Kumar Surekha & Ors. AIR 1974 SC 301 it was held that unless the complaint showed that the accused had dishonest or fraudulent intention at the time the complainant parted with the money it would not amount to an offence under Section 420 IPC and it may only amount to breach of contract. In G.V. Rao v. L.H.V. Prasad & Ors. 2000 (3) SCC 693, it was reiterated that guilty intention is an essential ingredient of the offence of cheating and, therefore, to secure conviction 'mens rea' on the part of the accused must be established. It has been further held that in order to constitute the offence of cheating the intention to deceive should be in existence at the time when the inducement was offered.

So far as the present appellants are concerned, they came into picture much later in July 1999, when various trademarks and brands of A-1 were purchased by A-6. The appellants were not at all in picture at the time when the complainant claims to have spent money in improvement of its bottling plant on the basis of the agreement executed with Cadbury Schweppes Beverages India Pvt. Ltd. (A-1). Since the appellants were not in picture at all at the time when the complainant alleges to have spent money in improving the bottling plant, neither any guilty intention can be attributed to them nor there can possibly be any intention on their part to deceive the complainant. No offence of cheating can, therefore, be said to have been committed by the appellants on account of the fact that a notice was given to the complainant that the bottling agreements will not be renewed any further

after expiry of the initial term. Thus, even if the allegations made in the complaint are accepted to be absolutely true and correct, the appellants cannot be said to have committed any offence of cheating as provided in Section 420 IPC.

The High Court has held that the Petitions filed by the appellants for quashing the complaint and the FIRs registered against them are pre-mature. The question which arises is that where the complaint or the FIR does not disclose commission of a cognizable offence, whether the same can be quashed at the initial stage ? This question was examined by this Court in State of West Bengal & Ors. v. Swapan Kumar Guha & Ors. AIR 1982 SC 949 and it was held that the First Information Report which does not allege or disclose that the essential requirements of the penal provision are prima facie satisfied, cannot form the foundation or constitute the starting point of a lawful investigation. It is surely not within the province of the police to investigate into a Report (FIR) which does not disclose the commission of a cognizable offence and the Code does not impose upon them the duty of inquiry in such cases. It was further held that an investigation can be quashed if no cognizable offence is disclosed by the FIR. The same question has been considered in State of Haryana & Ors. v. Ch. Bhajan Lal & Ors. AIR 1992 SC 604 and after considering all the earlier decisions, the category of cases, in which the Court can exercise its extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 Cr.P.C. either to prevent abuse of the process of any Court or to secure the ends of justice, were sumarised in para 108 of the Report and sub- paras 1 to 3 thereof are being reproduced hereinbelow :

> "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.
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> 2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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.
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> 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."

As mentioned earlier, the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute any offence as against the appellants. Therefore, the complaint filed by the respondent and the FIRs registered in pursuance thereof are liable to be quashed. Trisuns Chemical Industry v. Rajesh Agarwal & Ors. 1999(8) SCC 686 cited by learned counsel for the complainant is clearly distinguishable as in the said case the allegation in the complaint was that the complainant had paid in advance a price higher than the market price for purchasing "toasted soyabean extracts" but the accused sent the commodity which was of most inferior and substandard quality due to which the complainant suffered a loss of Rs.17 lakhs. In view of the allegations made in the complaint, the matter required investigation and the proceedings could not have been quashed on the ground that the dispute was of a civil nature. In the result, the

appeals are allowed. The impugned judgment and order dated January 16, 2002 of the High Court is set aside and the complaint filed by the Respondent no.2 and the FIRs registered in pursuance thereof as Case Crime Nos.5 of 2001, 13 of 2001 and 18 of 2001, as against the appellants, are quashed.