Veer Prakash Sharma vs Anil Kumar Agarwal & Anr on 1 August, 2007

Equivalent citations: 2007 AIR SCW 4816, (2007) 57 ALLINDCAS 32 (SC), 2007 CRI. L. J. 3735, 2007 (5) ALL LJ 321, (2007) 3 JCC 2192 (SC), (2007) 3 GUJ LH 182, (2008) 1 BOMCR(CRI) 311, (2008) 2 BANKCLR 521, (2008) 1 BANKCAS 253, 2007 (3) JCC 2192, 2007 (3) SCC(CRI) 370, 2007 (9) SCALE 502, 2007 ALL MR(CRI) 2618, 2007 (7) SCC 373, 2008 (1) CALCRILR 28, 2007 (57) ALLINDCAS 32, (2007) 1 UC 94, (2007) 38 OCR 365, (2007) 3 ALLCRIR 2855, (2007) 2 NIJ 443, (2007) 3 CRIMES 314, (2007) 2 ORISSA LR 608, (2007) 3 CHANDCRIC 180, (2008) 1 MAH LJ 135, (2007) 3 RECCRIR 960, (2007) 5 SUPREME 771, (2007) 4 EASTCRIC 87, (2007) 3 CURCRIR 239, (2008) 1 MAD LJ(CRI) 1053, (2007) 4 ICC 575, (2007) 9 SCALE 502, (2007) 59 ALLCRIC 508, (2007) 4 ALLCRILR 284, 2008 (1) ANDHLT(CRI) 230 SC, (2008) 1 ANDHLT(CRI) 230

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Bench: S.B. Sinha, Harjit Singh Bedi

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           CASE NO.:
Appeal (crl.)  980 of 2007

PETITIONER:
Veer Prakash Sharma

RESPONDENT:
Anil Kumar Agarwal & Anr.

DATE OF JUDGMENT: 01/08/2007

BENCH:
S.B. Sinha & Harjit Singh Bedi

JUDGMENT:
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J U D G M E N T [Arising out of SLP (Crl.) No. 2272 of 2006] S.B. SINHA, J :

1. Leave granted.

2. The parties hereto entered into a contract for sale and purchase of welding rods. Appellant allegedly did not pay some amount due from him towards supply of the said article. He issued two cheques for a sum of Rs.

3,559/- and Rs. 3,776/- in the year 1983. The said cheques were dishonoured. Alleging that by reason of such act, the appellant has committed offences under Sections 406, 409, 402 and 417 of the Indian Penal Code, a complaint petition was filed by the First Respondent in the Court of Special Judicial Magistrate, Rampur which was marked CC No. 132 of 1986. The principal allegation made therein against the appellant reads as under:

> That applicant, regarding these cheques and payment of money, wrote several times to accused and also sent his representative. But he kept on making excuses in making payment. At last he told on 19.12.1985 that he had issued fabricated cheques knowingly with an intention to cheat him and grab his money. He would not pay his money, he is free to take any action, whatever he likes.

3. In his statement under Section 200 of the Code of Criminal Procedure, Respondent No. 1 alleged:

> ...Both the Cheques were, thus, dishonoured. I also wrote to accused regarding dishonour of Cheques, even I, myself, visited him and also sent to my Representative, but the accused kept on making excuses for making the payment. At last, on 19.12.1985, he told that he had knowingly issued these false and fabricated Cheques only to deceive and grab his money. He further told that he shall never pay back his money. You can do whatever you like. I went to lodge the Report, but Thana Officials did not note down the Report.

4. One of the witnesses Shri Rajendra Kumar Saxena in his statement alleged:

> I was working as Supervisor in Hira Electronics during 1983. Accused Vir Prakash has purchased Electric Rods from the company worth Rs. 3599.33 P and Rs. 3776.73 P. Money was paid later on through Bank Cheques both cheques were dishonored by Bank. When accused was later on asked for the payment of the amount taken accused refused to pay and said that he had knowingly issued the fabricated cheques to deceive and grab the money. You can do what you like.

5. Another witness A. Khalik also made similar statements which were recorded in the following terms:

> Stated on oath that I was an employee of Hira Electronics since 1983. Accused Vir Prakash has purchased articles worth Rs. 3599.33 P and Rs. 3776.73 P. in 1983 for which payment was made through Bank. Both cheques issued by the accused were dishonored. On when reminder for payment is made to the accused then he said that I have knowingly issued the fabricated cheques to cheat him and grab his money. I will not pay.

6. Cognizance was taken against the appellant. He was summoned. An application was filed by him on 25.08.1987 for quashing of the said criminal proceeding before

the High Court. A learned Single Judge of the Allahabad High Court by reason of the impugned order dated 3.01.2006 while refusing to exercise his jurisdiction stated:

> As the allegations against the applicant are factual in nature, that cannot be adjudicated in the present application, there is no ground for quashing criminal proceedings. Stay order, if any, stands vacated. The trial court is directed to conclude the trial expeditiously.

7. The principle underlying exercise of jurisdiction by the High Court under Section 482 of the Code of Criminal Procedure is now well-settled viz. that the allegations contained in the complaint petition even if given face value and taken to be correct in its entirety do not disclose an offence or not is the question.

8. The dispute between the parties herein is essentially a civil dispute.

Non-payment or under-payment of the price of the goods by itself does not amount to commission of an offence of cheating or criminal breach of trust.

No offence, having regard to the definition of criminal breach of trust contained in Section 405 of the Indian Penal Code can be said to have been made out in the instant case.

Section 405 of the Indian Penal Code reads, thus:

> 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".

Neither any allegation has been made to show existence of the ingredients of the aforementioned provision nor any statement in that behalf has been made.

Ordinarily, bouncing of a cheque constitutes an offence under Section 138 of the Negotiable Instruments Act. No complaint thereunder had been taken.

9. We are, therefore, left only with the question as to whether in a situation of this nature any offence of cheating can be said to have been made out.

Section 415 of the Indian Penal Code defines cheating to mean:

> 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".
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> In Hridaya Ranjan Prasad Verma and Others v. State of Bihar and Another [(2000) 4 SCC 168], this Court held:
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> 4. On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section 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 fradulent or dishonest.

In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.

15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time to inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. 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 fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed. [See also Indian Oil Corpn. v. NEPC India Ltd. and Others (2006) 6 SCC 736] The ingredients of Section 420 of the Indian Penal Code are as follows :

> i) Deception of any persons;
>
> 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.

No act of inducement on the part of the appellant has been alleged by the respondent. No allegation has been made that he had an intention to cheat the respondent from the very inception.

What has been alleged in the complaint petition as also the statement of the complainant and his witnesses relate to his subsequent conduct. The date when such statements were allegedly made by the appellant had not been disclosed by the witnesses of the complaints. It is really absurd to opine that any such statement would be made by the appellant before all of them at the same time and that too in his own district. They, thus, appear to be wholly unnatural.

In law, only because he had issued cheques which were dishonoured, the same by itself would not mean that he had cheated the complainant. Assuming that such a statement had been made, the same, in our opinion, does not exhibit that there had been any intention on the part of the appellant herein to commit an offence under Section 417 of the Indian Penal Code.

10. Furthermore, admittedly, their residences are in different districts. Whereas the appellant is a resident of the district of Ajamgarh, the respondent is a resident of the district of Rampur. Cheques were admittedly issued by the appellant at his place. There is nothing on record to show that any part of the cause of action arose within the jurisdiction of the court concerned. Even if such statements had been made, the same admittedly have been made only at the place where the appellant resides. The learned Magistrate, therefore, had no jurisdiction to issue the summons. [See Mosaraf Hossain Khan v. Bhagheeratha Engg. Ltd. and Others, (2006) 3 SCC 658]

11. For the reasons aforementioned, the impugned judgment is set aside. The order taking cognizance is quashed. The appeal is allowed. In the facts and circumstances of the case, no offence is made out.