

M.N.G Bharateesh Reddy vs Ramesh Ranganathan on 18 August, 2022

Author: D.Y. Chandrachud

Bench: A S Bopanna, Dhananjaya Y Chandrachud

Crl.A.1273/2022

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Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No 1273 of 2022
(Arising out of SLP (Crl) No 9509 of 2019)

M N G Bharateesh Reddy

Appellant

Versus

Ramesh Ranganathan and Another

Respondents

Signature Not Verified

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Sanjay Kumar
Date: 2022.08.23
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Reason:
Crl.A.1273/2022

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JUDGMENT

Dr Dhananjaya Y Chandrachud, J

1. Leave granted.

2. This appeal arises from a judgment dated 12 July 2019 of a Single Judge of the High Court of Karnataka.

3. The first respondent was employed by BGS Apollo Hospital, Mysore, the second respondent 1, as a Consultant Neurosurgeon on a monthly guaranteed fee of Rs. 50,000. He worked in that capacity from March 2004 until June 2014. A contract, styled as a Consultancy Agreement was entered into between the first respondent and the hospital on 1 April 2013 containing his terms of engagement. One of the terms of the engagement was that either party may terminate the agreement, with or without cause, by giving a prior notice of thirty days. On 3 June 2013, the management of the hospital enhanced the emoluments of the first respondent by assuring him a guaranteed monthly fee of Rs 4,25,000.

4. Thereafter, differences arose between the first respondent and the management of the hospital. The first respondent wrote a letter dated 9 January 2014 to the Appellant alleging that patients referred to him were being diverted to other doctors of the hospital at the enquiry and reception “hospital” counter. Through the said letter, he also requested the Appellant to take action against the erring staff members. The services of the first respondent were terminated on 30 May 2014 for inconsistent and unsatisfactory behavior in terms of the Consultancy Agreement. Aggrieved by his termination, the first respondent furnished a representation on 31 May 2014 to the Managing Director, Apollo Group of Medical Sciences highlighting gross irregularities in the billing of patients. In this representation, he also alleged that the Appellant had been threatening and maligning him. On 2 June 2014, the first respondent wrote a letter to Director of Medical Services of the hospital requesting permission to treat patients till 30 June 2014, the end of his notice period.

5. On 10 October 2014, the first respondent filed a complaint under Section 200 of the Code of Criminal Procedure 1973, being PCR No 2536 of 2014, before the First Additional Civil Judge (Junior Division) and Judicial Magistrate First Class, Mysore 2. In his complaint, the first respondent alleged that the Appellant misused his authority and terminated his services with an oblique and ulterior motive of defaming him. The JMFC by an order dated 3 March 2015 took cognizance under Sections 120A, 405, 415, 420, 499, and 500 of the Indian Penal Code 3. The order of the JMFC was challenged in revision under Section 397, Code of Criminal Procedure 1973 before the IVth Additional Sessions Judge, Mysore. “JMFC” “IPC”

6. The Additional Sessions Judge by an order dated 16 December 2015 set aside the order of the JMFC on the ground that the complaint did not disclose the ingredients of the offences of defamation or cheating. Moreover, the Additional Sessions Judge held that the JMFC was not competent to take cognizance of the offence punishable under Section 420 of the IPC.

7. The order of the Additional Sessions Judge was called into question by the first Respondent before the High Court of Karnataka. The Single Judge by the impugned judgment dated 12 July 2019 held that no case was made out against the Appellant under sections 499 and 500 of the IPC. However, the Court held that the material placed on record prima facie disclosed ingredients of offences under sections 405 and 420 of the IPC.

8. Notice was issued in these proceedings on 25 October 2019 in pursuance of which the first Respondent has appeared.

9. We have heard Mr Manan Kumar Misra, senior counsel for the Appellant and Ms Radhika Gautam, counsel for the first respondent, who is the contesting party.

10. The issue which presents itself for determination in these proceedings is whether the ingredients of the offences of cheating and criminal breach of trust have been made out on the face of the complaint. Following the well settled principle of law, the contents of the complaint would have to be read in order to deduce as to whether the ingredients of the offence have been duly established.

11. The complaint filed by the first respondent on 10 October 2014 contains a narration of his engagement by the hospital as a Consultant Neurosurgeon pursuant to an offer dated 16 January 2004 and of his having worked between March 2004 to June 2014 by establishing the Department of Neurosurgery.

12. Paragraph 6 of the complaint contains a recital that as a result of the incompetence of the billing staff in the hospital, the fees which were to be charged for the first respondent were wrongly billed and drastically reduced. The complaint states that he drew this to the attention of the Chief Operating Officer in October 2011 and thereafter to the Appellant who had recently joined as the General Manager of the hospital. The complainant alleges that he had sustained a loss on the receipt of his professional fees and was verbally assured by the Appellant that the hospital would reimburse the fees after a thorough enquiry. Further, there are bald averments in the complaint that the complainant was targeted by the Appellant “along with his henchmen”. The complaint refers to certain bills which were raised by the hospital on 28 April 2013 and 4 November 2013 wrongly showing the surgery charges at Rs 1 and Rs 2. The complainant states that he was removed from the duty roster between 17 May and 31 May 2014 and that he was eventually removed from the service of the hospital.

13. The ingredients of the offence of cheating are spelt out in Section 415 of the IPC. Section 415 is extracted below:

“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.”

14. The ingredients of the offence under Section 415 emerge from a textual reading. Firstly, to constitute cheating, a person must deceive another. Secondly, by doing so the former must induce

the person so deceived to (i) deliver any property to any person; or (ii) to consent that any person shall retain any property; or (iii) intentionally induce 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 such an act or omission must cause or be likely to cause damage or harm to that person in body, mind, reputation or property.

15. Section 420 deals with cheating and dishonestly inducing delivery of property. It reads as follows:

“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 capable of converting 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.”

16. In *Hridaya Ranjan Prasad Verma v. State of Bihar* 4, a two-judge bench of this Court interpreted sections 415 and 420 of IPC to hold that fraudulent or dishonest intention is a precondition to constitute the offence of cheating. The relevant extract from the judgment reads thus:

(2000) 4 SCC 168 “14. 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 fraudulent 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 of 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.” (emphasis supplied)

17. In *Dalip Kaur v. Jagnar Singh* 5 a two-judge bench of this Court held that a dispute arising out of a breach of contract would not amount to an offence of cheating under section 415 and 420. The relevant extract is as follows:

“9. The ingredients of Section 420 of the Penal Code are:

“(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.”

10. The High Court, therefore, should have posed a question as to whether any act of inducement on the part of the appellant has been raised by the second respondent and whether the appellant had an intention to cheat him from the very inception. If the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance the same would not constitute an offence of cheating. Similar is the legal position in respect of an (2009) 14 SCC 696 offence of criminal breach of trust having regard to its definition contained in Section 405 of the Penal Code. (See *Ajay Mitra v. State of M.P.* [(2003) 3 SCC 11 : 2003 SCC (Cri) 703])” (emphasis supplied)

18. Applying the above principles, the ingredients of Sections 415 and 420 are not made out in the present case. The grievance of the first respondent arises from the termination of his services at the hospital. The allegations indicate that there was an improper billing in respect of the surgical services which were rendered by the complainant at the hospital. At the most, the allegations allude to a breach of terms of the Consultancy Agreement by the Appellant, which is essentially in the nature of a civil dispute.

19. The allegations in the complaint are conspicuous by the absence of any reference to the practice of any deception or dishonest intention on behalf of the Appellant. Likewise, there is no allegation that the complainant was as a consequence induced to deliver any property or to consent that any person shall retain any property or that he was deceived to do or omit to do anything which he would have not done or omitted to do if he was not so deceived. The conspicuous aspect of the complaint which needs to be emphasized is that the ingredients of the offence of cheating are absent in the averments as they stand.

20. Section 405 of the IPC deals with criminal breach of trust and 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 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 willfully suffers any other person so to do, commits “criminal breach of trust”. The offence of criminal breach of trust contains two ingredients: (i) entrusting any person with property, or with any dominion over

property; and

(ii) the person entrusted dishonestly misappropriates or converts to his own use that property to the detriment of the person who entrusted it.

21. In *Anwar Chand Sab Nanadikar v. State of Karnataka* 6 a two-judge bench restated the essential ingredients of the offence of criminal breach of trust in the following words:

“7. The basic requirement to bring home the accusations under Section 405 are the requirements to prove conjointly (1) entrustment, and (2) whether the accused was actuated by the dishonest intention or not misappropriated it or converted it to his own use to the detriment of the persons who entrusted it. As the question of intention is not a matter of direct proof, certain broad tests are envisaged which would generally afford useful guidance in deciding whether in a particular case the accused had mens rea for the crime.”

22. In *Vijay Kumar Ghai v. State of West Bengal*⁷ another two-judge bench held that entrustment of property is pivotal to constitute an offence under section 405 of the IPC. The relevant extract reads as follows:

“28. “Entrustment” of property under Section 405 of the Penal Code, 1860 is pivotal to constitute an offence under this. The words used are, “in any manner entrusted with property”. So, it extends to entrustments of all kinds whether to clerks, servants, business partners or other persons, provided they are holding a position of “trust”. A person who dishonestly misappropriates property entrusted to them contrary to the terms of an obligation imposed is liable for a criminal breach of trust and is punished under Section 406 of the Penal Code.” (2003) 10 SCC 521 (2022) 7 SCC 124

23. None of the ingredients of the offence of criminal breach of trust have been demonstrated on the allegations in the complaint as they stand. The first respondent alleges that the Appellant caused breach of trust by issuing grossly irregular bills, which adversely affected his professional fees. However, an alleged breach of the contractual terms does not ipso facto constitute the offence of the criminal breach of trust without there being a clear case of entrustment. No element of entrustment has been prima facie established based on the facts and circumstances of the present matter. Therefore, the ingredients of the offence of criminal breach of trust are ex facie not made out on the basis of the complaint as it stands.

24. In the above view of the matter, there is a patent error on the part of the High Court in setting aside the judgment of the Additional Sessions Judge and by holding that cognizance was correctly taken of the offence punishable under Sections 405, 415, and 420 of the IPC.

25. We accordingly allow the appeal and set aside the impugned judgment and order of the High Court dated 12 July 2019.

26. The order of the IVth Additional Sessions Judge dated 15 December 2015 in Criminal Revision Petition No 94 of 2015 shall accordingly stand restored, for the reasons which have been indicated above.

27. Pending applications, if any, stand disposed of.

.....J. [Dr Dhananjaya Y Chandrachud]
.....J. [A S Bopanna] New Delhi;

August 18, 2022 CKB