

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.127 of 2023

1. Suraj Kumar, aged about 33 years, son of Bhagwan Prasad, resident of Majhee Tola, Balidih, Near Central Bank Chas, P.O. + P.S.- Balidih, District- Bokaro, Jharkhand;

2. Bimal Kumar @ Vimal Kumar aged about 31 years, son of Bhagwan Prasad, resident of School, Balidih, P.O. + P.S.- Balidih, District- Bokaro, Jharkhand; ... Petitioners

Versus

1. The State of Jharkhand

2. Sriram Transport Finance Company Ltd. Represented by Abhishek Kumar (Branch Manager), resident of Plot No.7217, 7208, 7209 above ICICI Bank Chowk, by-pass Road Chas, P.O. + P.S.- Chas, District- Bokaro, Jharkhand- 827013; ... Opposite Parties

For the Petitioners	: Mr. Birendra Kumar, Advocate
For the State	: Mr. Vineet Kr. Vashistha, Spl. P.P.
For the O.P. No.2	: Mr. Vineet Prakash, Advocate

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure with a prayer to quash and set aside the entire criminal proceedings including the order of cognizance dated 18.08.2022 passed by learned Judicial Magistrate-1st Class, Bokaro, in Complaint Case No.278 of 2022 and the said case is now pending before the learned Judicial Magistrate-1st Class, Bokaro.

3. The allegation against the petitioners is that the petitioners respectively being the borrower and the guarantor, got a truck financed by the complainant-Finance Company and paid only Rs.65,000/- out of the money taken as loan

and thereafter stopped payment and when the authorized persons of the complainant went to the house of the petitioners they abused and drove them out and did not show them the vehicle and they have dismantled and sold the vehicle.

4. Learned counsel for the petitioners relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Satischandra Ratanlal Shah vs. State of Gujarat & Others** reported in **(2019) 9 SCC 148** paragraphs- 13 and 14 of which read as under:-

13.Xxxx xxxx xxxx. The mere inability of the appellant to return the loan amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, as it is this mens rea which is the crux of the offence. Even if all the facts in the complaint and material are taken on their face value, no such dishonest representation or inducement could be found or inferred.

14. Moreover, this Court in a number of cases has usually cautioned against criminalising civil disputes, such as breach of contractual obligations (refer to Gian Singh v. State of Punjab [Gian Singh v. State of Punjab, (2012) 10 SCC 303 : (2012) 4 SCC (Civ) 1188 : (2013) 1 SCC (Cri) 160 : (2012) 2 SCC (L&S) 988]). The legislature intended to criminalise only those breaches which are accompanied by fraudulent, dishonest or deceptive inducements, which resulted in involuntary and inefficient transfers, under Section 415 IPC.

and submits that as there is no allegation against the petitioners of having any dishonest intention since the beginning of the transaction between the parties, hence, the inability of the petitioners to return the loan amount cannot give rise to a criminal prosecution.

5. It is next submitted by the learned counsel for the petitioners that the allegation of abusing the representatives of the complainant has been made only to make the case a serious one and even if the same is treated to be true in its entirety, the same is insufficient to constitute either the offence punishable under Section 504 or 506 of the Indian Penal Code and as in the statement

under solemn affirmation or in the statement of the enquiry witnesses, there is no allegation of any hurt being caused by the petitioners to any person, hence, the offence punishable under Section 323 of the Indian Penal Code is not made out against the petitioners. It is lastly submitted that the entire criminal proceedings including the order taking cognizance dated 18.08.2022 passed by learned Judicial Magistrate-1st Class, Bokaro, in Complaint Case No.278 of 2022 which is now pending before the learned Judicial Magistrate-1st Class, Bokaro, be quashed and set aside.

6. Learned Spl.P.P. appearing for the State and the learned counsel for the opposite party No.2 on the other hand vehemently oppose the prayer of the petitioners to quash and set aside the entire criminal proceedings including the order taking cognizance dated 18.08.2022 passed by learned Judicial Magistrate-1st Class, Bokaro, in Complaint Case No.278 of 2022 which is now pending before the learned Judicial Magistrate-1st Class, Bokaro and submit that the offence punishable under Sections 504 and 506 of the Indian Penal Code is made out against the petitioners.

7. Having heard the rival submissions made at the Bar and after carefully going through the materials available in the record, so far as the offence punishable under Sections 504 and 506 of the Indian Penal Code is concerned, it is a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of **Vikram Johar vs. State of Uttar Pradesh & Another** reported in **(2019) 14 SCC 207** paragraphs-24 and 25 of which read as under:-

"24. Now, we revert back to the allegations in the complaint against the appellant. The allegation is that the appellant with two or three other unknown persons, one of whom was holding a revolver, came to the complainant's house and abused him in filthy language and attempted to assault him and when some neighbours arrived there the appellant and the other persons accompanying him fled the spot. The above allegation taking on its face value does not satisfy the

ingredients of Sections 504 and 506 as has been enumerated by this Court in the above two judgments. The intentional insult must be of such a degree that should provoke a person to break the public peace or to commit any other offence. The mere allegation that the appellant came and abused the complainant does not satisfy the ingredients as laid down in para 13 of the judgment of this Court in Fiona Shrikhande [Fiona Shrikhande v. State of Maharashtra, (2013) 14 SCC 44 : (2014) 1 SCC (Cri) 715] .

25. Now, reverting back to Section 506, which is offence of criminal intimidation, the principles laid down by Fiona Shrikhande [Fiona Shrikhande v. State of Maharashtra, (2013) 14 SCC 44 : (2014) 1 SCC (Cri) 715] has also to be applied when question of finding out as to whether the ingredients of offence are made or not. Here, the only allegation is that the appellant abused the complainant. For proving an offence under Section 506 IPC, what are the ingredients which have to be proved by the prosecution? Ratanlal & Dhirajlal on Law of Crimes, 27th Edn. with regard to proof of offence states the following:

“... The prosecution must prove:

(i) That the accused threatened some person.

(ii) That such threat consisted of some injury to his person, reputation or property; or to the person, reputation or property of someone in whom he was interested;

(iii) That he did so with intent to cause alarm to that person; or to cause that person to do any act which he was not legally bound to do, or omit to do any act which he was legally entitled to do as a means of avoiding the execution of such threat.”

(emphasis supplied)

A plain reading of the allegations in the complaint does not satisfy all the ingredients as noticed above.

that the mere allegation that the appellant threatened the complainant does not by itself satisfies the ingredients of Section 504 of the Indian Penal Code. There has to be an intentional insult of such a degree that should provoke a person to break the public peace or to commit any other offence. In the absence of any such allegation this Court has no hesitation in holding that the offence punishable under Section 504 of the Indian Penal Code is not made out against the petitioners.

8. So far as the offence punishable under Section 506 of the Indian Penal Code is concerned, for establishing the said offence it must be alleged that the break consisted of some injury to the person, reputation, property to any

person and the threatening was with the intention to cause alarm to the victim or cause the victim to do any act which he was not legally bound to do. In the absence of any such allegation, this Court is of the considered view that the allegations made against the petitioners, even if considered to be true in its entirety, still the offence punishable under Section 506 of the Indian Penal Code is not made out against the petitioners.

9. So far as the offence punishable under Section 406 of the Indian Penal Code is concerned, as has been held by the Hon'ble Supreme Court of India in the case of **Binod Kumar & Others vs. State of Bihar & Another** reported in (2014) 10 SCC 663 paragraph-18 of which read as under:-

"18. In the present case, looking at the allegations in the complaint on the face of it, we find that no allegations are made attracting the ingredients of Section 405 IPC. Likewise, there are no allegations as to cheating or the dishonest intention of the appellants in retaining the money in order to have wrongful gain to themselves or causing wrongful loss to the complainant. Excepting the bald allegations that the appellants did not make payment to the second respondent and that the appellants utilised the amounts either by themselves or for some other work, there is no iota of allegation as to the dishonest intention in misappropriating the property. To make out a case of criminal breach of trust, it is not sufficient to show that money has been retained by the appellants. It must also be shown that the appellants dishonestly disposed of the same in some way or dishonestly retained the same. The mere fact that the appellants did not pay the money to the complainant does not amount to criminal breach of trust." (Emphasis supplied)

that to make out a case of criminal breach of trust, it is not sufficient to show that money has been retained by the accused persons. It must also be shown that the accused persons dishonestly disposed of the same in some way or dishonestly retained the same.

10. Now, coming to the facts of the case, the main allegations against the petitioners is that the petitioners have availed the loan being borrower and guarantor respectively but did not pay back the loan amount. Under such

circumstances, keeping in view the settled principle of law; even if the allegations made in the complaint, statement on solemn affirmation and the statement of enquiry witnesses are considered to be true in their entirety still the offence as alleged, in respect of which the learned Judicial Magistrate has taken the cognizance i.e. the offence punishable under Sections 323, 406, 504 and 506 of the Indian Penal Code is not made out. Hence, this Court is of the considered view that the continuation of this case against the petitioners will amount to abuse of process of law and this is a fit case where the entire criminal proceedings including the order of cognizance dated 18.08.2022 passed by learned Judicial Magistrate-1st Class, Bokaro, in Complaint Case No.278 of 2022 which is now pending before the learned Judicial Magistrate-1st Class, Bokaro, be quashed and set aside.

11. Accordingly, the entire criminal proceedings including the order of cognizance dated 18.08.2022 passed by learned Judicial Magistrate-1st Class, Bokaro, in Complaint Case No.278 of 2022 which is now pending before the learned Judicial Magistrate-1st Class, Bokaro, is quashed and set aside.

12. In the result, this Cr.M.P. stands allowed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 15th of April, 2024
AFR/ Animesh-Saroj