

CRIMINAL REVISION

Present:

The Hon'ble Mr. Justice Syamal Kanti Chakrabarti

Judgment on 09.09.2010

C. R. R. 1333 of 2009

Cargill India Pvt. Ltd. & Anr.

Vs

State of West Bengal & Anr.

POINTS:

QUASHING, JURISDICTION: From the very inception of transaction no fraudulent intention or misrepresentation is forthcoming – whether the accused are liable for prosecution under Section 420 IPC - **Code of Criminal Procedure,1973 Ss.179, 482-Indian Penal Code S.415, 420**

FACTS:

The complainant alleged that the 7 accused lured the complainant to become a distributor of their product in Kharagpur and accordingly being attracted by the said offer of the accused persons the complainant paid a sum of Rs. 50,000/- in favour of the accused no. 1, Cargill India Private Limited which was received by them and the accused persons promised to deliver a consignment amounting to 75 cases of Soyabin and Sunflower Oil. But till filing of the complaint the said consignment was not delivered by them and the amount is still lying with them. Upon perusal of the said complaint and initial deposition of the complainant the Learned Court below took cognizance of the offence under Section 420 and issued process against all the accused persons. Accused nos. 1 and 7 have filed the instant revisional application and contended that the accused petitioner no. 1 is a subsidiary company and is a part of international business operations of Cargill India Private Limited. M/s. Ganesh Lal Agarwal in Kharagpur is a super distributor from August, 2007. M/s. Ganesh Lal Agarwal, Kharagpur had commercial transaction with the said OP No. 2. The opposite party no. 2 became defaulter in paying dues. M/s. Ganesh Lal Agarwal, Kharagpur requested the petitioner no. 1 to intervene and resolve the matter amicably. Pursuant to the intervention of the

petitioner no. 1 the opposite party no. 2 paid the admitted payment to M/s. Ganesh Lal Agarwal, Kharagpur through the petitioner no. 1 for which the demand draft was made in the name of the petitioner no. 1. On receipt of the same the petitioner no. 1 credited the same to the Trade Account of M/s. Ganesh Lal Agarwal, Kharagpur, the super distributor of petitioner no. 1 to the extent of Rs. 50,000/- as agreed to by the petitioner no. 1, M/s. Ganesh Lal Agarwal, Kharagpur and the opposite party no. 2.

HELD:

If the contents of the complaint are contradicted Court cannot take cognizance upon such vague and contradictory allegation without sufficient prima facie materials before it.

Para 8

Dispute between the parties, if there be any, obviously is civil in nature and from the very inception of transaction made by them no fraudulent intention or misrepresentation is forthcoming for which the petitioners herein may be liable for prosecution under Section 420 IPC. Para 15

In the complaint it is alleged that all the accused nos. 1 to 7 lured the complainant to become their distributor. Now the address of the accused no. 1 is at New Delhi, accused nos. 2 to 6 is at Gurgaon, Hariyana and that of accused no. 7 is in Kolkata – 700 026. If the allurement is made the same must have taken place, either in Delhi or in Hariyana or in Kolkata and not within the jurisdiction of Kharagpur (Town) PS. In the initial deposition also the complainant has introduced a new allegation of placing the order to the accused company for delivery of goods but silent on how, at what place and when such order was placed. Therefore, prima facie no materials on record to show that the cause of action or any part of cause of action of the alleged offence under 420 IPC

was taken place within the jurisdiction of the Learned Chief Judicial Magistrate, Paschim Medinipur. Section 179 Cr.P.C. specifically provides that offence is triable where act is done or consequence ensues and the Court within whose jurisdiction such thing has been done and such a consequence has ensued. Such offence may be enquired into and tried by a Court in whose local jurisdiction such act was done consequence ensued. Therefore, cognizance taken in this case is also barred by Section 179 Cr.P.C. Para 16

Cases cited:

(2009) 7 SCC 495; (2004) 4 SCC 168

For the Petitioner : Mr. B. C. Roy, Learned Advocate General,
 Mr. J. Bagchi,
 Mr. Dipayan Chowdhury,
 Ms. Rupa Bahdopadhyaya.

For the OP No. 2 : Mr. Jayanta Narayan Chatterjee,
 Mr. Gaurab Banerjee.

For the State : Mr. S. S. Roy

Syamal Kanti Chakrabarti, J.:

The present revisional application is directed against the order dated 26.02.2009 passed in Complaint Case No. CR 193/2009 passed by the Learned Judicial Magistrate, 2nd Court, Paschim Medinipur under Section 418/420 IPC and for quashing of the said proceedings.

2.The complainant Sushil Kumar Goel, Constituted Attorney of Smt. Asha Goel has lodged the said complaint alleging, inter alia, that accused no. 1, Cargill India Private Limited is a body corporate under the Companies Act, 1956 and accused nos. 2 to 6 are its Directors and responsible for the day to day affairs of the business and accused no. 7 is an employee under accused nos. 1 to 6. The petitioners herein are manufacture of Soyabin

Oil and Sunflower Oil in the name and style of GEMINI SOYA and GEMINI SUNFLOWER OIL. All the 7 accused lured the complainant to become a distributor of their product in Kharagpur and accordingly being attracted by the said offer of the accused persons the complainant paid a sum of Rs. 50,000/- by an account payee demand draft being no. 931640 dated 29.09.2008 in favour of the accused no. 1, Cargill India Private Limited which was received by them and the accused persons promised to deliver a consignment amounting to 75 cases of Soyabin and Sunflower Oil. But till filing of the complaint the said consignment was not delivered by them and the amount is still lying with them. It is alleged that accused nos. 1 to 7 had full knowledge and commercial intention that the consignment shall never be delivered but induced the complainant to deliver the sum of Rs. 50,000/- and thereby cheated him which offence is punishable under Section 418/420 of the IPC. Upon perusal of the said complaint and initial deposition of he complainant the Learned Court below by order dated 26.02.2009 took cognizance of the offence under Section 420 and issued process against all the accused persons.

3. Being aggrieved by and dissatisfied with such order the accused nos. 1 and 7 have filed the instant revisional application and contended that the accused petitioner no. 1 is a subsidiary company and is a part of international business operations of Cargill India Private Limited, a company providing food, agricultural and risk management products and services worldwide. The company operates through a service network of distributors to market its branded edible oils of Nature Fresh and Gemini. M/s. Ganesh Lal Agarwal in Kharagpur is a super distributor from August, 2007 who in turn sells such branded goods on cash/ credit to various parties and dealers including opposite

party no. 2 herein, i.e., Sushil Kumar Goel. It will be evident from the invoices dated 02.07.2008 and 04.07.2008 that the said M/s. Ganesh Lal Agarwal, Kharagpur had commercial transaction with the said OP No. 2 for a total sum of Rs. 96,005/- for selling “Gemini Refined Vegetable Oil”. It is the further case of the petitioner that after receipt of the said articles the opposite party no. 2 became defaulter in paying dues. So the said M/s. M/s. Ganesh Lal Agarwal, Kharagpur requested the petitioner no. 1 to intervene and resolve the matter amicably. Pursuant to the intervention of the petitioner no. 1 the opposite party no. 2 paid the admitted payment to M/s. Ganesh Lal Agarwal, Kharagpur through the petitioner no. 1 in accordance with their discussion and consensus arrived at for which the demand draft was made in the name of the petitioner no. 1. On receipt of the same the petitioner no. 1 credited the same to the Trade Account of M/s. Ganesh Lal Agarwal, Kharagpur, the super distributor of petitioner no. 1 to the extent of Rs. 50,000/- as agreed to by the petitioner no. 1, M/s. Ganesh Lal Agarwal, Kharagpur and the opposite party no. 2. But unfortunately the instant complaint has been lodged on false and frivolous grounds which has no basis at all.

4.It is the further case of the petitioner that in pursuance of their consensus with four other corporate bodies participating in the “Scheme of Amalgamation” with effect from 01.04.2008, the petitioner no. 1 herein decided not to transact any wholesale trading business from the financial year 2008-09 except through super distributors like the said M/s. Ganesh Lal Agarwal, Kharagpur. The said M/s. Ganesh Lal Agarwal, Kharagpur became the sole super distributor both for Purba Medinipur and Paschim Medinipur with the knowledge of opposite party no. 2. The said opposite party no. 2 was producing goods through the said sole super distributor M/s. Ganesh Lal Agarwal, Kharagpur from

April, 2008. Accordingly the sale to such parties like Goel Agencies (opposite party no. 2) was made through the super distributor. Therefore, they have not committed any offence of 420 IPC and as such the instant proceeding is liable to be quashed including the order dated 26.02.2009 passed by the Learned Court below taking cognizance of the aforesaid offence.

5.Learned Advocate General has contended on behalf of the petitioners herein that the petition of complaint and the initial deposition recorded by the Learned Court below do not disclose any prima facie offence under Section 420 IPC and as such the cognizance taken is bad in law and not sustainable and the constructive liability levelled upon the petitioner nos. 2 to 7 herein is also not tenable in law under the Indian Penal Code. He has also contended that no cause of action arose within the jurisdiction of the Learned Court below taking cognizance of the offence as their alleged transactions were made outside West Bengal as will be evident from the address of the accused nos. 1 to 6 recorded in the petition of complaint.

6.Learned lawyer for the defacto complainant opposite party no. 2 herein has on the contrary contended that if there is no business transaction between the complainant and the petitioner no. 1 why the demand draft sent to him was accepted in spite of returning the same? It is virtually admitted in paragraphs C, D, and F of the instant revisional application that the petitioners have received the demand draft and utilized the same for the purpose of settlement of dispute between the complainant and their super distributor without consent of the complainant. Therefore, these are mere questions of fact which

cannot be decided by the revisional Court and there is no merit in this revisional application which should be dismissed.

7.Learned Advocate General has drawn my attention to the averment made in paragraphs 3 and 4 of the petition of complaint which are contradictory. In paragraph no. 3 of the complaint the complainant has claimed that the accused nos. 1 to 7 lured him to become a distributor of their product in Kharagpur and accordingly, being attracted by the said offer of the accused person he paid the sum of Rs. 50,000/- by way of an account payee demand draft in favour of the accused no. 1 company. Therefore, as per paragraph no. 3 the payment was made only for the purpose of obtaining distributorship from GEMINI SOYA and GEMINI SUNFLOWER OIL. Therefore, as per petition of complaint the deposit was tendered for distributorship and not against any contractor work order for supply of any article by the manufacturer.

8.In paragraph no. 4 of the petition of complaint on the contrary it is claimed by the complainant that the accused persons duly received the said sum of Rs. 50,000/- and promised to deliver a consignment amounting to 75 cases of Soyabin and Sunflower Oil. Thus according to paragraph no. 4 the payment was made in advance for delivery of 75 cases of oil products and not for procuring any dealership. The fallacy of such claim lies in the fact that the petitioner no. 1 was not dealing with direct commercial transaction with the distributors with effect from 01.04.2008 under their scheme of amalgamation with four other corporate bodies and as such they have not entered into any contract with the complainant for direct supply of their products bypassing the super distributor M/s. Ganesh Lal Agarwal, Kharagpur. If the contents of the complaint are contradicted

Court cannot take cognizance upon such vague and contradictory allegation without sufficient prima facie materials before it.

9. Learned Advocate General has also drawn my attention to the initial deposition of the complainant recorded by the Learned Court below on 26.02.2009. For the sake of convenience the same is quoted below:

“S. A. of Sushil Kumar Goel on (26.02.2009)

I am the Constituted Attorney of Smt. Asha Goel, sole proprietor of Goel Agencies.

We placed order and paid draft to the accused company for delivery of goods. But in spite of repeated demand they did not deliver the goods to us. We sent Advocate’s notice also which returned with remarks refused. Hence, I filed this case for cheating.

(closed) ”

10. Learned Advocate General has relied upon the principle laid down in (2009) 7 SCC 495. It has been held by the Hon’ble Apex Court therein that misrepresentation from the very beginning is the sine qua non for constitution of an offence of cheating, although in some cases, intention to cheat may develop at a later stage of formation of the contract. In the instant case from the conduct of the parties it will appear that the petitioner no. 1 had no intention to cheat the complainant by misrepresentation from the very beginning and even at a later stage of the transaction they had no intention to cheat it. In fact to

resolve a commercial dispute between the retailer and distributor, the manufacturer being interested in promoting their business on request assumed the role of arbitrator and intended to settle the dispute. His offer was accepted by the complainant and so he issued the demand draft in favour of the petitioner no. 1 though he was a defaulter in making payment to the distributor M/s. Ganesh Lal Agarwal, Kharagpur. The very issue of the demand draft in favour of the manufacturer is a prima facie proof that the complainant accepted the terms of the arbitrator who had no occasion to receive such money since they were operating their business not directly but through distributors in the locality.

11. The Learned Advocate General has also contended that the dispute by and between the parties at best can be treated as a civil dispute regarding settlement of outstanding dues between the retailer and the distributor and merely the complainant issued the cheque in favour of the petitioner no. 1 is the same cannot be treated as a commission of an offence of a commercial breach of trust or cheating as the petitioner had no intention to cheat the complainant from the very inception. It is peculiar to note that on the one hand it is alleged in the complainant that the petitioner company and his other agents tempted the complainant to be their distributor for which he paid the sum of Rs. 50,000/- but in the same breathing it is alleged that he tendered the amount to the manufacturer for supply of 75 cases of Soyabin and Sunflower Oil. I fact the complainant himself suffers from indolence and obscurity regarding the purpose for which he paid the money to the manufacturer. He cannot claim any offence of cheating against them because by necessary implication the complainant admits that the payment was made for distributorship and thereafter the petitioner cannot misrepresent any fact for which the

complainant paid the amount. In fact at a subsequent stage the complainant wanted refund of the said amount of Rs. 50,000/- for which as a counterblast the complaint was lodged to create pressure upon the petitioners and there was no intentional deception on the part of the petitioners herein. In such a case continuation of the proceedings will be treated as an abuse of the process of the Court as held by the Hon'ble Apex Court in (2004) 4 SCC 168.

12. From the initial deposition of the complainant also it will appear that he has specifically claimed that they placed order and paid draft to the accused company for delivery of the goods but in spite of repeated demand the delivery was not effected. This type of averment corroborates paragraph no. 4 of the petition of complaint but contradicts paragraph no. 3 of the same. In such examination on SA the complainant has introduced a new plea of placing the order for supply of goods but there is no whisper how such order was placed orally or in writing or on what date such order was placed and communicated to the manufacturer bypassing the distributor. In the petition of complaint there is no whisper regarding placing of such order and equally in the initial deposition of the complainant there is no whisper regarding inducement made by the accused petitioners herein tempting him to be a distributor under the petitioner no. 1. In the midst of such contradiction and confusion taking of cognizance by the Learned Court below is a serious infirmity because on the basis of such testimony if the prosecution is allowed to continue it will not ultimately warrant any conviction. Moreover, the complaint as well as the initial deposition of the complainant taken together do not disclose any prima facie offence of Section 420 IPC.

13. Drawing my attention to the illustration (g) under Section 415 of the Indian Penal Code, the Learned Advocate General has tried to impress upon me that the facts of the present case will come under the purview of such illustration so far as the conduct of the present petitioner is concerned. As an arbitrator the petitioner no. 1 received the demand draft from the complainant for the purpose of payment to the supplier of the goods received by the complainant but the price of which has not been paid. Here the manufacturer, the distributor as well as the retailer are connected with each other in commercial transaction in course of which one party became defaulter and the other came for his rescue by amicable settlement without intervention of the civil court.
14. Section 415 IPC provides 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 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.
15. From Annexure P-1 it appears that the complainant purchased from M/s. Ganesh Lal Agarwal, Kharagpur several oil products by tax invoice dated 02.07.2008 and 04.07.2008 respectively amounting to total sum of Rs. 52,805.79 and Rs. 43,200.04 respectively. From Annexure P-2 of the application it will also appear that M/s. Ganesh Lal Agarwal, Kharagpur instructed the accountant of the petitioner no. 1 company (manufacturer) that the DD No. 931640 dated 29.09.2008 on Syndicate Bank, Kharagpur Branch of Rs. 50,000/- of M/s. Goel Agency, Malancha Road, Kharagpur

done in favour of Cargill India Private Limited may kindly be deposited in their account against goods sold by them against bill no. 209 dated 02.07.2008 and bill no. 210 dated 04.07.2008 as per Annexure P-1). In pursuance of such requisition the demand draft was delivered by the manufacturer to the super distributor from whom the retailer received goods worth Rs. 52,805.79 + Rs. 43,200.04, i.e., Total Rs. = 96,005.83 but did not pay anything. In the petition of complaint there is no whisper regarding such commercial dispute on account of non-payment of dues against delivery of products. Rather it prima facie shows that the complainant knew that the M/s. Ganesh Lal Agarwal, Kharagpur is the distributor of the Soyabin and Sunflower Oil in question from July, 2008 and with them he made commercial transaction bypassing the sole distributor. Why he paid the bank draft directly to the manufacturer is not explained. It is also apparent on the face of record that the said demand draft was prepared on 29.09.2008 after delivery of the goods in two counts in July, 2008 i.e., two months after receipt of the goods. Therefore, dispute between the parties, if there be any, obviously is civil in nature and from the very inception of transaction made by them no fraudulent intention or misrepresentation is forthcoming for which the petitioners herein may be liable for prosecution under Section 420 IPC.

16. It will also appear from the complaint that the place of occurrence has been identified as Malancha Road, Post Nimpura, PS Kharagpur (Town), District – Paschim Medinipur for which the case was instituted before the Learned Judicial Magistrate, Paschim Medinipur which was ultimately transferred to the 2nd Court of Learned Judicial Magistrate, Paschim Medinipur for disposal. In the complaint it is alleged that all the accused nos. 1 to 7 lured the complainant to become their distributor. Now the address

of the accused no. 1 is at New Delhi, accused nos. 2 to 6 is at Gurgaon, Hariyana and that of accused no. 7 is in Kolkata – 700 026. If the allurement is made the same must have taken place, either in Delhi or in Hariyana or in Kolkata and not within the jurisdiction of Kharagpur (Town) PS. In the initial deposition also the complainant has introduced a new allegation of placing the order to the accused company for delivery of goods but silent on how, at what place and when such order was placed. Therefore, prima facie I do not find any materials on record to show that the cause of action or any part of cause of action of the alleged offence under 420 IPC was taken place within the jurisdiction of the Learned Chief Judicial Magistrate, Paschim Medinipur. Section 179 Cr.P.C. specifically provides that offence is triable where act is done or consequence ensues and the Court within whose jurisdiction such thing has been done and such a consequence has ensued. Such offence may be enquired into and tried by a Court in whose local jurisdiction such act was done consequence ensued. Therefore, I also hold that cognizance taken in this case is also barred by Section 179 Cr.P.C.

17. On the backdrop of the above context I find that the objection raised by learned lawyer for the opposite party no. 2 solely rests on the argument that the petitioner no. 1 company has admitted receipt of the demand draft and delivery of the same to a third party without consent of the complainant which amounts to an offence punishable under Section 420 IPC. I do not subscribe to the same views because in order to constitute such offence there must be some specific allegations in the petition of complainant indicating any substance of the offence alleged in unambiguous terms which should be reiterated rather expounded in the initial deposition of the compliant. I have already pointed out that the petition of complainant as well as the initial deposition are

contradictory, lacks in details of what offence has been committed by the accused persons and whether such temptation or allurements from the very inception of the transaction did take place. Within jurisdiction of the Learned Court taking cognizance.

18. Considering all these things I hold that cognizance taken in this case is bad in law and continuation of such a proceeding will be sheer abuse of the process of law. To prevent such abuse, the instant proceeding being CR 193 of 2009 under Section 420 IPC, now pending before the Learned 2nd Court of Judicial Magistrate, Paschim Medinipur is hereby quashed and the accused persons are discharged and released from their respective bail bonds.
19. Urgent Photostat certified copy of this order, if applied for, be given to respective parties, upon compliance all necessary formalities.

(Syamal Kanti Chakrabarti, J.)