

M/S KUNSTOCOM ELECTRONICS (I) PVT. LTD.

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v.

GILT PACK LTD. AND ANR.

JANUARY 24, 2002

[D.P. MOHAPATRA AND P. VENKATARAMA REDDY, JJ.]

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Criminal Law :

Penal Code, 1860—Section 420—Failure to supply raw material to respondent as per contract—Case of cheating filed against appellant before Trial Court—Summons issued to the appellant—In appeal, High Court declined to interfere at this stage—Appellant filing objections and an application to drop the proceedings before Trial Court—Trial Court holding a prima facie case of cheating against the appellant—In appeal, High Court again declined to interfere giving liberty to the appellant to file objections on framing the charges—Held, since the Trial Court has held a prima facie case of cheating against the appellant, the High Court should exercise its jurisdiction to decide the petition on merits—Hence, remanded back to the High Court—Criminal Procedure Code 1973—Section 482.

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Respondent-company entered into a contract with a German company, through the appellant-company, for purchase of 1500 MT of polypropylene bastec, which is a raw material for manufacture of HDPE/PP bags. The respondent opened an irrevocable letter of credit for the full quantity as per the terms and conditions of the contract. The German company shipped only 50 MT and failed to supply the remaining quantity stating unforeseen circumstances. The respondent filed a case of cheating under Section 420 IPC against the appellant before trial court and alleging a loss of \$ 2,36,250 incurred on account of rise in prices during the interregnum. The trial court issued summons to the appellant. The appellant filed a petition before High Court under Section 482 CrPC against the summons of the trial court. The High Court declined to entertain the petition and gave liberty to the appellant to raise objections before the trial court and directed the trial court to consider the objections before passing a reasoned order. The appellant filed objections and an application before the trial court seeking to drop the proceedings. The trial court, by a reasoned order, rejected the application holding that there was a prima

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A *facie* case of cheating under section 420 IPC against the appellant. The appellant again filed a petition before the High Court under Section 482 CrPC for dropping the proceedings. The High Court again declined to interfere with the proceedings giving liberty to the appellant to file objections at the time of framing of charges by the trial court.

B In appeal to this Court, the appellant contended that the High Court was wrong in declining to exercise its jurisdiction and hearing the petition on merits; and that the respondent failed to prove the case of cheating under section 415 IPC.

C The respondent contended that there was no case for interference by this Court since the High Court has given liberty to the appellant to raise objections at the time of framing of the charges by the trial court; and that no error was committed by the trial court in taking cognizance of the offence.

D Allowing the appeal, the Court

HELD : High Court was not justified in declining to exercise its jurisdiction and adjudicating the matter on merits. Raising the objections at the time of framing the charges would practically be an empty formality as the trial court had already taken a definite view in the matter. The High Court in passing the order has virtually ignored the spirit behind the direction given and observations made in the earlier order. There is no hard and fast rule that the objection as to cognizability of the offence and maintainability of the complaint shall be allowed to be raised only at the time of framing the charges. Such was not the intention of the High Court in passing the earlier order. Hence the order of the High Court is set aside and the matter is remitted back to the High Court for fresh disposal of the petition on merits expeditiously. [439-E-G; 440-E]

Ashok Chaturvedi & Ors. v. Shitul H. Chanchani & Anr., [1998] 7 SCC 698, relied on.

G CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 114 of 2002.

From the Judgment and Order dated 9.8.2000 of the Madhya Pradesh High Court in M. CrI. C. No. 4193 of 1998.

H Shanti Bhushan, Vinay Garg, Mrs. Deepam Garg and Rajesh Yadav for

the Appellant.

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R.R. Misra, Shail Kumar Dwivedi, S.D. Sharma and Prashant Kumar for B.S. Banthia for the Respondent.

The Judgment of the Court was delivered by

P. VENKATARAMA, REDDY, J. Leave granted and the appeal heard on merits.

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The respondent herein filed a private complaint in the court of Chief Judicial Magistrate, Indore, alleging that the appellant committed an offence of cheating in relation to a transaction of supply of 1500 mt. tons of 'polypropylene brastec' which is a raw material required for manufacture of HDPE/PP bags. In January 1994 the respondent-Company placed orders on a German Company named M/s. Kunstplast Chemic GMBH . for the supply of 1500 mt. tons of polypropylene brastec through the media of the appellant in accordance with the price and terms specified in two indents. According to the appellant, it is a business agent of the German Company, though according to the respondent, the appellant claimed to be a representative and associate of the German Company. Pursuant to the deal, an irrevocable letter of credit was opened in favour of the German Company covering the value of entire quantity of 1500 mt. tons. Out of that quantity, only 50 MTs. were shipped on 09.03.1994 and the letter of credit was encashed to that extent. The remaining quantity which was expected to be supplied as per the contract was not shipped and the correspondence and personal talks with the appellant did not evoke any positive response. Finally, on 29.4.1994, the appellant-company informed the respondent that the remaining 1450 mt. tons cannot be shipped due to some unforeseen circumstances. The appellant requested that the L.C. may be treated as cancelled. As a result of non-fulfillment of obligation under the contract, it is claimed by the respondent that it suffered a loss of \$ 2,36,250 on account of escalation of prices. It is the case of the complainant that on account of rise in prices during the interregnum, the appellant and the German company deliberately failed to honour the commitment in order to profit themselves at the expense of the respondent. It is alleged that the deceptive intention of the accused from the beginning could be gathered from the initial representations and the subsequent conduct. According to the respondent-complainant, the appellant was trying to gain time on one pretext or the other right from the date of opening the letter of credit in furtherance of its criminal intention to cheat. The complainant also alleged that it was induced to believe by the representation of the appellant

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A that the entire quantity would be supplied within the stipulated period on receipt of irrevocable letter of credit and on the strength of this representation, the contract was entered into.

B The appellant's case is that even going by the contents of the complaint and the statements of the witnesses recorded by the learned Magistrate, no offence of cheating is made out and it is purely a case of breach of contract arising out of non-supply of remaining quantity of goods. According to the appellant, there was no fraudulent or dishonest intention at the time of entering into the contract nor any deception practised on the contracting party (complainant). It is also averred that the police before whom the complaint
C was referred to under Section 156 (3) Cr.P.C. submitted a report that no offence of cheating was made out.

Challenging the legality of the summoning order dated 2.9.1995, the appellant filed an application under Section 482 Cr.P.C. in the High Court. The petition was disposed of with the following observations on 15.5.1996:-

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"Looking to the contentions as advanced by the counsel for the petitioner, at this stage, it is not a fit case to entertain this petition. However, it is directed that the learned C.J.M. Indore, where the matter is pending for disposal in accordance with law on merits, shall consider all the objections raised by petitioner in this petition and shall pass a reasoned order on the same. The petitioner, if aggrieved, by any adverse orders passed against it, shall have right to challenge the same in accordance with law. With these observations, this petition is finally disposed of *in limini*, without notice to the other side."

The appellant then filed objections before the C.J.M., Indore, and sought for dropping the proceedings. By a reasoned order dated 3.10.1996, the C.J.M., Indore, rejected the application. The learned C.J.M., held that there were substantial grounds to make out a *prima facie* case under Section 420 IPC and it will not be proper to drop the proceedings at this stage. The C.J.M., Indore, accordingly re-affirmed the order of his predecessor in issuing the summons to the accused. Aggrieved thereby, the appellant once again moved the High Court under Section 482 Cr.P.C. The High Court disposed of the petition as follows :-

"This matter is pending from 1996. This is a petition u/s 482 Cr.P.C. for dropping the proceedings of the private complaint. The appellant has come up against the issue of the process. This petition is disposed

of with the observation that the applicant shall have right to raise all the grounds at the time of framing charge.” A

It is against this order that the present SLP has been filed.

Mr. Shanti Bhushan, learned senior counsel appearing for the appellant, vehemently protested against the stance of the High Court in refraining from giving a verdict on merits, despite its earlier order. The learned counsel then took us through the complaint and the statement of the law Officer of the respondent-Company and submitted that they do not disclose an offence of cheating within the meaning of Section 415. The learned counsel sought to draw support from certain decisions of this Court. The learned senior counsel Mr. R.R. Misra, for the respondents, contended that there is no case for interference as the High Court has given liberty to the appellant to raise the relevant objections at the time of framing the charges. That apart, it is submitted that it is premature to hold that the appellant did not cheat the respondents and that it is purely in the nature of civil claim. The relevant portions of the complaint were referred to and it was submitted that no error has been committed by the learned C.J.M., in taking the cognizance and issuing the process to the accused. B
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The High Court in our opinion was not justified in declining to exercise its jurisdiction and adjudicating the matter on merits. On an earlier occasion when the appellant moved the High Court, the High Court directed the C.J.M., Indore, to consider the objections raised by the appellant and to pass a reasoned order. Thereafter, the C.J.M., Indore, passed an order overruling the objections and decided to proceed with the case. When the appellant approached the High Court again against the speaking order passed by the C.J.M., the High Court once again declined to decide the petition on merits, but left it to be raised before the trial court at the time of framing the charge. Raising the very same objections at the time of framing the charge would practically be an empty formality as the trial court had already taken a definite view in the matter. The High Court in passing the impugned order has virtually ignored the spirit behind the direction given and observations made in the earlier order. There is no hard and fast rule that the objection as to cognizability of offence and maintainability of the complaint should be allowed to be raised only at the time of framing the charge. Such was not the intention of the High Court in passing the order dated 15.5.1996. In any case, we have the authority of the judgment of this Court in the case of *Ashok Chaturvedi and Ors. v. Shitul H. Chanchani and Anr.*, [1998] 7 SCC 698 to hold that the determination of the question as regards the propriety of the order of the Magistrate taking E
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A cognizance and issuing process need not necessarily wait till the stage of framing the charge. G.B. Pattanaik, J. speaking for the Court observed thus:-

B “This argument, however, does not appeal to us inasmuch as merely because an accused has a right to plead at the time of framing of charges that there is no sufficient material for such framing of charges as provided in Section 245 of the Criminal Procedure Code, he is debarred from approaching the court even at an earliest (*sic* earlier) point of time when the Magistrate takes cognizance of the offence and summons the accused to appear to contend that the very issuance of the order of taking cognizance is invalid on the ground that no offence can be said to have been made out on the allegations made in the complaint petition. It has been held in a number of cases that power under Section 482 has to be exercised sparingly and in the interest of justice. But allowing the criminal proceeding to continue even where the allegations in the complaint petition do not make out any offence would be tantamount to an abuse of the process of court, and therefore, there cannot be any dispute that in such case power under Section 482 of the Code can be exercised.”

E It may be that in a given case it would be more appropriate and proper to raise objections of this nature at the time of the charge-framing, but this is not a case of that nature, especially looking at the observations made in the earlier order of the High Court dated 15.5.1996. We are, therefore, inclined to set aside the impugned order of the High Court and remit the matter back to the High Court for fresh disposal of the petition - M.Cr.C. No. 4193 of 1998 for a decision on merits expeditiously. As the High Court declined to express any view on the crucial question whether the alleged offence has been made out, we do not consider it appropriate and proper to undertake the task of deciding the question which the High Court ought to have decided.

F The Criminal Appeal is accordingly allowed and the matter will now go back to the High Court for disposal in the light of the observations made above. There shall be no order as to costs.

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Appeal allowed.