

After much persuasion, in the month of June, 2016 a meagre sum of Rs.6,00,000/- was paid by the petitioners to the Opp. Party No.2. It is further alleged that thereafter the Opp. Party No.2 on several occasions, demanded the balance payment of Rs.58,92,862/- through mails and telephonic conversation with all the petitioners, but no payment had been made till date. Thereafter, the Opp. Party No.2 sent a request letter along with banking details on 22.03.2018 under reference no./SALER/ 063/17-18, but again no payment was made by the petitioners, resultantly the complaint case was filed on 27.11.2018

5. It is submitted by learned counsel for the petitioners that learned Court had overlooked the fact that petitioner No.1 being a registered company under the Companies Act, as such, cannot be made as an accused in a criminal proceeding for the acts of its agents or servants and the mens rea of such agents or servants cannot be attributed to the company. It is submitted that a corporate body is included in the definition of “person” under Section 11 of IPC, however, there are certain offences which could be committed by an individual human being and a corporate body could not, therefore, be capable of committing such offences. The certain offences are to be punished only with imprisonment and it would not be possible to impose a punishment of imprisonment on corporate bodies.

6. In support of the contention that a company cannot be prosecuted, reliance has been placed on *State of Maharashtra vs. Messrs Syndicate Transport Co. (P) Ltd. [AIR 1964 BM. 195]*, and *Ravindranath Bajpe vs. Mangalore Special Economic Zone Ltd. & Ors. [Criminal Appeal No.1047-1058/2021, decided on September 27, 2021]* wherein it has been held that the criminal proceedings cannot be kick-started against the directors and other management personnel of a company in absence of specific allegations and their role in the crime. The Supreme Court in passing this order re-affirmed its earlier judgments in *Sunil Bharti Mittal v. Central Bureau of Investigation [(2015) 4 SCC 609]* and *Maksud Saiyed vs. State of Gujarat & Others [(2008) 5 SCC 668]* which provided that :-

- a. Unless the statute specifically provides, vicarious liability of the directors cannot be automatically imputed where company is the offender;
- b. If a company commits an offence involving mens rea (guilty intent), it would normally be the intent and action of that individual who acted on behalf of the company;

The sum and substance of the argument on behalf of the petitioner is that order of cognizance is bad in law on the ground that the order taking cognizance has no territorial jurisdiction as the entire financial transaction took place at Paradip Port, Orissa. It is also submitted that the Director of Company cannot be impleaded unless specific role is attributed to him in view of the settled law.

Cognizance has been taken against the Company which is impermissible and the role of Director over the petitioner in the present case has not been stated. Part payment of the amount goes to show that there was no dishonest intention and criminality involved in the case.

7. I find force in the argument made by the learned APP and the counsel on behalf of the opposite party, that there is no legal bar to hold a corporate entity to be liable for a criminal act, in the facts and circumstance of a particular case.

It has been held in *Standard Chartered Bank & Others v. Directorate of Enforcement*, (2005) 4 SCC 530 that there is no dispute that a company is liable to be prosecuted and punished for criminal offences. As in the case of torts, the general Rule prevails that the corporation may be criminally liable for the acts of an officer or agent, assumed to be done by him when exercising authorised powers, and without proof that his act was expressly authorised or approved by the corporation. In the statutes defining crimes, the prohibition is frequently directed against any “person” who commits the prohibited act, and in many statutes the term “person” is defined. Even if the person is not specifically defined, it necessarily includes a corporation. It is usually construed to include a corporation so as to bring it within the prohibition of the statute and subject it to punishment. In most of the statutes, the word “person” is defined to include a corporation. In Section 11 of the Penal Code, 1860, “person” is defined thus:

“11. The word ‘person’ includes any company or association or body of persons, whether incorporated or not.”

***Iridium India Telecom Ltd. v. Motorola Inc. & Others*, (2011) 1 SCC 74 :**

55. We are of the considered opinion that there is much substance in the submission of Mr Jethmalani that virtually in all jurisdictions across the world governed by the rule of law, the companies and corporate houses can no longer claim immunity from criminal prosecution on the ground that they are incapable of possessing the necessary mens rea for the commission of criminal offences. The legal position in England and the United States has now crystallised to leave no manner of doubt that a corporation would be liable for crimes of intent.

In view of the above settled position of law, the legal proposition advanced on behalf of the petitioner cannot be acceded to that corporate entity cannot be held criminally liable.

8. The matter for consideration in the present case is whether materials brought on record during enquiry is sufficient to make out an offence of cheating or criminal breach of trust.

9. In order to make out a case of cheating, there should be material to make out a prima facie case that accused had fraudulent or dishonest intention at the time of making the promise. Deception is the essence of the offence of cheating. Mere breach of contract is not criminal, unless it was at the same time dishonest and was manifested by some overt act. It has been held in *Hridaya Ranjan Prasad Verma v. State of Bihar & Others*, (2000) 4 SCC 168 that 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. It is the intention which is the gist of the offence. 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.

10. Here in the present case, it is alleged that the complainant was induced to enter into an agreement to supply lime stone to the petitioner company. There is no further detail in the complaint petition or in the enquiry as to how the inducement was made. It is left to conjecture that deception was practiced for obtaining the consent of the complainant to supply the said consignment of lime stone. Admittedly, Rs.6,00,000/- had been paid as part of the consideration amount and therefore, it cannot be said that there was an intention of deception since inception.

11. In case of criminal breach of trust, the pivotal ingredient is entrustment of property followed by misappropriation. Deception since inception is not a fundamental ingredient of the offence, as it may arise later when the property so entrusted is misappropriated. There is a difference between misappropriation and the mere non-fulfillment of legal obligation. In every criminal breach of trust a breach of contract is implicit. The determining factor to impute criminality in a particular case is whether the proceeded against had acted dishonestly. The distinction between cheating and breach of contract lies in the intention of the accused at the time when the inducement was made. It has been held in *State of Gujarat v. Jaswantlal Nathalal*, (1968) 2 SCR 408, "The term "entrusted"

found in Section 405 IPC governs not only the words “with the property” immediately following it but also the words “or with any dominion over the property” occurring thereafter—see *Velji Raghvaji Patel v. State of Maharashtra* [(1965) 2 SCR 429]. Before there can be any entrustment there must be a trust meaning thereby an obligation annexed to the ownership of property and a confidence reposed in and accepted by the owner or declared and accepted by him for the benefit of another or of another and the owner. But that does not mean that such an entrustment need conform to all the technicalities of the law of trust — see *Jaswantrai Manilal Akhaney v. State of Bombay* [(1956) SCR 483, 498-500]. The expression “entrustment” carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. Further the person handing over the property must have confidence in the person taking the property so as to create a fiduciary relationship between them. A mere transaction of sale cannot amount to an entrustment”.

12. From the above exposition of law, it is apparent that there should be some entrustment of property to the accused wherein the ownership is not transferred to the accused. In case of sale of movable property, although the payment may be deferred the property passes in the goods on delivery as per Sections 20 and 24 of the Sales of Goods Act, 1930.

20. Specific goods in a deliverable state. — Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made and it is immaterial whether the time of payment of the price or the time of delivery of goods, or both, is postponed.

24. Goods sent on approval or “on sale or return.” — When goods are delivered to the buyer on approval or “on sale or return” or other similar terms, the property therein passes to the buyer—

(a) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time.

13. From the above stated position of law, there cannot be any doubt whatsoever that in case of sale of goods the property passes to the purchaser from the seller when the goods are delivered. Once the property in the goods passes to the purchaser, it cannot be said that the purchaser was entrusted with the property of the seller. Without entrustment of property, there cannot be any criminal breach of trust. Thus, prosecution of cases on charge of criminal breach of trust, for failure to pay the consideration amount in case of sale of goods is flawed to the core. There can be civil remedy for the non-payment of the consideration amount, but no criminal case will be maintainable for it.

14. Here in the present case, once the consignment of lime stone was delivered, property in it passed to the petitioner company, and did not remain the property of the complainant, consequently it cannot be said that the petitioner company was entrusted with property of the complainant.

15. This Court is of the view that the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence of cheating, criminal breach of trust or of criminal conspiracy.

16. The present case is yet another instance of a purely civil dispute regarding non-payment of sale amount being given a criminal colour to launch criminal prosecution against the petitioners. In any case criminal prosecution cannot be permitted as an arm twisting measure to settle and extract dues for which efficacious civil remedy is available. It has been reiterated in *Vijay Kumar Ghai v. State of W.B.*, (2022) 7 SCC 124 that any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.

For the reasons discussed above, the entire criminal proceeding including the order dated 07.05.2019 passed by learned J. M. 1st Class, Jamshedpur in Complaint (C/1) Case No.3290 of 2018, is quashed.

Criminal miscellaneous petition is allowed.

Pending I.A., if any, stands disposed of.

(Gautam Kumar Choudhary, J.)

Jharkhand High Court, Ranchi
Dated the 17th March, 2023

AFR / Anit