

Hari Prasad Chamaria

Vs

Bishun Kumar Surekha and Others

Criminal Appeal No. 49 of 1970

(H. R.Khanna, A. Alagiriswami JJ)

06.09.1973

JUDGMENT

KHANNA, J. -

1. This appeal by special leave has been filed by Hari Prasad Chamaria against the judgment of Patna High Court whereby the High Court accepted a petition under Section 561-A of the Code of Criminal Procedure filed by the two respondents and quashed the proceedings which were pending against them in the trial Court.

2. The brief facts of the case are that the appellant filed a complaint against the two respondents on the allegation that the appellant was running business at Samastipur in Bihar and Calcutta. The respondents were known to the appellant and he had full faith in them. The appellant wanted to start some business and in that connection talked to the respondents. The respondents then stated that they would start transport business under the name and style of Drang Transport Corporation. The respondents further stated that the appellant would be the proprietor of the said Corporation and the respondents would work as his agents. On January 2, 1967, the appellant paid Rs. 35,000 to the respondents in Samastipur. In March, 1967 when the appellant went to Calcutta, he found that the respondents were doing transport business but the appellant was not shown as the proprietor of that business. When the appellant remonstrated with the respondents, the respondents stated that they were trying to get the Drang Transport Corporation registered and they would show the name of the appellant as the proprietor thereof. The respondents also agreed to settle the business accounts in the month of December every year. Despite the aforesaid commitment, the respondents failed to render account in the month of December, 1967. The respondents on being asked to render the accounts stated that the transport business was being carried on in Nepal that as and when the money would be received, the accounts would be gone into. The appellant thereafter asked for the refund of his money. When the respondents failed to comply with the demand of the appellant, he filed the present complaint.

3. The complaint came up for hearing before the Sub-Divisional Magistrate, Samastipur and on August 6, 1968 he took cognizance of the offence under Section 420 Indian Penal Code. It was directed that the process should issue against the respondents. The respondents thereafter approached the High Court under Section 561-A of the Code of Criminal Procedure. The High Court was of the view that the case of the appellant was based upon contract. Mere breach of contract, in the opinion of the High Court, could not give rise to criminal prosecution. The appellant, it was further observed, had a remedy in the Civil Court and he could not be allowed to fight the matter in the Criminal Court. In the result, the criminal proceedings against the respondents were quashed.

4. We have heard Mr. Maheshwari on behalf of the appellant and are of the opinion that no case has been made out against the respondents under Section 420 Indian Penal Code. For the purpose of the present appeal, we would assume that the various allegations of fact which have been made in the complaint by the appellant are correct. Even after making that allowance, we find that the complaint does not disclose the commission of any offence on the part of the respondents under Section 420 Indian Penal Code. There is nothing in the complaint to show that the respondents had dishonest or fraudulent intention at the time the appellant parted with Rs. 35,000. There is also nothing to indicate that the respondents induced the appellant to pay them Rs. 35,000 by deceiving him. It is further not the case of the appellant that a representation was made by the respondents to him at or before the time he paid the money to them and that at the time the representation was made, the respondents knew the same to be false. The fact that the respondents subsequently did not abide by their commitment that they would show the appellant to be the proprietor of Drang Transport Corporation and would also render accounts to him in the month of December might create civil liability for them, but this fact would not be sufficient to fasten criminal liability on the respondents for the offence of cheating.

5. In our opinion, there is no merit in the appeal, which fails and is dismissed.

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