

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 216 of 2024

Ruchika Kakar, aged about 53 years, wife of Mukul Kakar, Director of M/s Ritebanc Agri Tech Solution Pvt. Ltd., Mumbai having its office at 126, 12th Floor, Belonte Tower, Mugal Lane, Mahim, P.S.-Mahim, P.O.-Mahim, Dist.-Mumbai-400016, Maharashtra, through his Power of Attorney holder Devadatta Parshuram Dalvi, aged about 50 years, s/o late Parshuram Dalvi, R/o A/102, Swami Samartha, CHS, opposite Shangrila Biscuits, LBS Road, Bhandup (West), P.O.-Bhandup (West), P.S.- Bhandup (West), Dist.-Mumbai, PIN-400078, State-Maharashtra

.... Petitioner

Versus

1. The State of Jharkhand
2. Vivek Agrawal, son of Shri Banwari Lal Agrawal, aged about 39 years, resident of Modi Compound, P.O.-Lalpur, P.S.-Lalpur, Dist.-Ranchi, Jharkhand

.... Opp. Parties

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

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For the Petitioner	: Mr. A.K. Das, Advocate
	: Mr. Ashish Verma, Advocate
For the State	: Mr. Rajesh Kumar, Addl. P.P.
For O.P. No.2	: Mr. Pratyush Kr. Jha, Advocate

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By the Court:-

1. Heard the parties.

2. This criminal miscellaneous petition has been filed invoking the jurisdiction of this Court under Section 482 Cr.P.C. with a prayer to quash the entire criminal proceeding in connection with Complaint Case No.3834 of 2018 including the order dated 13.03.2023 passed by the learned Judicial Magistrate 1st Class, Ranchi whereby and where under, cognizance has been taken for the offence punishable under Section 406, 420/34 of Indian Penal Code.
3. The allegation against the petitioner is that the petitioner is the director of Ritebanc Agritech Solution Pvt. Ltd. The co-accused - Managing Director of the said company came to the office of the complainant and entered into an agreement as per which the complainant supplied rice against eight written orders worth Rs.1,67,50,573/- by truck. A sum of Rs.34,60,000/- in total was transferred to the bank account of the complainant on different dates. On demand being made to pay the remaining money, it was told that the payment will be made after six months as there was shortage of money. Some money was also transferred to the account of the complainant from the account of Bio Ethanol Agro Pvt. Ltd. in which the co-accused was the director but after six months also the money was not paid and ultimately, the accused informed the complainant to forget his remaining money hence, the complaint was filed.
4. It is submitted by the learned counsel for the petitioner that this is the second journey of the petitioner. Earlier the petitioner along with accused persons moved before this Court in Cr.M.P. No. 3504 of 2021 and vide order dated 01.12.2022, the coordinate Bench of this Court

to the effect that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating; where there was any deception played at the very inception and in that case also this Court also relied upon the judgment of Hon'ble Supreme Court of India in the case of **Satish Chandra Ratanlal Shah vs. State of Gujarat & Anr.** reported in **(2019) 9 SCC 148** wherein the Hon'ble Supreme Court of India reiterated the settled principle of law that a mere breach of a promise, agreement or contract does not, ipso facto, constitute the offence of the criminal breach of trust contained in Section 405 of the Indian Penal Code for which punishment has been provided in Section 406 of the Indian Penal Code; without there being a clear case of entrustment.

6. It is next submitted by the learned counsel for the petitioner that there is no allegation of any entrustment to the petitioner and at best the entrustment is against the company and there is no allegation against the petitioner of being anyway involved in the said decision, if any, taken by the company.
7. Relying upon the judgment of Hon'ble Supreme Court of India in the case of **Ravindranatha Bajpe vs. Mangalore Special Economic Zone Ltd. & Ors.** reported in **(2022) 15 SCC 430**, wherein, the Hon'ble Supreme Court of India relied upon its judgment in the case of **Sunil Bharti Mittal Vs. CBI** reported in **(2015) 4 SCC 609** paragraph no.43 of which reads as under:-

"43. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with

criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision."

and submits that it is a settled principle of law as has been held in the case of **Sunil Bharti Mittal Vs. CBI** (Supra) that for an individual to be made an accused on the allegation that he has perpetrated the commission of any offence on behalf of the company, there has to be sufficient evidence of his active role coupled with criminal intent and the second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

8. It is next submitted by the learned counsel for the petitioner that since the offence involved in this case is the offence punishable under the penal provision of Indian Penal Code and Indian Penal Code does not contain any provision for vicarious liability; therefore the only way the petitioner could have been made an accused is that; if there was sufficient evidence of her active role coupled with criminal intent but there is absolutely no allegation of either the petitioner ever playing any active role or the petitioner having any criminal intent. Hence, it is submitted that the prayer as made in this criminal miscellaneous petition be allowed.

9. Learned Additional Public Prosecutor and the learned counsel for the opposite party no.2 on the other hand opposes the prayer to quash the entire criminal proceeding in connection with Complaint Case No.3834 of 2018 including the order dated 13.03.2023 passed by the learned Judicial Magistrate 1st Class, Ranchi and submits that the

fact that since in the complaint, it has been mentioned that the complainant along with witnesses went to meet the petitioner at Mumbai so this is sufficient evidence of the active role coupled with criminal intent of the petitioner. Hence, it is submitted that this criminal miscellaneous petition being without any merit be dismissed.

10. Having heard the submissions made at the Bar and after going through the materials in the record, as has already been referred to above in the foregoing paragraphs of the Judgment, it is a settled principle of law that in order to make an individual an accused along with the company, there should either be a doctrine of vicarious liability in the statutory regime or sufficient evidence of the active role played coupled with the criminal intent is to be shown; against the accused concerned.
11. Now coming to the facts of the case, the only allegation against the petitioner is that the complainant along with witnesses went to meet her at Mumbai or met her at Mumbai. This in itself; in the considered opinion of this Court is not sufficient of her active role coupled with criminal intent more so when the company itself has not been made an accused though admittedly, the transaction is allegedly with the company. Otherwise also, as it being a settled principle of law, as has been mentioned in the foregoing paragraphs of this judgment, that in order to constitute the offence punishable under Section 420 of Indian Penal Code, deception has to be played at the very inception and if the intention to cheat develops later on, the same will not amount to cheating.

12. Now coming to the facts of the case, there is admission of the complainant of part payment of the amount taken. There is no allegation that the petitioner played deception at the very inception.
13. Under such circumstances, this Court has no hesitation in holding that even if the allegations made in the complaint, statement on solemn affirmation of the complainant and the statement of the enquiry with witnesses are considered to be true in the event as still the offence punishable under Section 420 of Indian Penal Code is not made out.
14. So far as the offence punishable under Section 406 of 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 **Binod Kumar & Others vs. State of Bihar & Another** reported in (2014) 10 SCC 663, paragraph-18 of which reads 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).”
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.

15. Now coming to the facts of the case, the only allegation against the petitioner is that part of the money was not paid on the ground that they do not have any money but there is no allegation of any dishonest misappropriation on the part of the petitioner.

16. Under such circumstances, this Court is of the considered view that even if the entire allegation made in the complaint, statement of the complainant on solemn affirmation and the statement of the inquiry witnesses are considered to be true in its entirety, still the offence punishable under Section 406 of Indian Penal Code is not made out.

17. Hence, it is neither the offence punishable under section 420 nor the offence punishable under section 406 of the Indian Penal Code is made out against the petitioner, in the considered opinion of this Court, continuation of the criminal proceeding against the petitioner will amount to abuse of process of law. Therefore, this is a fit case where the entire criminal proceeding in connection with Complaint Case No.3834 of 2018 including the order dated 13.03.2023 passed by the learned Judicial Magistrate 1st Class, Ranchi be quashed and set aside.

18. Accordingly, the entire criminal proceeding in connection with Complaint Case No.3834 of 2018 including the order dated

13.03.2023 passed by the learned Judicial Magistrate 1st Class, Ranchi is quashed and set aside.

19. In the result, this criminal miscellaneous petition is allowed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 8th May, 2024
AFR/Sonu-Gunjan/-