HIGH COURT OF MADHYA PRADESH
BENCH GWALIOR

SB : Justice G.S. Ahluwalia

Criminal Revision No. 510/2017
Akhil Mishra
Vs.
State of M.P. & anr.

Shri Wesley Menezes with Shri Sankalp Sharma, counsel for the applicant.
Shri Devendra Chaubey, counsel for the respondent No.1/ State.
Shri Ankur Maheshwari, counsel for the respondent No. 2.

Date of hearing : 05.04.2018
Date of order : 11.04.2018
Whether approved for reporting : Yes

O R D E R
(Passed on 11/04/2018)

This criminal revision under Section 397, 401 of Cr.P.C. has been filed against the order dated 28.03.2017 passed by the Additional Sessions Judge (Special Judge No. 3 Electricity), Gwalior in S.T. No.322/2016, by which the charge under Section 420 of IPC has been framed against the applicant.

(2) The necessary facts for the disposal of the present revision, in short, are that the applicant is an employee of a Travel and Tourism Company known as 'Cox and Kings Limited' and the charge-sheet was filed against the applicant for the offence punishable under Sections 384, 417, 420, 465, 467, 468 of IPC.

(3) Respondent No. 2, who is a retired judicial officer, had made a written complaint against the applicant to the effect that he and his wife had booked a Europe Tour @ Rs.2,15,000/- per person along with one Govind Singh Thakur and R.C. Chhari.

Initially, Govind Singh Thakur and R.C. Chhari had booked a tour and, thereafter, respondent No. 2 was informed about that. [It appears that since the friends of respondent No. 2 were going on a Europe Tour, therefore, respondent No. 2 also agreed to accompany them and called the applicant in his house seeking enquiry about the Europe Tour]. The applicant thereafter went to the house of respondent No. 2 and informed that the cost of Europe Tour would be @ Rs.2,19,000/- per person. When respondent No. 2 informed that Govind Singh Thakur has booked a tour @ Rs.2,15,000/- per person, then the applicant also agreed to offer Europe Tour @ Rs.2,15,000/- per person to the respondent no.2, and accordingly an amount of Rs.,1,00,000/- was given in advance. It was further alleged that in the month of March, 2015, the applicant had given in writing that he would arrange for the Europe Tour @ Rs.2,19,000/- per person and now by E-mail dated 02.05.2015, he is demanding Rs.2,23,140/- per person, otherwise the amount of Rs.1,00,000/- would be forfeited. Now, the applicant is not refunding the advance amount and he has also separated the tour of the respondent No. 2 from that of his friends. It was further alleged that by showing his position and under the threat of forfeiture of an amount of Rs.1,00,000/-, the applicant is demanding a further amount of Rs.16,280/- for two persons (The respondent no.2 has claimed that the applicant had agreed to reduce the cost of European Tour @ 2,15,000/- per person and now by raising the cost of European Tour @ 2,23,140/- per person, the applicant has demanded an additional amount of Rs. 16,280/- for two persons). On this report, the police registered the FIR in Crime No. 31/2016 for offence under Sections 384, 417, 420, 465, 467 and 468 of IPC. The police after concluding the investigation filed the charge-sheet for the above-mentioned offences.

(4) The applicant filed an application under Section 227 of Cr.P.C. for discharge. The Trial Court after considering the allegations made against the applicant, discharged the applicant for the offence punishable under Sections 384, 465, 467 and 468 of IPC, but framed the charge under Section 420 of IPC. Since the offence under Section 420 of IPC is triable by the Court of Magistrate, therefore, the case was remitted back to the Court of Magistrate.

(5) Challenging the order dated 28.03.2017 passed by the Court of Additional Sessions Judge (Special Judge No. 3 Electricity), Gwalior, it is submitted by the counsel for the applicant that even if the entire allegations are accepted, it would be clear that no offence under Section 420 of IPC is made out and the offence is in the nature of civil dispute and respondent No. 2 had already approached the District Consumer Forum, who had directed the Travel Agency, Cox and Kings to refund the amount of Rs.80,000/- out of the amount of Rs.1,00,000/-. The said order of the District Consumer Forum is sub-judice before the State Consumer Forum as the Travel Agency has filed an appeal.

(6) *Per contra*, it is submitted by the counsel for the respondent No. 2 that the Trial Court did not commit any mistake in framing the charge under Section 420 of IPC. The applicant, arbitrarily and with an intention to cheat and forfeit the amount of Rs.1,00,000/-, had enhanced the cost of tour from Rs.2,19,000/- from Rs.2,23,140/- and had separated the tour of respondent No. 2 with that of his friends. However, it was accepted by the Counsel for the respondent no.2, that the respondent no.2 had filed a complaint before the District Consumer Forum, and an award has been passed, directing the travel agency to repay Rs. 80,000/- out of Rs. 1,00,000/- and it was also admitted that the Travel agency i.e., Cox and

Kings has filed an appeal, before the State Consumer Forum, which is still pending.

(7) Heard the learned counsel for the parties and perused the charge-sheet.

(8) The police along with the charge-sheet has filed a copy of notice sent by respondent No. 2 to the applicant. In the notice, it was mentioned that the applicant had agreed that all the four persons would be sent jointly on a Europe Tour. However, now the tour of his friends has been separated from that of the applicant. It was also mentioned that in case, if the Travel Agency separates the Europe Tour of the applicant from that of his friends, then his advance money should be refunded. Thus, it appears that the basic concern of respondent No. 2 was to cancel his Europe Tour as the tour of his friends, namely Govind Singh Thakur and R.C. Chhari was separated. It is the case of the applicant that as Govind Singh Thakur has fallen sick, therefore, he himself had requested for postponement of the Europe Tour and only because of the request made by Govind Singh Thakur, tours were separated. The police has recorded the statements of R.C. Chhari and Govind Singh Thakur under Section 161 of Cr.P.C. They have not expressed any grievance in their statements with regard to separation of their tour. Even R.C. Chhari and Govind Singh Thakur have not clarified that why their tour was separated from that of respondent No. 2. Furthermore, the prosecution has also filed a copy of E-mail dated 30.04.2015 sent by the Travel Agency to the respondent No. 2. In this E-mail notice, it is specifically mentioned that because of the health problem, Govind Singh Thakur has postponed his Europe Tour and, therefore, the Europe Tour of R.C. Chhari and Govind Singh Thakur has been postponed to June but the Travel Agency refused to postpone the tour program as respondent No. 2, but he was not ready to

travel without R.C. Chhari, therefore, he demanded his advance amount back. Thus, it is clear that R.C. Chhari and Govind Singh Thakur have suppressed the real cause of postponement of tour program in the statement recorded under Section 161 of Cr.P.C.

(9) Be that whatever it may.

(10) The Trial Court has already discharged the applicant for the offence punishable under Sections 384, 467, 468 and 465 of IPC. The charge under Section 420 of IPC has been framed only on the ground that in the booking form, the cost of the tour was not mentioned. The prosecution along with the charge-sheet has filed a document titled as 'European Discovery - Oman Holiday Free' on which it was mentioned by the applicant that after all discount, the cost of European Tour per person would be Rs.2,19,000/-. Respondent No. 2 has also admitted that he was offered Europe Tour at the cost of Rs.2,19,000/- per person. However, there is nothing on record to suggest that the applicant after negotiations had agreed to reduce the cost of tour from Rs.2,19,000/- from Rs.2,15,000/- per person. The respondent No. 2 refused to carry on his tour programme without the company of R.C. Chhari and Govind Singh Thakur but both the tour programs were booked separately and there is nothing on record to suggest that it was agreed upon between the parties that both the tour programs would be joint. There is nothing on record to suggest that the Travel Agency had ever agreed to cancel the tour programme of all the four persons in case even if one of them, because of some reason, is unable to carry on European Tour. In absence of any contract between the parties, respondent No. 2 could not have refused to go on European Tour without his friends and once he had decided that he would not go on European Tour without his friends, then he was liable to face the consequences.

(11) It is well established principle of law that a civil dispute may include criminal intent also and a criminal case cannot be quashed merely on the ground that such dispute involves civil dispute also. However, it is well established principle of law that a civil dispute cannot be allowed to be converted into a criminal dispute so as to adopt a short cut method of settling the disputes.

(12) The Supreme Court in the case of **Binod Kumar & Ors. v. State of Bihar & Anr.** reported in **(2014) 10 SCC 663** has held as under:-

> "8. In proceedings instituted on criminal complaint, exercise of the inherent powers to quash the proceedings is called for only in case where the complaint does not disclose any offence or is frivolous. It is well settled that the power under Section 482 Cr.P.C. should be sparingly invoked with circumspection, it should be exercised to see that the process of law is not abused or misused. The settled principle of law is that at the stage of quashing the complaint/FIR, the High Court is not to embark upon an enquiry as to the probability, reliability or the genuineness of the allegations made therein.
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> 9. In Smt. Nagawwa vs. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736, this Court enumerated the cases where an order of the Magistrate issuing process against the accused can be quashed or set aside as under: (SCC p.741, para 5)
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> "(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complainant does not disclose the essential ingredients of an offence which is alleged against the accused;
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> (2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is a sufficient ground for proceeding against the accused;
>
> (3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and
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> (4) where the complaint suffers from

fundamental legal defects such as, want of sanction, or absence of a complaint by legally competent authority and the like."

The Supreme Court pointed out that the cases mentioned are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash the proceedings.

10. In Indian Oil Corporation vs. NEPC India Ltd. And Ors., (2006) 6 SCC 736, this Court has summarised the principles relating to exercise of jurisdiction under Section 482 Cr.P.C. to quash complaints and criminal proceedings as under:- (SCC pp.747-48, para 12)

"12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few—Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre (1988) 1 SCC 692, State of Haryana v. Bhajan Lal,1992 Supp (1) SCC 335; Rupan Deol Bajaj v. Kanwar Pal Singh Gill (1995) 6 SCC 194, Central Bureau of Investigation v. Duncans Agro Industries Ltd (1996) 5 SCC 591; State of Bihar v. Rajendra Agrawalla (1996) 8 SCC 164, Rajesh Bajaj v. State NCT of Delhi,(1999) 3 SCC 259; Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd(2000) 3 SCC 269 [pic]Hridaya Ranjan Prasad Verma v. State of Bihar (2000) 4 SCC 168, M. Krishnan v. Vijay Singh (2001) 8 SCC 645 and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque(2005) 1 SCC 122. The principles, relevant to our purpose are:

(i) A complaint can be quashed where 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 or make out the case alleged against the accused.
For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

11. Referring to the growing tendency in business circles to convert purely civil disputes into criminal cases, in paragraphs (13) and (14) of the Indian Oil Corporation's case (supra), it was held as under:- (SCC pp.748-49)

"13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, [pic]leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. 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. In G. Sagar Suri v. State of U.P., (2000) 2 SCC 636 this Court observed: (SCC p. 643, para 8)

> "8. … It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."
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> 14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

(13) The Supreme Court in the case of **International Advanced Research Centre For Powder Metallurgy and New Materials (ARCI) & Ors. v. Nimra Cerglass Technics Private Limited and Anr.** reported in **(2016) 1 SCC 348** has held as under:-

> "13. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is, as to whether uncontroverted allegations as made in the complaint establish the offence. The High Court being superior court of the State should refrain from analyzing the materials which are yet to be adduced and seen in their true perspective. The inherent jurisdiction of the High Court under Section 482 Cr.P.C. should not be exercised to stifle a legitimate prosecution. Power under Section 482 Cr.P.C. is to be used sparingly only in rare cases. In a catena of cases, this Court reiterated that the powers of quashing criminal proceedings
> should be exercised very sparingly and quashing a complaint in criminal proceedings would depend

upon facts and circumstances of each case. Vide State of Haryana & Ors. vs. Bhajan Lal & Ors., 1992 Supp.(1) SCC 335; State of T.N. vs. Thirukkural Perumal, (1995) 2 SCC 449; and Central Bureau of Investigation vs. Ravi Shankar Srivastava, IAS & Anr. (2006) 7 SCC 188.

14. In the light of the well-settled principles, it is to be seen whether the allegations in the complaint filed against ARCI and its officers for the alleged failure to develop extruded ceramic honeycomb as per specifications disclose offences punishable under Sections 419 and 420 IPC. It is to be seen that whether the averments in the complaint make out a case to constitute an offence of cheating.

15. The essential ingredients to attract Section 420 IPC are: (i) cheating; (ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security and (iii) mens rea of the accused at the time of making the inducement. The making of a false representation is one of the essential ingredients to constitute the offence of cheating under Section 420 IPC. In order to bring a case for the offence of cheating, it is not merely sufficient to prove that a false representation had been made, but, it is further necessary to prove that the representation was false to the knowledge of the accused and was made in order to deceive the complainant.

16. The distinction between mere breach of contract and the cheating would depend upon the intention of the accused at the time of alleged inducement. If it is established that the intention of the accused was dishonest at the very time when he made a promise and entered into a transaction with the complainant to part with his property or money, then the liability is criminal and the accused is guilty of the offence of cheating. On the other hand, if all that is established that a representation made by the accused has subsequently not been kept, criminal liability cannot be foisted on the accused and the only right which the complainant acquires is the remedy for breach of contract in a civil court. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown at the beginning of the transaction. In S.W. Palanitkar & Ors. vs. State of Bihar & Anr. (2002) 1 SCC 241, this Court held as under:

> "21 ……In order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was

made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating."

The above view in Palanitkar's case was referred to and followed in **Rashmi Jain vs. State of Uttar Pradesh & Anr.** (2014) 13 SCC 553.

22. By analysis of terms and conditions of the agreement between the parties, the dispute between the parties appears to be purely of civil nature. It is settled legal proposition that criminal liability should not be imposed in disputes of civil nature. In Anil Mahajan vs. Bhor Industries Ltd. & Anr. (2005) 10 SCC 228, this Court held as under:-

"6. … A distinction has to be kept in mind between mere breach of contract and the offence of cheating. It depends upon the intention of the accused at the time of inducement. The subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent, dishonest intention is shown at the beginning of the transaction.

8. The substance of the complaint is to be seen. Mere use of the expression "cheating" in the complaint is of no consequence. Except mention of the words "deceive" and "cheat" in the complaint filed before the Magistrate and "cheating" in the complaint filed before the police, there is no averment about the deceit, cheating or fraudulent intention of the accused at the time of entering into MOU wherefrom it can be inferred that the accused had the intention to deceive the complainant to pay…. We need not go into the question of the difference of the amounts mentioned in the complaint which is much more than what is mentioned in the notice and also the defence of the accused and the stand taken in reply to notice because the complainant's own case is that over rupees three crores was paid and for balance, the accused was giving reasons as above-noticed. The additional reason for not going into these aspects is that a civil suit is pending inter se the parties for the amounts in question."

23. In Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736, this court observed that civil liability cannot be converted into criminal liability and held as under:- "13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time

consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. 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. In G. Sagar Suri v. State of U.P. (2000) 2 SCC 636 this Court observed: (SCC p. 643, para 8)

'8. … It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice." 14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

25. The above decisions reiterate the well-settled principles that while exercising inherent jurisdiction under Section 482 Cr.P.C., it is not for the High Court to appreciate the evidence and its truthfulness or sufficiency inasmuch as it is the function of the trial court. High Court's inherent powers, be it, civil or criminal matters, is designed to achieve a salutary public purpose and that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. If the averments in the complaint do not constitute an offence, the court would be justified in quashing the

proceedings in the interest of justice .”

(14) If the facts of the present case are considered, the undisputed fact is that Europe Tour was offered at the cost of Rs.2,19,000/- per person and as per the E-mail, which was sent on 02.05.2015, the Travel Agency had demanded Rs.2,23,140/- as a cost of Europe Tour per person. That means the Travel Agency had demanded an additional amount of Rs.4,140/- per person. Where originally, the cost of the entire Europe Tour including the visa fees and allied fees was Rs.4,38,000/- for two persons, then whether demand of additional amount of Rs.8140/- for two persons would include criminal intent or not is a moot question to be decided in the present case. It is evident from the E-mail dated 30.04.2015 sent by the Travel Agency to the respondent No. 2, that because of health problems Govind Singh Thakur had postponed his European Tour. This fact has not been controverted by Govind Singh Thakur or R.C. Chhari or even the respondent No. 2 or his wife in their case diary statements. On the contrary from the notice dated 04.05.2015 sent by respondent No. 2, it is clear that he was aggrieved by separation of his European Tour with that of European Tour of his friends. It is undisputed fact that both the European Tours were booked separately. P.C. Chhari and Govind Singh Thakur had booked an European tour at the first instance and only on the persuasion by them, respondent No. 2 and his wife also decided to go on a European Tour. Respondent No. 2 has failed to bring anything on record to suggest that the Travel Agency had ever agreed to combine both the European Tours into a one European Tour or had agreed, that in case of postponement of European Tour by one person, the company would be under obligation to postpone the European Tour of all the four persons.

(15) In the present case, it appears that the first European Tour was booked by R.C. Chhari and Govind Singh Thakur and Govind Singh Thakur had made a request for postponement of European Tour because of his health problems, therefore, the Agency had postponed the European Tour of R.C. Chhari also as European Tour of R.C. Chhari and Govind Singh Thakur was booked jointly. It is also mentioned in the E-mail notice dated 30.04.2015 that respondent No. 2 was also not ready to travel without R.C. Chhari and Govind Singh Thakur. In absence of any contract, the company was not under obligation to postpone the tour of respondent No. 2 also. Further enhancement of cost of Rs.4,140/- per person cannot be said to be a criminal intent to forfeit the advance amount of Rs.1,00,000/-. It is well known that the price of rupees keeps on changing in the international market. If the amount of Rs.4,410/- is considered in the light of the cost of European Tour of one person, i.e., Rs.2,19,000/-, then it is negligible.

(16) Further it is a well established principle of law that every violation of term of contract, would not bring the allegations within the offence of cheating. The intention to cheat the victim should be from the very inception. The Supreme Court in the case of **Vesa Holdings (P) Ltd. Vs. State of Kerala** reported in **(2015) 8 SCC 293** has held as under :

> **"12.** From the decisions cited by the appellant, the settled proposition of law is 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. If the intention to cheat has developed later on, the same cannot amount to cheating. In other words for the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a

> culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Penal Code, 1860 can be said to have been made out."

(17) Therefore, under the facts and circumstances of the case, criminal intent cannot be attributed either to the Travel Agency or to the applicant so as to warrant his prosecution for offence under Section 420 of IPC. It is also mentioned by the Trial Court that since in the booking form, the cost of tour was not mentioned, therefore, the applicant had committed an offence under Section 420 of IPC. The booking form has been countersigned by the respondent No. 2. He should have also insisted the applicant to fill up the cost of European Tour, but he also did not do so. Even otherwise, the prosecution itself has filed a document to show that the price of European Tour per person was offered at Rs.2,19,000/- by the applicant. Even otherwise, it is the case of respondent No. 2 himself that initially, he was offered the European Tour at the cost of Rs.2,19,000/- per person. Thus, where the parties have agreed to enter into a contract knowing-fully the cost of European Tour which was offered, then it cannot be said that by not mentioning the cost of the tour in the booking form, the applicant had cheated the respondent No. 2. Further more, there is nothing on record to suggest that there was any intention on the part of the applicant to cheat the respondent no.2, from very inception. In fact, the friends of the respondent no.2 made a request for postponement of the Tour, and since, the respondent no.2, was also not interested in traveling without his friends, therefore, he also insisted either for postponement of the tour or for refund of the entire amount which was paid by him.

(18) If the facts of this case are assessed from any angle, then it is clear that at most, it can be said to be a civil dispute

because whether the company was under obligation to postpone the tour of respondent No. 2 or not and whether the Travel agency was well within its right to refuse to postpone the European Tour of respondent No. 2 or not, and whether the Travel Agency was well within its rights to either forfeit the amount so deposited by the respondent no.2, or whether the Travel Agency had already utilized the amount for getting the Visa etc, are some questions which are predominantly of a civil in nature.

(19) Under these circumstances, this Court is of the considered opinion that the dispute, which predominantly of civil in nature, has been given a colour of criminal case and, therefore, the same cannot be allowed to go on. Accordingly, the order dated 28.03.2017 passed by the Additional Sessions Judge (Special Judge No. 3 Electricity), Gwalior in S.T. No. 322/2016, framing the charge under Section 420 of IPC is hereby quashed. Accordingly, the criminal proceedings pending against the applicant in the Court of JMFC, Gwalior are also quashed.

The revision succeeds and is hereby allowed.

(G.S. Ahluwalia)
Judge

Abhi