

HIGH COURT OF MADHYA PRADESH
BENCH GWALIOR

SB : Justice G.S. Ahluwalia

MCRC No. 10820/2018

Antim Dubey

Vs.

State of M.P. & anr.

Shri Rajiv Jain, counsel for the applicant.
Shri Dilip Singh Tomar, counsel for the respondent No. 1/State.

Date of hearing : 28.03.2018
Date of order : 05.04.2018
Whether approved for reporting : Yes

ORDER

(Passed on 05/04/2018)

This application under Section 482 of Cr.P.C. has been filed for quashing the FIR in Crime No. 463/2017 registered by Police Station Aron District Guna for the offence punishable under Section 406 of IPC.

(2) The necessary facts for the disposal of the present application, in short, are that the complainant Manish Sharma lodged a report that the applicant had entered into an agreement to purchase one "10 wheeler truck" bearing registration No. RJ11-GA-6251 for a consideration amount of Rs.13,75,000/-, out of which Rs.5,85,000/- was paid to the complainant and the remaining amount of Rs.7,90,000/- was to be paid to Magma Finance Company by the applicant. The said agreement was executed in the presence of one Kalla Yadav and the present applicant took possession of the truck. Thereafter, the applicant neither paid the remaining amount to the Magma Finance Company nor has paid to the complainant. Even the truck was not got ensured and the fitness certificate

was also not obtained and the applicant in an illegal manner is plying the truck. The complainant has sent various notices to the applicant to deposit the financed amount but he has not returned so. Thus, he has committed criminal breach of trust.

(3) Challenging the FIR lodged by the complainant, it is submitted by the counsel for the applicant that the agreement is alleged to have been executed on 07.07.2014 and on that day, the applicant was minor. It is well established principle of law that any contract executed by a minor is void and on the basis of void contract, the applicant cannot be prosecuted. The applicant has also made a complaint to the Superintendent of Police, Guna in this regard on 26.12.2017. However, no steps have been taken.

(4) *Per contra*, it is submitted by the counsel for the State that so far as the agreement by a minor is concerned, the criminal law does not grant any exemption to a minor in this regard. If the accused has misappropriated the funds or has committed a criminal breach of trust, then he can be prosecuted. The accused cannot claim any exemption from the criminal law.

(5) Heard the learned counsel for the parties.

(6) Counsel for the applicant has made a singular submission that as the applicant was juvenile on the date of execution of the contract, therefore, the contract by a minor is void. Thus, the applicant cannot be prosecuted on the basis of a void agreement.

(7) It is the case of the complainant that the applicant had entered into an agreement to purchase the truck for a consideration amount of Rs.13,75,000/-, out of which Rs.5,85,000/- was paid and the applicant had agreed to pay the remaining amount of Rs.7,90,000/- to Magma Finance Company. It is alleged that the applicant has neither paid the

said amount to the Magma Finance Company nor has paid the said amount to the present complainant, although the possession of the truck was taken by the applicant on the date of agreement itself. Section 406 of IPC read as under:-

“406. Punishment for criminal breach of trust.—Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

(8) Criminal breach of trust has been defined under Section 405 of IPC, which reads as under:-

“405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.

Explanation 1.—A person, being an employer 3[of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not] who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Explanation 2.—A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation

established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid."

(9) If the allegations are considered, then it is clear that the applicant had agreed to purchase the truck for a consideration amount of Rs.13,75,000/- and out of which, an amount of Rs.5,85,000/- was paid to the complainant. Since the remaining amount was payable to the Magma Finance Company, therefore, the applicant had agreed to pay the said amount to the Magma Finance Company. Although the applicant has challenged the FIR but has not placed the copy of the agreement on record, therefore, the remaining conditions of the agreement are not known.

(10) The Supreme Court in the case of **Lalita Kumari Vs. State of U.P.** reported in **(2014) 2 SCC 1**, has held that where the complaint discloses a cognizable offence, then the police is under obligation to register the FIR.

(11) Section 4 of the Sale of Goods Act, 1930, reads as under:-

"4. Sale and agreement to sell.- (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.”

(12) Section 5 of the Sale of Goods Act, 1930, reads as under:-

“5. *Contract of Sale how made* -. (1) A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price or both, or for the delivery or payment by installments, or that the delivery or payment or both shall be postponed.

(2) Subject to the provisions of any law for the time being in force, a contract of sale may be made in writing or by word of mouth, or partly in writing and partly by word of mouth or may be implied from the conduct of the parties.”

(13) Section 31 of the Sale of Goods Act, 1930, deals with the duties of seller and buyer, which reads as under:-

“31. *Duties of seller and buyer*.- It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.”

(14) Section 33 of the Sale of Goods Act, 1930, deals with delivery, which reads as under:-

“33. *Delivery*.- Delivery of goods sold may be made by doing anything which the parties agree shall be treated as delivery or which has the effect of putting the goods in the possession of the buyer or of any person authorised to hold them on his behalf.”

(15) Section 45 of the Sale of Goods Act, 1930, defines 'unpaid seller', which reads as under:-

“45. *"Unpaid seller" defined*.- (1) The seller of goods is deemed to be an "unpaid seller" within the meaning of this Act-

(a) When the whole of the price has not been paid or tendered.

(b) When a bill of exchange or other negotiable instrument has been received as

conditional payment, and the conditions on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

(2) In this Chapter, the term "seller" includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price."

(16) Section 46 of the Sale of Goods Act, 1930, deals with the 'rights of unpaid seller', which reads as under:-

"46. *Unpaid seller's rights.*- (1) Subject to the provisions of this Act and of any law for the time being in force, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law.

(a) a lien on the goods for the period while he is in possession of them,

(b) in case of the insolvency of the buyer a right of stopping the goods in transit after he has parted with the possession of them.

(c) a right of re-sale as limited by this Act.

(2) Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer."

(17) Thus, it is clear that where the seller has delivered the property to the buyer and a part of the consideration amount has not been paid by the buyer, then unpaid seller has lien over the said property. There is nothing in the Act, which prohibits a Juvenile to enter into any transaction. The Juvenile cannot claim any exemption from the provision of the Indian Penal Code. He cannot say that in view of Section 11 of the Contract Act, the contract is void and, therefore, he cannot be criminally prosecuted for a criminal breach of trust. The allegations, which have been levelled against the present applicant, are that he

has purchased a truck from the complainant and has made a part payment of the consideration amount and has not paid the amount of Rs.7,90,000/- either to the Magma Finance Company or to the complainant and the applicant has also not returned the truck to the complainant. Thus, it is clear that where the purchaser after obtaining the delivery of a property has to pay either the entire or part consideration amount to the seller, then the unpaid seller will have lien over the said property and under these circumstances, it can be said that by not making the payment of remaining consideration amount and by constantly using the property so delivered by the seller, the act of buyer would certainly amount to criminal breach of trust because the position of the buyer would be that of trustee so long as he does not pay the entire consideration amount. Further, whether the applicant was juvenile on the date of agreement or not is a question of fact, which cannot be decided in these proceedings.

(18) In view of the facts and circumstances of the case, it cannot be said that the FIR lodged by the complainant against the applicant does not disclose the commission of cognizable offence. Accordingly, the FIR in Crime No. 463/2017 registered by Police Station Aron District Guna against the applicant for an offence under Section 406 of IPC cannot be quashed. Accordingly, the application fails and is hereby dismissed.

(G.S. Ahluwalia)
Judge

Abhi