

U. DHAR AND ANR.
THE STATE OF JHARKHAND AND ANR.

JANUARY 20, 2003
[M.B. SHAH AND ARUN KUMAR, JJ.]
Penal Code, 1860—Sections 403, 406, 420 and 120B—Cognizance of offence under Section—Justification of—Complainant filing criminal complaint against a company on account of non payment of money for work done under contract—Court taking cognizance and issuing summons—Aggrieved party filing petition for quashing of order—High Court dismissing the same—On appeal: held, since the dispute between parties is of civil nature and basic ingredient of alleged offence are not satisfied, no case made out for the alleged offence—Hence order of Magistrate as well as High Court quashed.

Bokaro Steel Plant entrusted erection part of contract for certain works to appellant's company who in turn awarded the work to complainant-company. After completing the work complainant-company did not receive the payment for the work done under the contract. They filed a criminal complaint against appellant's company under Sections 403, 406, 420 and 120B IPC alleging that appellant's company had already received money from the Steel plant and had mis-appropriated the same for its own use. Judicial Magistrate took cognizance of the alleged offence and issued summons to appellants. Appellants filed petition for quashing the order. High Court dismissed the petition. Hence the present appeal.

Appellants contended that complaint relates to purely a civil dispute regarding payment of money and no case for criminal complaint for the alleged offences is made out.

Allowing the appeals, the Court

HELD: 1.1. The dispute of complainant even assuming to be correct, is regarding recovery of money due under the contract which is of civil nature. [449-G; 450-B]

1.2. Courts below overlooked the fact that the contract regarding execution of certain works between the parties are separate and

A independent of each other and also their contractual obligations are separate, thus payment under one has no relevance qua the other. [450-C, F]

B 1.3. The words 'dishonestly' and 'misappropriate' are necessary ingredients of an offence under Section 403 IPC. It cannot be said that there is any dishonest intention on the part of appellants nor it can be said that appellant's company or appellants have misappropriated or converted the movable property of the complainant to their own use. Even if Steel Plant has made the payment to appellant's company under its contract with the latter, it will not give rise to plea of misappropriation of money because that money is not money or movable property of the complainant. Since the basic ingredients of the relevant Section in the Penal Code are not satisfied, the order taking cognizance of the offence as well as the issue of summons to appellants is wholly uncalled for. Such an order brings about serious repercussions. Thus when no case is made out for the alleged offences even as per the complaint filed by complainant, there is no reason to permit appellants to be subjected to trial for the alleged offences. Hence the impugned orders of Chief Judicial Magistrate as well as High Court are quashed. [450-D, E, G, H; 451-A]

C CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 70 of 2003.

E From the Judgment and Order dated 3.5.2002 of the High Court of Jharkhand in CrI. M.P. No. 4780 of 2001.

WITH

Criminal Appeal No. 71/2003.

F R.K. Jain and M.K. Dua for the Appellants.

S.K. Dholakia, Gopa Prasad, M.P. Jha, Ram Ekbal Roy, Sanjeev Mishra and Anil Kumar Chopra and Anil K. Jha, for the Respondent.

The Judgment of the Court was delivered by

G ARUN KUMAR, J. CrI.A.No. 70 of 2003 @ SLP(CrI)No.2654 of 2002.

Leave granted.

H This Appeal is filed by U. Dhar, Managing Director and Mr. Asis Ray, Vice President (Operation), both of Tata Construction & Project Ltd. against

an order dated 3rd May, 2002 passed by the High Court of Jharkhand in Crl.M.P. No.4780/2001 whereby the High Court dismissed the petition filed by the appellant herein for quashing an order dated 19th June, 2001 whereby cognizance was taken of offence against the appellants under Sections 403, 406, 420 and 120B of Indian Penal Code by the learned Chief Judicial Magistrate, Bokaro.

Briefly, the facts are that Bokaro Steel Plant, a unit of Steel Authority of India Limited (for short, SAIL) awarded a contract to M/s. Tata Iron & Steel Co. Ltd. (for short, TISCO), Growth Shop for certain works. TISCO growth shop completed supply part of the work and erection part of the work was entrusted by it to M/s. Tata Construction & Projects Ltd. (for short TCPL). TCPL in turn issued Tender Enquiry and awarded the work to M/s. Singh Construction Co., the complainant. According to the complainant after completing the work it demanded payment of the balance amount under the contract from TCPL. The appellants herein are the Managing Director and President (Operations) of TCPL. When the complainant failed to receive the payment for the work done, they filed a complaint on 11th January, 2001 under Sections 403, 406, 420 and 120B IPC at Bokaro. The concerned Magistrate took cognizance of the alleged offences and issued summons vide order dated 19.6.2001 to the appellants. The appellants challenged the said order by filing a Crl.M.P.4780/2001 in the High Court of Jharkhand at Ranchi. The impugned order was passed by the High Court dismissing the said petition on 3rd May, 2002.

The present appeal has been filed against the said order of the High Court whereby the High court refused to quash the order of the learned Chief Judicial Magistrate taking cognizance of the alleged offences against the appellants. The learned counsel for the appellants argued that a perusal of the complaint would show that no case is made out against the appellants for the alleged offences, and, therefore, the order passed by the learned Chief Judicial Magistrate is wholly without jurisdiction. According to the learned counsel for the appellants, the controversy relates to purely a civil dispute regarding payment of money and no case for criminal complaint for the alleged offences is made out. We have been taken through the complaint as well as our attention has been drawn to the impugned order passed by the Chief Judicial Magistrate and the confirming order of the High Court. After careful consideration of the facts placed on record, it appears to us that the dispute between the parties is of a purely civil nature. The grievance of the complainant is about the failure of TCPL to pay the balance amount under the contract

A even though according to it the work stands completed. The appellants have disputed this.

B In our view, what is relevant is that the contract between TCPL and the complainant is an independent contract regarding execution of certain works and even assuming the case of the complainant to be correct, at best it is a matter of recovery of money on account of failure of TCPL to pay the amount said to be due under the contract. The complainant has alleged that TCPL has already received the money from SAIL for the work in question and it has misappropriated the same for its own use instead of paying it to the complainant and it is for this reason that the offences are alleged under C Sections 403, 406 and 420 etc. The courts below have overlooked the fact that the contract between Bokaro Steel (a unit of SAIL) and TCPL is a separate and independent contract. The contract between complainant and TCPL is altogether a different contract. The contractual obligations under both the contracts are separate and independent of each other. The rights and obligations of the parties i.e. the complainant and TCPL are to be governed D by the contract between them for which the contract between TCPL and Bokaro Steel (SAIL) has no relevance. Therefore, even if Bokaro Steel has made the payment to TCPL under its contract with the latter, it will not give rise to plea of misappropriation of money because that money is not money or movable property of the complainant. Further Section 403 uses the words E 'dishonestly' and 'misappropriate'. These are necessary ingredients of an offence under Section 403, IPC. Neither of these ingredients are satisfied in the facts and circumstance of the case. In para 14 of the complaint, the complainant has stated as under:

F ".....Release of payments to complainant was never depended on the payment released by Bokaro Steel Plant a Unit of SAIL to TISCO growth shop and TCPL".

G Thus admittedly, the two contracts are independent of each other and payment under one has no relevance qua the other. It cannot be said that there is any dishonest intention on the part of appellants nor it can be said that TCPL or the appellants have misappropriated or converted the movable property of the complainant to their own use. Since the basic ingredients of the relevant Section in the Indian Penal Code are not satisfied, the order taking cognizance of the offence as well as the issue of summons to the appellants is wholly uncalled for. Such an order brings about serious H repercussions. So far as the appellants are concerned when no case is made

out for the alleged offences even as per the complaint filed by the complainant, A
there is no reason to permit the appellants to be subjected to trial for the
alleged offences. Hence, the appeal is allowed. The impugned orders of the
High Court as well as of Chief Judicial Magistrate are hereby ordered to be
quashed.

CRIMINAL APPEAL NO. 71 OF 2003 @ SLP(CRL)NO.2698/2002: B

Leave granted.

In view of the above judgment, this appeal is also allowed.

N.J.

Appeal allowed. C