

07.08.2018
Complainant
For orders

ORDER

The complainant has filed this private complaint against the accused for the offences punishable u/s.415, 417, 420 of IPC.

2. The brief facts of the complainant case are as under :

That the complainant is a company engaged in the business of manufacturing and marketing of laminates, veneers, wooden flooring and allied products and accused No.1 is a Proprietorship Firm with accused No.2 as the Proprietor in the name and style of accused No.1. On 28.9.2015 the accused No.1 approached the complainant with advance payment of Rs.3,00,000/- and persuaded the complainant to supply goods. That the complainant based on the trust created by the accused No.1 by way of an advance payment supplied goods worth Rs.19,21,351/- and raised one invoice dated 29.9.2015 and three invoices on 8.10.2015 towards the supplies made. The accused No.1 made payment of Rs.3,31,798/- by cheque which was dishonored and accused No.1 convinced that the cheque was dishonored by mistake and made payment of Rs.45,13,247/- thereby regaining the trust of the complainant and thereafter induced the complainant to further supply goods worth Rs.45,13,447/- leaving an amount of Rs.16,21,554/- as outstanding which was promised by the accused No.1 that it will be paid. The complainant sent a letter dated

18.3.2016 to the registered addressed of accused requesting for payment of outstanding amount of Rs.16,21,554/- with interest at the rate of 24% within 10 days. The accused No.1 in response to the said letter has issued cheque in favour of the complainant duly signed by accused No.2 for an amount of Rs.16,21,554/-. But the said cheque was also dishonored. On the request of accused the cheque was re-presented but the said cheque again returned dishonored. The complainant intimated the accused through several e-mails regarding outstanding dues of Rs.16,21,554/-, but the accused neither replied to the e-mails made by the complainant nor made any payments. So, the accused No.1 and 2 with criminal intention have cheated the complainant. For these reasons it is submitted that, the accused have committed offences punishable u/s.415, 417, 420 of IPC.

3. Sworn statement of the complainant is recorded.

4. Heard counsel for the complainant.

5. On perusal of the complaint averments it is submitted that, the accused No.1 and 2 persuaded the complainant to supply goods on credit with an intention to cheat him and accused No.1 and 2 fraudulently made false statement to show that accused are financially stable and his credibility to pay the amount against the supply of goods on credit. It is the contention of the complainant that, earlier the accused have made payment of Rs.3,31,798/- towards the supply of goods and the said cheque was dishonored and when the said fact was informed to the accused they told that

the said cheque was dishonored by mistake and made a payment of Rs.45,13,247/- for the previous transactions along with an advance payment of Rs.28,91,893/- and induced the complainant to further supply of goods worth Rs.45,13,447/- and the outstanding amount was Rs.16,21,554/-, the accused issued cheque for the said amount but the said cheque was also bounced. Afterwards the complainant tried to contact the accused on e-mails but the accused did not respond to the e-mails and did not return the amount due to the complainant.

6. In the sworn statement the complainant has stated about the facts narrated by him in the complaint averments. On perusal of the complaint averments and as well as the sworn statement of the complainant, it appears that there is sale and purchase transaction between the complainant and accused. The transaction of sale cannot amount to an entrustment. So, looking to the ingredients of Sec.405 of IPC, there must be an entrustment of property and dishonest misappropriation of such entrusted property.

7. So, looking to the complaint averments the ingredients of Sec.406 are not fulfilled by the complainant. The complainant has filed the complaint against the accused for the offence punishable u/s.415 of IPC also but the said provision relates to definition of cheating. So, on perusal of the complaint averments as I have already discussed above, the ingredients of Sec.406 of IPC are not attracted to present case. This court is a special court to deal with the offences relating to the provisions of Sec.403 to 409 of IPC. So,

when the alleged offences in the complaint averments are u/s.415, 417, 420 of IPC, I am of the opinion that the present complaint cannot be tried and decided. So, the complaint has to be transferred to the court having jurisdiction to try the complaint. So, this private complaint is ordered to be transferred to the jurisdictional court having jurisdiction to try the complaint. Hence, I proceed to pass the following :

ORDER

Office to place this case before Hon'ble CMM to transfer the case to the court having jurisdiction to try the alleged offences u/s.417, 420 of IPC.

(Roopa R. Kulkarni)
IV Addl.CMM, Bengaluru.