

**Manoranjan Haldar Vs. Mechfab Engineering Industries**

**LegalCrystal Citation :** [legalcrystal.com/134801](http://legalcrystal.com/134801)

**Court :** Guwahati

**Decided On :** Mar-15-1983

**Judge :** S.M. Ali, J.

**Appellant :** Manoranjan Haldar

**Respondent :** Mechfab Engineering Industries

**Judgement :**

S.M. Ali, J.

1. This application under Section 401 and/or 482 Cr.P.C. is directed against the order dated 15.10.81 passed by Judicial Magistrate, Gauhati in Case No. 1666/81 and for quashing the proceeding pending in the court of the judicial Magistrate vide the aforesaid case.

2. The opposite party filed a complaint petition in the Court of the Chief Judicial Magistrate, Kamrup at Gauhati on 28.8.82, against the accused-petitioner alleging that the complainant is a partner of M/s. Mechfab Engg, Industries having its head office and place of business at Zoo Road, Gauhati and being a firm manufacturing steel articles. On 3.7.81 the accused-petitioner placed an order with the firm for supply of 27 Nos. of G.I. Tank valued at Rs. 64,500/-. In pursuance of which the accused-petitioner paid an advance amounts of Rs. 30,000/- to the firm by a Bank cheque D/-3.7.81 which was duly encased by the firm Against the order of supply the complainant firm issued 27 Nos. of M. Section Moulds for P.S.C. Poles and one G.I. Tank by the bill D/-5.9.81. 14 Nos. of P.S.C. Poles and G. I. Tank were accepted by the accused-petitioner from the firm on 14.8.81. Then 13 Nos. of M.S. Moulds, P.S.C. Poles were supplied to the accused-petitioner on 5.9.81 by the firing which the accused-petitioner accepted. It is further alleged that a sum of Rs. 10,000/- was subsequently paid by the accused-petitioner to the complainant through a Bank Cheque which was also duly encased. For the balance amount of the dues the accused-petitioner issued a Bank Cheque DA 7.9.81 against his account at the Central Bank of India, Fancy Bazar Branch, Gauhati. The complainant presented the cheque to the Bank on 7.9.81 but it was dishonoured by the Bank. This fact was brought to the notice of the accused-petitioner who however apologized for the firm having not received the payment of the cheque money. The accused-petitioner assured the complainant that the cheque would be honoured if presented to the Bank after a couple of days. The complainant again presented the cheque on 24.9.81 to the Bank but' the Bank informed that the accused petitioner by his letter D/- 24.9.81 directed the Bank to stop payment to the complainant. On enquiry from Bank the complainant came to know that the accused-petitioner had only sum of Rs. 700/- at his credit at the Bank. Thereafter the complainant demanded the sum of Rs. 24,500/- from the accused-petitioner on several occasions but the accused ultimately refused to make

payment of the dues on 14.10.81. The allegation is therefore that the accused-petitioner with full knowledge that he had no money in the Bank to satisfy the dues of the complainant issued the cheque and thus had the intention to deceive the complainant. Thus the accused-petitioner dishonestly induced the complainant to, deliver the articles with the intention to cheat the complainant.

3. The learned Chief Judicial Magistrate transferred the petition of complaint to the learned Judicial Magistrate who examined the complainant on oath and finding that a prima facie case Under Section 420 IPC was made out against the accused, issued, warrant of arrest against the accused with a bail of Rs. 5000/-.

4. On 17.11.81 the accused-petitioner I appeared before the court and was enlarged on a bail of Rs. 3000/- with one surety.

5. The case remains pending in the court of the learned Judicial Magistrate, who has not yet started trial.

6. It is to be seen whether any offence of cheating has been made out as per the complaint. In his examination under Section 200 Cr.P.C. the complainant (the partner representing the firm) disclosed that he met the accused-petitioner 2/4 days after the Bank had issued him a memo. Showing the reason of not honouring the bank cheque and that ultimately on 14.10.81 the accused informed him that he would not make any payment. Learned counsel for the petitioner pointed out that the facts of the complaint do not constitute the ingredients necessary for the offence of cheating, in any form. Section 415 IPC defines cheating as follows:

Whoever by deceiving any person fraudulently or dishonestly induces the person so deceived to deliver any property to any person or to consent that any person shall retain any property or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were so deceived and which act or omission causes or is likely to cause the damage or harm to that person in body, mind, reputation or property is said to cheat.

Explanation - The dishonest concealment of facts is a deception within the meaning of this section.

Section 420 IPC says:

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person or to make, alter or destroy the whole or any part of a valuable security or anything which is signed or sealed and which is capable of being converted into a valuable security, shall be punished....

It is therefore clear that the intention to cheat must have been there with the accused at the time of the initial transaction. Where the accused had an intention to pay against delivery of goods, the fact that he did not pay would not convert the transaction into one of cheating. On the other hand, if he had no intention to pay but merely expressed his intention to pay in order to induce the complainant to part with the goods, then in that case cheating would be established. Then again, if there be no intention to, cheat at the time when promise of payment is made, subsequent inability to pay or perform the promise will not amount to any offence. It is of course settled principle that intention of an accused may be judged by his subsequent act or

conduct. But still such conduct or act cannot be the sole criterion to judge his intention at the time of initial representation. There are two main Elements of offence of cheating, namely, deception and dishonest inducement to do or omit to do anything. At the same time, there deception is not a criminal offence nor is mere dishonesty so. In between the two conceptions there is yet a line though very thin giving rise to breach of contract for which remedy lies in a civil action.

7. In the light of the aforesaid principles of law we have to examine whether any criminal offence has been made out by the facts of the complaint. Here admittedly the accused made a payment of Rs. 40,000/- only to the complainant against the articles received by him from the firm. For the balance of the dues he issued a cheque D/- 7.9.81 which though post dated was accepted by the complainant for encashment. When the Bank first dishonoured the cheque and as the matter came to the knowledge of the accused-petitioner he apologized and assured that in future the cheque would be honoured. That means he would be making necessary deposit in the Bank for encashment of the cheque. The accused-petitioner had only a sum of Rs. 700/- on his account in the Bank. It is stated in the complaint that on some subsequent occasions also the accused-petitioner assured the complainant that the payment would be made. Ultimately on 14.10.81 he refused to make any payment. These are the circumstances of the case and on the basis of these circumstances, it cannot be said that at the time when order for supply of the articles was placed by the accused-petitioner, he had any dishonest intention to deceive the complainant. There is scope to think that due to some subsequent developments, taking place between the parties, the accused-petitioner might have changed his mind for which he refused the payment. As said before, it is the established principle of law that the dishonest intention at the time of the initial transaction must appear to be clear. The subsequent conduct of the accused cannot make the transaction amount to cheating. The submission of the learned Counsel for the opposite parties that the facts of the case indicate that the accused-petitioner in order to cover up his dishonest intention made partial payment and that it was in his mind that after receiving the entire lot of the articles he would not make the balance payment thereby having some wrongful gain and that such dishonest intention to deceive the complainant was there with the accused from the very start of the deal, cannot be accepted in view of the facts of the case. The knowledge of the accused-petitioner that he had only a sum of Rs. 700/- in the Bank, whereas the Bank Cheque issued by him on 7.9.81 was for a sum of Rs. 24,500/- also by itself does not lead to the inference that he had the dishonest intention of cheating the complainant at the time when he placed the order for supply of the goods or at the time when he accepted the goods. As said before, there should be circumstances showing in a clear way that the accused had such a dishonest intention at the initial stage. As said before subsequent refusal to pay the balance amount cannot convert the transaction into cheating. It is found that the matter is purely of civil nature. It is a case of breach of contract. The complainant may take recourse to civil action if he so likes. But the criminal proceeding as it is in the present form would be merely a futile exercise.

8. The result is that the petition is allowed. The impugned order and the proceeding are hereby quashed. No order as to costs.