

Failure to pay salary is not criminal conduct

By: N. Raja Sujith, Partner, and Anant Joshi, Principal, Majmudar & Partners, India.

Background

The former Chief Executive Officer (the “**Complainant**”) of Safal Life Science (P) Ltd. (the “**Company**”) filed a criminal complaint under Sections 420 (cheating), 406 (criminal breach of trust), and 34 (acts done by several persons with common intent) of the erstwhile Indian Penal Code, 1860 (the “**IPC**”) against Dasrathbhai Narsangbhai Chaudhary and others, former directors of the Company (the “**Former Directors**”), for non-payment of his outstanding salary and performance bonus amounting to approximately INR 14.7 million.

The Former Directors initiated proceedings under Sections 482 and 401 of India’s erstwhile Criminal Procedure Code, 1973 (the “**CrPC**”) before the Calcutta High Court to quash the criminal complaint.

Facts and arguments

- (i) Complainant’s allegations: The Complainant was employed as the Chief Executive Officer of the Company from April 1, 2017 until 2019. His compensation package included a monthly salary and performance bonuses. He alleged that, despite his diligent service, the Company failed to pay his outstanding dues, totaling INR 14.7 million. He lodged a police complaint and, subsequently, filed a criminal case under Sections 420, 406, and 34 of the IPC.
- (ii) Former Directors’ defence: The Former Directors argued that this was a civil dispute concerning unpaid salary and bonuses, which should be adjudicated in a civil forum and not in a criminal court. They contended that they weren’t directors of the Company when the alleged non-payment occurred, having sold their shares and resigned from the Company’s board in 2019. The Complainant’s claims should, therefore, be directed at the current directors of the Company. The Former Directors emphasized that the trial court lacked territorial jurisdiction, as the Company and the Former Directors were based in Gujarat, while the complaint was filed in West Bengal. They also argued that the trial court had failed to conduct the necessary inquiry under Section 202 of the CrPC before issuing the summons to individuals residing outside its jurisdiction, thereby rendering the summons invalid.

Ruling

The Calcutta High Court quashed the proceedings against the Former Directors and set aside the issuance of the summons on the following grounds:

- (i) Civil nature of the dispute: The dispute arose from a contractual obligation related to the Complainant’s employment with the Company and non-payment of

compensation, which is inherently civil in nature. The court referred to precedents in which non-payment of dues was held to be a civil matter and did not constitute cheating or criminal breach of trust under Sections 420 and 406 of the IPC.

- (ii) Lack of fraudulent intent: For a charge of cheating under Section 420 of the IPC, there must be fraudulent intent at the time of entering into the contract. The court found no evidence that the Former Directors had any dishonest intention at the inception of the employment relationship. A mere failure to pay salary and bonuses does not amount to criminal conduct.
- (iii) Non-compliance with Section 202 of the CrPC: The court noted that as the Former Directors resided outside the jurisdiction of the trial court, the trial court was required to conduct an inquiry under Section 202 of the CrPC before issuing the summons. Failure to do so rendered the proceedings as procedurally defective.
- (iv) Territorial jurisdiction: The court noted that the Complainant's place of work and the Company's registered office were in Gujarat, outside the jurisdiction of the West Bengal court, and the filing of the complaint in West Bengal by the Complainant appeared to be an act of forum shopping intended to harass the Former Directors.

Conclusions

This case underscores the importance of distinguishing between civil and criminal matters in employment disputes. The Calcutta High Court's ruling that civil disputes, particularly those relating to contractual employment relationships, should not be converted into criminal cases is commendable.

From a corporate law perspective, this judgment protects business owners and directors from the misuse of criminal law as a debt recovery tool and pressure tactic. The court's application of the principle that fraudulent intent must exist at the outset of the contractual relationship to constitute an offence under Section 420 of the IPC is a sound legal standard that safeguards businesses from unwarranted criminal prosecution. In this case, the lack of evidence of such intent at the time of entering into the employment highlights the need to confine claims of non-payment to civil remedies.

The court's critique of the trial court's failure to comply with Section 202 of the CrPC is equally significant. The requirement to conduct an inquiry or investigation before summoning individuals residing outside the court's jurisdiction ensures procedural fairness and prevents undue harassment of business leaders.

Additionally, the court's finding on territorial jurisdiction prevents forum shopping, a common tactic used to exert undue pressure on corporate respondents. Ensuring that cases are tried in the appropriate jurisdiction where the parties are based and the events have taken place strengthens the integrity of judicial proceedings and curtails abuse of process.

In conclusion, the judgment provides critical safeguards for businesses and their directors, reinforcing the proper separation between civil and criminal disputes, and ensuring procedural fairness in criminal prosecutions. It sends a clear message that business leaders should not be unjustly roped into criminal cases over employment-related financial disputes.