

The Star : Non-delivery

Written by Administrator

Monday, 14 September 2009 16:38 -

NEWSPAPER reports often carry stories of people being short-changed in one way or another. There was the story of a woman whose dream to run a daycare centre, turned into a nightmare when the contractor collected the entire sum for the renovation and disappeared after completing only 60% of the work.

On a different occasion, a businessman thought he was dealing with a construction company which ordered the goods. The goods were delivered to the buyer's warehouse in exchange for post-dated cheques. But when the cheques were not honoured, the businessman went to the warehouse and was shocked to find that it was empty. Even the signboard had disappeared.

The immediate reaction of the aggrieved party is to lodge a police report. However, to what extent does a police report help resolve the situation?

The options the victim has and the consequences that can befall the delinquent party depend on the relationship between the two, and the circumstances under which the transaction was carried out.

Where a criminal offence is committed or believed to have been committed, the report made alerts the police and is referred to as a first information report. Its purpose is to trigger an investigation into the complaint to see if the facts disclose an offence in law. If it were otherwise, the police report will merely serve to corroborate the state of mind of the complainant.

However, for the police to prosecute the culprit, it is necessary to have evidence, which can help prove an offence of cheating as defined in Section 415 of the Penal Code which reads: ♦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 not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation, or property, is said to ♦cheat♦.♦

This definition of cheating in the Penal Code requires the existence of a fraudulent or dishonest intention on the part of the person complained against. Failure to comply with an obligation assumed and undertaken does not by the mere fact amount in law to cheating and therefore become a criminal offence.

Factual scenario

Where the contractor has collected all the money and then left 40% of the work undone, it could be that he had the intention to complete the work but ran into financial difficulties with which he could not cope. If this is so, there may not be any dishonest intention and the failure to complete the work would be a mere breach of contract.

On the other hand, when a person pretends to be a contractor and orders goods and after receiving the goods and without paying he disappears, the position would be different. If the facts show that this was planned, it does point towards dishonest intention and this would bring the matter closer to being a criminal offence.

In both cases, it is necessary to examine the conduct of the party who received the money or collected the goods in its entirety. There is a basic difference between an undertaking where the non-payment is pre-planned as opposed to a subsequent inability to pay for any reason whatsoever. The former would lead to suggest a criminal offence and the latter to a mere breach of contract.

Even if the facts disclose an offence has been committed, the police may have their priorities with regard to the offences on which they need to expand their sometimes limited resources.

However, irrespective of whether there is any criminal intent, the non-payment would in any event ♦ and

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irrespective of whether there is a prosecution in law ♦ be a breach of contract for which civil proceedings to recover the amount would be available.</p><div align="justify"> </div><p align="justify"> Whilst this right exists in law, in reality the money can only be recovered if the delinquent party has assets against which any judgement obtained can be enforced. If the delinquent party has dissipated his assets or cannot be found, then any judgement obtained will be ♦paper judgement♦.</p><div align="justify"> </div><p align="justify">Even if the person can be located and prosecuted, any punishment will not financially benefit the aggrieved person as all fines paid will go to the State. It will only give the victim the satisfaction of knowing that the other party has been punished.</p><div align="justify"> </div><p align="justify">Given such a scenario, how could a person protect himself?</p><div align="justify"> </div><p align="justify">A person should familiarise himself with the person he deals with. This is especially so when you are dealing with the person for the first time and do not have any form of assurance of payment.</p><div align="justify"> </div><p align="justify">However, many business people and even ordinary individuals, in their enthusiasm to promote their business or secure the performance of work, are prepared to take risks and trust an unknown party.</p><div align="justify"> </div><p align="justify">When dealing with a contractor engaged to work on the owner♦s premises, the employer can protect himself by ensuring that the payments made are measured against the value of the work done. So long as the payments made are less than the work done, there is every incentive for the contractor to finish the work.</p><div align="justify"> </div><p align="justify">However, once a point is reached where the payments made exceed the work done, there is a proportionately increased disincentive not to complete the work, especially for a contractor who is not financially sound. If he has collected all the money and left a substantial amount of work undone, this work is in monetary terms work for which he is not going to get further payment.</p><div align="justify"> </div><p align="justify">Sometimes individuals who find themselves in such a situation may be inclined to vent their anger on the person who was the introducer or a publication in which an advertisement appeared which eventually led to the transaction which was entered into.</p><div align="justify"> </div><p align="justify">It is unlikely that any relief can be obtained from the introducer unless he has guaranteed completion of the work, which is highly unlikely. Similarly, the publisher of the publication in which the advertisement was placed cannot be held responsible for having facilitated the transaction through the advertisement.</p>Articles of Law by BHAG SINGH1 April 2008♦<p align="justify"> </p><p> </p>