
(2011) 02 PAT CK 0054

In the Patna High Court

Case No : Criminal Miscellaneous No. 781 of 2001

Anil Kumar Tripathi

APPELLANT

Vs

State of Bihar, Sri Ram Nath Pandey and Sri Chhotan Singh

RESPONDENT

Date of Decision : 04-02-2011

Acts Referred:

Citation : (2011) 02 PAT CK 0054

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—The sole Petitioner, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, has prayed for quashing of an order, dated 13.11.2000/14.11.2000, passed by learned Sub Divisional Judicial Magistrate, Bikramganj at Sasaram in Trial No. 277 of 1998. By the said order, learned Magistrate has rejected the petition for discharge filed on behalf of the Petitioner.

2. Short fact of the case is that on the basis of fard-beyan of one Sri Ram Nath Pandey (Opposite Party No. 2), an F.I.R. was lodged vide Bikramganj P.S. Case No. 73 of 1998 for the offences under Sections 392/364 of the Indian Penal Code against four unknown accused persons. It was disclosed by the informant that he was ?Khalasi? of a truck bearing registration No. BR-20G-1801, and on 13.1.1998, while he alongwith driver was going on the aforesaid truck, one Armada Jeep came from the back side and after over taking the same stopped in front of the truck. In the said Armada Jeep, there were 3-4 accused persons. After frightening the driver, he was forced to get down from the truck and one driver from inside the Jeep came out and he took the charge of driving seat of the truck and they started to move while other accused persons sitting in the Armada Jeep started to follow the truck. After some time, the truck came out from Bikramganj market and on Nasariganj road the truck stopped near Salempur bridge. In the meanwhile, the informant anyhow got down from the truck and went to nearby village. After drinking water, he again came back. Thereafter, he noticed that truck had gone towards Nasariganj. The informant,

thereafter, came to the Police Station, and on the basis of fard-beyan, Bikramganganj P.S. Case No. 73 of 1998 was registered on 13.4.1998 for the offences under Sections 392/364 of the Indian Penal Code. Police after investigation submitted charge sheet against four accused persons including the Petitioner.

3. After the charge sheet was submitted, the learned Magistrate took cognizance of the offence. Thereafter, the Petitioner approached this Court vide Cr. Misc. No. 15660 of 1999 against the order of cognizance. However, the said petition stood rejected. It has been stated in Para 2 of the present petition that the Petitioner was granted liberty to raise all the points at the time of framing of the charge. While the case reached to the stage of charge, a petition for discharge was filed by the Petitioner alongwith other three charge-sheeted accused persons on the plea that the truck in question was purchased on hire purchase basis. However, the said discharge petition was rejected by the learned Sub Divisional Judicial Magistrate, Bikramganj at Sasaram on 13.11.2000/14.11.2000.

4. Aggrieved with the impugned order of rejection of discharge petition, the Petitioner approached this Court by filing the present petition, which was admitted on 29.10.2002. While admitting, it was directed, that during the pendency of this application, further proceeding against the Petitioner in connection with Trial No. 277 of 1998 pending before the Sub Divisional Judicial Magistrate, Bikramganj at Sasaram shall remain stayed.

5. At the time of admission also, notice was issued to Opposite Party Nos. 2 & 3 which was considered as ?deemed valid service? but none appeared on behalf of Opposite Party Nos. 2 & 3, and thereafter, on 29.10.2002 the case was admitted for hearing, and again, direction was issued for issuance of fresh notice on Opposite Party Nos. 2 & 3. Due to non-compliance of the order of this Court, petition in respect of Opposite Party Nos. 2 & 3 stood rejected. Since, the matter was pending for long period and it was a Police Case, it was considered to hear the matter even in the absence of Opposite Party No. 2 and 3 and as such, the case was heard.

6. Sri R.K. Shukla, learned Counsel for the Petitioner at the very outset has argued that the truck in question was purchased by Opposite Party No. 3 on hire purchase basis from M/s Rumjhum Bonds & Holdings Ltd., Calcutta, which was the financier. Since, the purchaser had become defaulter in making payment of instalments, a suit vide Title Suit No. 189 of 1996 was filed in the court of Civil Judge, City Civil Court at Calcutta, and on 3.2.1996, a compromise was arrived at, and the suit was decreed in terms of compromise, according to which one Sri Durga Das Sangiri was appointed as receiver of the truck and the hire purchaser i.e., Opposite Party No. 3, in terms of the agreement was to pay a sum of Rs. 4,01,960/- in twenty eight (28) monthly installments at the rate of Rs. 14,375/- as first installment and rest at the rate of Rs. 14,355/- After making payment of some of the installments, the hire purchaser (Opposite Party No. 3) again became defaulter. Thereafter, Sri Durga Das Sangiri (receiver) authorized Sri

Raman Kumar, who has also been charge-sheeted as one of the accused, to take possession of the truck, and for which, a power of attorney was executed in favour of Sri Raman Kumar. The attorney, thereafter, remained in search of the truck, and immediately after noticing that the truck was parked on Nasariganj-Dehri Road he took possession of the same. The Petitioner and other two assisted the attorney, i.e. Sri Raman Kumar in taking back possession of the truck and, as such, it was submitted that no criminal offence is made out. It was submitted that it was hardly a dispute of civil in nature, for which criminal court may not be allowed to be abused. In support of his stand Sri Shukla, learned Counsel for the Petitioner has heavily relied on Charanjit Singh Chadha and Others Vs. Sudhir Mehra, . In this context, learned Counsel has also referred to a Judgment reported in Sardar Trilok Singh and Others Vs. Satya Deo Tripathi, and a single Judge Bench decision of this Court reported in Mohan Singh, R. Prasad @ Rakeshwar Prasad and Ajay Kumar Sinha Vs. The State of Bihar Besides, referring to averment made in supplementary affidavit, as well as, referring to an order passed by this Court in Cr. Misc. No. 17299 of 1998 i.e., Annexure-7, it was submitted that, at subsequent stage, the Opposite Party No. 2 got release order in respect of the truck in his favour from the Court of Sub Divisional Judicial Magistrate. The said order was challenged by the receiver of the truck in question, namely, Sri Durga Das Sangiri vide Cr. Misc. No. 17299 of 1998 in which a direction was issued for conducting an enquiry, and thereafter, Sub Divisional Police Officer, Sonapur, district Saran, filed an affidavit annexing with a report which revealed that the truck was not traceable and Sri Chhotan Singh (the Opposite Party No. 3) was found to be a minor of about 7-8 years. From the said report, it further transpired, that the vehicle had already been sold at Ranchi, and after changing its number, the vehicle was put under operation and was being plied either by the person who took the vehicle in custody or someone else. On perusing the affidavit and report, this Court by its order dated 2.9.2002 quashed the order dated 25.4.1998 passed by learned Sub Divisional Judicial Magistrate at Sasaram in G.R. Case No. 277 of 1998, whereby the truck No. BR-20G-1801 was directed to be released in favour of and to be given in the custody of registered owner i.e. Sri Chhotan Singh (Opposite Party No. 3). Since, Sri Chhotan Singh was absconding and truck was not traceable, this Court by its order dated 2.9.2002 further directed to issue necessary warrants for recovery of the vehicle and also for recovery of the amount from Sri Chhotan Singh and his two sureties.

7. In view of peculiar situation arose in the case, it was submitted by Sri Shukla that firstly by committing fraud the Opposite Party No. 3 got the loan financed for the purchase of the truck, thereafter, stopped payment, and while the truck in question was taken in custody in a legal manner, the hire purchaser got the present false case instituted and he is regularly abusing the process of the court. On the aforesaid facts and circumstances, it was prayed to quash the impugned order as well as criminal proceeding in Trial No. 277 of 1998 so far as Petitioner is concerned.

8. On behalf of the State Smt. Indu Bala Pandey, learned Additional Public Prosecutor has appeared and opposed the prayer of the Petitioner. It was submitted by Smt. Pandey that the grounds which have been taken by the Petitioner can well be looked into during the trial and the learned Sub Divisional Judicial Magistrate has rightly observed that those facts can be looked into during the trial and rejected the petition for discharge.

9. Besides hearing learned Counsel for the parties, I have also perused the materials available on record. So far as, the genuineness of Opposite Party No. 3 is concerned, the court is of the opinion that since the petition stood rejected so far as Opposite Party Nos. 2 & 3 are concerned, it would not be appropriate for this Court to pass any comment, but the fact remains that the Petitioner alongwith three other charge-sheeted accused persons have categorically informed the court that truck in question was taken on hire purchase basis. It was also argued and facts were brought to the notice of the Court that by an order of Civil Judge, City Court, Calcutta in Title Suit No. 189 of 1996 one Sri Durga Das Sangiri was appointed as receiver of the truck and the purchaser had become defaulter. Subsequently, the receiver had appointed Sri Raman Kumar as authorized attorney to take the possession of the vehicle in possession. The Petitioner has brought on record a photo copy of special power of attorney as Annexure-4 to the petition, whereby, Raman Prasad, S/o Sri Jai Narayan Lal was appointed lawful attorney alongwith one Md. Samim Khan, and thereafter, the truck in question was taken into possession by the attorney of the receiver in which Petitioner and two others rendered assistance. Of-course, in normal course, it is not appropriate for this Court to examine such documents but in view of position clarified by the Apex Court in number of judgments so far as dispute in relation to hire purchase is concerned, there is no reason to overlook such document. In the present case, the order dated 2.9.2002, passed in Cr. Misc. No. 17299 of 1998, Annexure -7 to the supplementary affidavit, further makes it clear that the present dispute may not be considered as a dispute constituting any criminal offence. From the facts indicated above, as well as, on perusal of the impugned order of rejection of discharge petition, it is evident that it was purely a case of hire purchase in which one of the co-accused was appointed authorized attorney by the receiver, who was appointed receiver in terms of the order by Civil Judge, City Civil Court, Calcutta, and thereafter, Petitioner alongwith others assisted the authorized attorney to take possession of the truck in question, and as such, the Court is of the opinion that on such allegation allowing criminal proceeding will amount to allowing abuse of the process of the court and, accordingly, with a view to prevent the abuse of the process of the court, it is apt to interfere with the impugned order.

10. Accordingly, the order dated 13.11.2000/14.11.2000 passed by Sub Divisional Judicial Magistrate, Bikramganj at Sasaram in Trial No. 277 of 1998 (arising out of Bikramganj P.S. Case No. 73 of 1998) as well as entire criminal proceeding so far as Petitioner is concerned, is hereby, set aside and petition stands allowed.