

(1998) 12 PAT CK 0019

In the Patna High Court

Case No : Criminal Miscellaneous No. 11054 of 1993

Ashutosh Singhai

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 09-12-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 192

Penal Code, 1860 (IPC) — Section 120(B), 406, 420, 425, 504

Citation : (1999) 1 PLJR 297

Hon'ble Judges : P.K. Sarkar, J

Bench : Single Bench

Advocate : B.K. Sinha, for the Appellant; Anant Prakash Sahay, for the Respondent

Final Decision : Allowed

Judgement

P.K. Sarkar, J.—This application has been filed for quashing the order dated 6.3.93 passed in Complaint Case No. 127/93 by Sri R.P. Singh, Judicial Magistrate, 1st Class, Gaya, "through which he has taken cognizance against the Petitioner and others.

2. The brief facts leading to this application is as follows. The Petitioner is one of the Directors of M/s. Kumar Distributors Private Limited who were distributors of Beltek T.V. and has his own service centre to repair TV. etc. It is further alleged that a TV. was sold to O.P. No. 2 Sri Pritam Singh Bagga by the dealer at Gaya, namely, Devendra Kumar. The said T.V. was gifted to Smt. Satpal Kaur, sister-in-law of O.P. No. 2 by him. Some defects were detected in the said T.V. and the sister-in-law or O.P. No. 2 got the T.V. repaired by some local dealer. Subsequently, she wanted that the T.V. should be repaired by the authorised dealer of Calcutta as the defect occurred during the Guarantee period. Accordingly, a representative of Smt. Satpal Kaur contacted the Petitioner and requested him to give a letter in the name of the dealer at Chittranjan address. Accordingly, the Petitioner gave a letter addressed to Lalit Jalan at Calcutta who

was the main distributor of the Beltek T.V. in the area. The representative of Smt. Satpal Kaur contacted the Asansol office of Mr. Jalan who found that the said T.V. was repaired by some other mechanic and hence he refused to accept it for repair. The Petitioner again wrote to Mr. Jalan for getting the T.V. repaired. On account of this dispute, the complaint was filed by Sri Pritam Singh Bagga O.P. No. 2 against this Petitioner and others. The complainant was examined on Solemn Affirmation and the case was transferred by the Chief Judicial Magistrate, Gaya to the court of Sri R.P. Singh, Judicial Magistrate, 1st Class, Gaya u/s 192 Code of Criminal Procedure who examined some witnesses and issued summons against the Petitioner and other accused persons under Sections 420, 425, 120 (B) and 504 I.P.C. on 6.3.93.

3. Being aggrieved and dis-satisfied with the impugned order, the present application has been filed.

4. The learned Counsel for the Petitioner submits that as per the terms of the Warranty issued for the sale of T.V. the same Warranty will be applicable to the Distributor, if any defect is found during the Warranty period. But since the private mechanics were engaged who handled the T.V. and removed some parts, the terms of Warranty automatically expires and it can not be enforced. Moreover, the Petitioner is one of Directors of M/s. Kumar Distributors (sic) Ltd. who were distributors of Beltek (sic) and is not manufacturer and, thus he not be held responsible for manufacture defect or any other defects which subsequently was found in the T.V. Stil(sic) avoid any litigation, the Petitioner wrote letter to Mr. Jalan at Calcutta to get T.V. repaired. It is further submitted the complainant moved before the Consumers Forum for compensation but same was dismissed as the Consumer Forum did not find enough evident against the Petitioner. It is further submitted that on the last date the Petitioner was directed to file supplementary affidavit on the point whether the m(sic) had been settled outside the court, accordingly, a supplementary Affidavit been filed by the Petitioner wherein has clearly stated that he got the repaired and if the complainant O.P. 2 wants to take delivery of the T.V. can take it from the office of M/s. K(sic) Distributors Pvt. Ltd. at Patna. The plainant-O.P. No. 2 did not take del(sic) of the T.V. on the ground that he was a different set. In that view of the m(sic) it does not appear that there is any (sic)sibility of compromise. On the last also, nobody turned up on behalf of No. 2 Three weeks time was allowed settlement between the parties and subsequently the case was taken u(sic) hearing to-day i.e. after three and months. To-day also, nobody turned on behalf of O.P. No. 2 In that view (sic) matter, it is clear that O.P. No. 2 is way interested to compromise the and the fact remains that a Beltel was purchased by the O.P. No. 2 for sister-in-law. The said T.V. was subsequently found defective and before presented the same before the o(sic) Distributor for repair, it was handle some private mechanics. So, the o(sic) Distributor did not take the T.V. for repair. The present Petitioner is admittedly one of the Direptors of M/s. Kumar Distributors Pvt. Ltd. and he has filed an affidavit to show that he repaired the T.V. and is ready for its delivery to the complainant O.P. No. 2, whenever he comes to take such delivery.

5. The Opposite party has not filed any counter-affidavit. Hence, the aforesaid facts have not been disputed. The complainant-O.P. No. 2 has also not appeared in the Court to place the correct facts. Mr. A.P. Sahay, Additional Public Prosecutor is present on behalf of the State.

6. In that view of the matter, the elements of the offences under Sections 420, 425, 406 120(B) are lacking.

7. Accordingly, this petition is allowed and the order of cognizance dated 6.3.93 passed in Complaint Case No. 127/93 is hereby quashed. However, the Petitioner will deliver the T.V. to O.P. No. 2 after getting it properly repaired whenever he comes for such delivery. The Petitioner will inform the O.P. No. 2 by registered cover asking him to take such delivery.