
(2008) 08 PAT CK 0071

In the Patna High Court

Case No : Criminal Miscellaneous No. 32170 of 2007

Baidyanath Singh and Another

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 06-08-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2009) 4 PLJR 4

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Ajay Dubey and Awanish Kumar Pandey, for the Appellant;
Jharkhandi Upadhaya for the State and Mr. Amit Kumar Singh for O.P. No. 2, for the Respondent

Final Decision : Allowed

Judgement

Abhijit Sinha, J.—The two petitioners who have been arrayed as accused in Complaint Case No. C-1000 of 2007 are aggrieved by and have prayed for the quashing of the order dated 3.4.2007/4.6.2007 passed therein by the learned Chief Judicial Magistrate, Saran at Chapra, whereunder he has taken cognizance against the petitioners for the offences under Sections 420, 406 I.P.C. The complainant, one Braj Bhushan Singh, impleaded as O.P. No. 2 herein, filed the aforesaid complaint inter alia stating that being educated and unemployed he had decided to earn his livelihood by running a pig-sty under the aegis of the Prime Minister's Employment Scheme for which he had applied to and duly received approval from the District Industries Center, Chapra, who sent his application to the Nagara Branch of State Bank of India for disbursement of the loan amount with intimation to him. It is said that on approaching the Bank he was given to understand by accused No. 1 that he would receive the loan only after proper verification by the Field Officer. It is alleged that on 15.5.2003 both the accused approached him and advised him to change his choice of trade of running a pig-sty, which was incompatible with his family status, and in its stead

to ply an auto-rickshaw for which the Bank would provide immediate finance and that they would get the nature of the trade already sanctioned changed from the concerned authority. It is further alleged that accused No. 1 on his own sent the approval order to the Managing Director, District Industries Center, and got the sanctioned trade changed from pig-sty to plying auto-rickshaw. The further allegation is that the petitioners with ulterior motive took the complainant to a shop at Hajipur where he was made to sign some papers and subsequently an auto-rickshaw was supplied to him which from the very beginning appeared to be an old one which had been camouflaged into a new one (sic) means of denting and painting and later the Insurance Company refused to insure the vehicle as it happened to be an old one and the chasis No. and engine No. did not tally with those disclosed in the sale letter. It has been alleged that the petitioners in collusion with the auto-rickshaw dealer fraudulently and with evil intention had got sold to him an old vehicle instead of a new one and had usurped and swallowed the balance amount of the loan sanctioned.

2. It has been submitted on behalf of the petitioners that loan had indeed been sanctioned to the opposite party No. 2 by the Bank but now with the intention to evade repayment of loan he had filed the instant complaint on false and baseless assertions. In this connection, while denying that the petitioners had prevailed upon him to change his trade, it was submitted that the complainant had petitioned them with a request to return the earlier application so that he could file a fresh application for purchasing an auto-rickshaw, and petitioner No. 1 in good faith forwarded the case vide letter dated 22.5.2003 to the District Industries Center which they returned by letter dated 29.5.2003 after making necessary corrections. This, according to the learned counsel for the petitioners only goes to show that there was no inducement from their side in altering the nature of trade.

3. The further submission on behalf of the petitioners is that it was O.P. No. 2 who had himself obtained a quotation from Moti Private Ltd. and after appending his signature thereupon had handed over the same to petitioner and it was on the basis thereof that D.O. letter dated 5.6.2003 was issued to Moti Private Ltd. and in pursuance thereof O.P. No. 2 received the auto-rickshaw on 6.6.2003 after signing the bill and Chalan and also undertook to deposit the insurance papers within 20 days of the purchase. A perusal of the bill and Chalan bearing the Chasis No. and Engine No. would reveal that allegations of O.P. No. 2 were concocted and misconceived since O.P. No. 2 never informed the petitioners of the defects in the auto-rickshaw concerned.

4. It was finally submitted that the complainant had not come with clean hands and had suppressed important material facts. In this connection it was submitted that prior to the filing of the complaint petition the complainant had approached the District Consumer Forum, Vaishali at Hajipur through Case No. 1 of 2004 with the same set of allegations and the same was dismissed vide order dated 28.4.2004. Not satisfied therewith a compliant was lodged with the Zonal Office

of the Bank. The allegations were found to be false and baseless by the Vigilance Cell of the Bank. It was only after a certificate case against the complainant was initiated and he received notice thereof that the instant complaint came to be filed.

5. Admittedly, there is no mention in the complaint petition of the complainant having unsuccessfully agitated similar allegations before the Consumer Forum and the Vigilance Cell of the Bank. Such suppression of important material facts in the complaint petition only goes to show that the complainant has not come with clean hands and sought to snatch an order from the Court by evil designs only to save his own skin from the certificate case lodged by the Bank and repay his outstanding dues with the Bank. The action of the complainant cannot be justified and in the circumstances the continuance of the criminal proceeding against both the petitioners would amount to an abuse of the process of the Court which is unwarranted. In the result, this application succeeds and the impugned order taking cognizance against the petitioners is hereby quashed.