

(2007) 02 PAT CK 0033

In the Patna High Court

Case No : Criminal Miscellaneous No. 10793 of 2003

Balbinder Singh

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 05-02-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2007) 2 PLJR 299

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Sanjeet Deokuliar, for the Appellant; J. Upadhaya and Mr. Jitendra Narain Sinha for O.P. No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Abhijit Sinha, J.—This application u/s 482 Cr.P.C. is directed against the order dated 18.1.2003 passed by Sri P.M. Rai, Judicial Magistrate, Bettiah, in Complaint Case No. 2189C of 2001 whereby and whereunder he has taken cognizance of offences under Sections 420, 406 I.P.C. against them. The prosecution case is based on the complaint petition filed by one Girdhari Lal who stated that he was the Branch Manager of the Bettiah Branch of M/s East India Transport Agency (hereinafter referred to as "the transport agency") and due to the frequent business transactions, a feeling of trust and security had developed in the mind of the complainant so far as the opposite party were concerned. It is said that O.P. No. 3 in order to avoid the rigors of Income Tax and Sales Tax carried out several business in different names from various premises and utilized the services of the transport agency for the transportation of his goods. It is further said that the said O.P. No. 3, as per the prevailing practice, on many occasions took delivery of his goods from the transport agency through his trustworthy agents Ashok Kumar and Om Prakash by merely informing over telephone or by chit or by merely stating the consignment number without paying the sum due thereon on the assurance that the payment would be made later. It has been

alleged that O.P. No. 3 through his agents, O.P. Nos. 1 and 2, had taken delivery of some consignments on various dates on the basis of telephonic request as per prevailing practice and with evil intentions he informed the head office of the transport agency that he had not as yet received the consignments. It is said that on hearing from the head office the informant realised that the accused persons in conspiracy had played a foul game with him after taking him into confidence. The full details of the consignment nos., the date of delivery and the name of the person receiving the consignment have been furnished at the foot of the complaint petition. It has been alleged that the accused persons had defrauded the transport agency of about rupees four lacs. Accordingly, a legal notice was sent to O.P. No. 3 who naturally denied the allegations attributed to him.

2. It has been submitted on behalf of the petitioner that he had purchased certain articles from M/s Kela Handloom and M/s P.M. Ammakannu Co., Chennai and the same were sent to him through the transport agency and the consignment nos. provided in the complaint petition were of those consignments and when the consignment did not reach him he made a complaint to the head office of the transport agency as also to the two Chennai Companies. It was also pointed out that the transport agency had written a letter on 21.8.2000 (Annexure-3) to the two Chennai Companies that the consignment was lying with them and requested for clearing the same from their godown. Later on the two Chennai Companies served legal notices on the transport agency (Annexure-5) but as there was no response the Chennai Companies filed claims with the Insurance Company which after investigation was paid and the cheques were sent by the Chennai Companies to the petitioner by way of insurance claim. On the aforesaid premise it has been submitted that the complaint petition was false and frivolous and the criminal proceeding on the basis thereof was an abuse of the process of court.

3. The complainant impleaded as opposite party no. 2 herein has appeared and filed a counter affidavit to contest this application. It has been submitted that the transport agency had never given any letter which purportedly has been annexed as Annexure-3 and that the same was a fabricated document manufactured by the accused persons to bring an end to the litigation against them. It has further been submitted that the total consignment had been taken delivery of by the men of the petitioner Balbinder Singh and no consignments whatsoever was left with the transport agency to be delivered. The receipts showing one Om Prakash to have taken delivery of consignments have been annexed as Annexure-"A" series. It has also been submitted that the Chennai Office of the transport agency had requested information from its Muzaffarpur Office regarding delivery of the consignments in question and the Muzaffarpur Officer in reply thereto had informed that all the consignments had been lifted by the party. The copies of the said letters have been annexed as Annexure-"B" series. Finally, it was submitted that in order to grab a huge amount, i.e., about four lacs the petitioner herein had manufactured Annexure-"3" and other documents which

have been filed as Annexures to the application.

4. The question whether the consignments had been taken delivery of or not by the petitioner herein is a question of fact and its decision would hinge inter alia on evidence. Such evidence has not so far been led by the parties. It is not usual for this Court to go into disputed questions of fact in an application u/s 482 Cr.P.C. Where matter is the subject matter between the parties in a competent court the High Court will not interfere by exercising powers u/s 482 Cr.P.C. Accordingly, I find no merit in this application which is dismissed.