

(2003) 03 OHC CK 0080

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 2722 of 2001

Bijoy Kumar Sahoo

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 21-03-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Criminal Procedure Code, 1973 (CrPC) — Section 202, 482

Penal Code, 1860 (IPC) — Section 294, 34, 341, 384, 392

Citation : (2003) 03 OHC CK 0080

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : S.S. Das, R. Mohapatra, B.R. Das, R.R. Mohanty and K. Behera, for the Appellant; Addl. Standing Counsel, for the Respondent

Judgement

L. Mohapatra, J.—The application had been initially filed under Articles 226 and 227 of the Constitution of India but subsequently by order dated 5.4.2001 the same has been converted to one u/s 482, Code of Criminal Procedure.

2. The Petitioner in this petition prays for quashing I.C.C. No. 15 of 2001 pending in the Court of the learned J.M.F.C. (Rural), Cuttack. From the order-sheet it appears that notice on opposite party No. 2 could not be served as a result of which the same was published in the news paper and on such publication notice on opposite party No. 2 was accepted as sufficient. In spite of such notice also the opposite party No. 2 has not appeared before this Court. Since notice was issued on the question of admission and final disposal, this matter was taken up for hearing on consent of the learned Counsel for the Petitioner and learned Counsel for the State.

3. From the complaint petition filed before the learned Magistrate, it appears that the opposite party No. 2 filed a complaint alleging commission of offences under Sections 341, 294, 392, 394, 384, 506 and 34 of the Indian Penal Code. The case of the complainant-opposite party No. 2 is that the accused persons have

formed a firm, named and styled J.S.S. Consultancy Services Private Limited and conducting business of sanctioning loan to the customers for purchase of vehicles. It is alleged that the complainant wanted to avail the loan for purchasing a car (Maruti-Zen) on the basis of hire purchase agreement. The loan was sanctioned and paid on 29.7.1999 directly to the supplier to deliver the vehicle to the complainant and the vehicle was thereafter registered with the authorities and was assigned No. OR-02-M-0207. It is also alleged that the complainant was paying the loan amount since 1st August, 1999 regularly and was obtaining receipts from the accused persons. According to the complainant, he found some mistakes and discrepancies relating to repayment of the loan amount and met the accused persons sometime in July, 2000 to rectify the mistakes. It is alleged that during such discussion with the accused persons the complainant was threatened. Thereafter, on 18.2.2001 when the complainant and his wife were coming to Cuttack in the car to consult their advocate regarding the incident which happened in respect of their computer institution, near Balikuda under Sadar Police Station, Cuttack one car came in front of their car and apprehending danger, the complainant stopped the car. It is alleged that the accused persons along with 3 to 4 antisocials got down from the car and surrounded the vehicle of the complainant and forcibly dragged him and his wife out of the vehicle. It is also alleged that the accused No. 1 namely, Satyanaryan Das, took away a revolver from his pocket and the other antisocials who had accompanied the accused persons under threat assaulted by means of arms, forcibly took away the vehicle and proceeded towards Bhubaneswar abusing the complainant and his wife in obscene language. It is also alleged that while taking away the vehicle one gold ring from the finger of the complainant and one gold chain from the wife of the complaint were also taken away. On the basis of such complaint, it appears that an inquiry u/s 202, Code of Criminal Procedure was made by the learned Magistrate and by order dated 7.4.2001 the learned Magistrate took cognizance of the offences under Sections 341, 294, 394, 506 and 34 of the Indian Penal Code and issued summons to the accused persons for their appearance. The Petitioner has challenged the proceeding after receipt of summons on the following grounds:

(1) JSS Consultancy Services Pvt. Ltd. does not deal with financing and as per agreement with the Citi Corp Maruti Finance Limited, the company only deals with P.D.C. presentation, reconciliation and Bank Account management in Bhubaneswar/Cuttack and some other allied jobs.

(2) JSS Consultancy Services Pvt. Ltd. does not deal with recovery of vehicles and, therefore, the question of involvement of the present Petitioner in the alleged recovery is ruled out and false implications have been made.

(3) Even accepting the complainant's case altogether to be correct no offence so far as present Petitioner is concerned, has been made out.

4. On a bare reading of the complaint petition itself though it appears that an allegation has been made that JSS Consultancy Services Pvt. Ltd. was running a

business of sanctioning loan, it appears that the Citi Corp Maruti Finance is an organisation which was financing for purchase of vehicles. No document whatsoever has been produced before the learned Magistrate to show that JSS Consultancy Pvt. Ltd. was the financing organisation. So far as the incident dated 18.2.2001 is concerned, though the complaint was lodged in a general manner that all the accused persons came along with 3 to 4 antisocials and took away the vehicle there is absolutely no allegation of any kind of overt act so far as the present Petitioner is concerned. The question raised by the learned Addl. Standing Counsel that the financing institution has no right to take away the vehicle forcibly has also been answered in the case of Silfred Benedict Alias Rajesh Bendict and Anr. v. Surya Kumar Sethi reported in (2001) 20 OCR 713, Relying on an earlier decision of the Apex Court, this Court in the aforesaid case held that when possession of the vehicle has been taken in terms of the agreement between the financier and the complainant, no criminal liability can be attributed and the dispute is of a civil nature. Therefore, taking away the vehicle from the possession of the complainant in the present case is a civil dispute as is evident from the hire purchase agreement filed before this Court. So far as the application of force or taking away the gold ring and gold chain are concerned, there is absolutely no allegation of any kind of overt act so far as the present Petitioner is concerned. There is also no material on record to attract Section 34 of the Penal Code.

5. I am, therefore, of the view that no offence in respect of which cognizance has been taken by the learned Magistrate is made out against the present Petitioner. I accordingly, quash the proceeding in I.C.C. No. 15 of 2001 pending in the Court of the learned J.M.F.C. (Rural), Cuttack so far as the present Petitioner is concerned. The case may proceed against other accused persons.