(1969) 12 PAT CK 0001

In the Patna High Court

Case No : Criminal Mis. C. No. 707 of 1969

Bishnu Kumar Sureka and Jai Kumar Sureka — APPELLANT

Vs

State of Bihar and Hari Pd. Chamaria — RESPONDENT

Date of Decision : 29-12-1969

Acts Referred:

Penal Code, 1860 (IPC) — Section 406, 409, 420

Citation : (1969) 12 PAT CK 0001

Hon'ble Judges : Kanhaiyaji, J

Bench : Single Bench

Advocate : B.P. Rajgarhia, for the Appellant; Brajeshwar Pd. Sinha, Parmeshwar Pd. Sinha and Arun Bihari Mathur, for the Respondent

Judgement

Kanhaiyaji, J.—This application is directed against the order dated 6.8.1968, passed by the learned Sub-divisional Magistrate taking cognizance u/s 420 of the Indian Penal Code. The petitioners have prayed for quashing the criminal proceeding pending in the court of Sri G.M. Konandi, Munsif-Magistrate, First Class, Samastipur. The opposite party (sic) complaint before the Sub-divisional Magistrate for prosecution of the petitioner under Sections 420, 409 and 406 of the Indian Penal Code. In the petition of complaint it is alleged that he has business both at Samastipur and Calcutta and he lives at both the places. He was on terms of acquaintance with the petitioners at Calcutta and he had full faith in them. The complainant wanted to start some good business and the petitioners suggested to him that he should start a transport business which would be named as Drang Transport Corporation and they would work as agents in the same and the complainant would be the proprietor thereof. The petitioners thereafter came to Samastipur on 2.1.1967, and the complainant having full faith in them made over Rs. 35,000/- in one lump sum for the business. The complainant went to Calcutta in March, 1967 and found the business running but he did not find his name as a proprietor. He, therefore, asked explanation from the petitioners to which they said that they were on the way of getting the corporation registered and that thereafter the name of the complainant would be entered as proprietor. According to the statement made in the complainant petition it was agreed between the parties at the time of giving money that monetary transaction would take place between them every year in the month of December. The complainant asked the petitioners to render accounts in the month of December, 1967, but they refused to do so saying that the business was carried in Nepal and that the money was not received till then from Sindri and other places. The petitioners assured the complainant to render account when money would be received. The complainant, asked about the registration of the Corporation but he left Calcutta as he became indisposed. The petitioners never came to Samastipur to render account and hence the complainant went to Calcutta on 1-8-1968, and demanded money from the petitioners. He also asked them to slow the account upto date but the petitioners refused to do so and told that the complainant wag free to go any where he liked. On the basis of these allegations it is alleged that the petitioners have deliberately misappropriated Rs. 35,000/- belonging to the complainant and when he went to demand the same the petitioners became ready to commit riot with him.

2. In the petition of complaint the essential terms agreed to between the parties for starting the business are not stated. It is also not stated therein that on what terms the petitioners agreed to act as agent of the complainant. Mr. Rajgarhia appearing for the petitioners drew my attention to Paragraph 6 of the petition wherein it is stated that the petitioners started the transport corporation much before the date as alleged by the complainant. The petitioners, it seems started the business in the name of Drang Transport Corporation in the year 1966 and not in the year 1968 as alleged in the petition of complaint. The assertion of the petitioners made in Paragraph 6 of the petition is not denied by the complainant in the counter-affidavit filed on his behalf. With reference to Paragraph 6 of the petition, in Paragraph 8 of the counter-affidavit the opposite party has alleged that the firm Drang Transport Corporation was not registered till the complaint petition was filed and as such the deponent had no knowledge that the Corporation was established since (sic)1966. The complainant not only knows the petitioners but also knows their family affairs. In Paragraph 2 of the counter-affidavit it is stated that it has been wrongly stated in the petition that the petitioners possess five houses in Calcutta. The real fact is that they are in possession of only one house which was purchased in auction sale for Rs. 3000/- by Banarasi Lal Saraf and subsequently the same was transferred to the mother of the petitioners for Rs. 3000/-. All these facts show that the complainant and the petitioners are fully known to each other in every respect and they might have entered in some agreement for carrying on transport business details of which are not given in complaint petition. Therefore, this seems to be a case based on contract. Mere breach of contract cannot give rise to a criminal prosecution. In my opinion, where there is no clear criminal intention of theft accused at the time the occurrence is said to have been committed and when the party aggrieved has his alternative remedy in the civil court the matter should not be allowed to be fought in a criminal court. For the reasons given above I

allow this application and quash the proceeding which is pending in the court of the learned Munsif-Magistrate at Samstipur.

