

(2009) 03 PAT CK 0049

In the Patna High Court

Case No : Criminal Miscellaneous No. 44208 of 2007

B.K. Sureka and Others

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 02-03-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 420, 427

Citation : (2011) 1 PLJR 615

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard learned Counsel for the Petitioners and for the State.

2. No one appears on behalf of the opposite party No. 2.

3. Even on the previous occasion, no one had appeared for opposite party No. 2 when this Court had adjourned the matter so as to grant him one more opportunity.

4. The Petitioners, who are office bearers of the Bharat Sugar Mills Ltd. assailed the order of cognizance dated 27.8.2007 in Complaint Case No. 1116/2007, Tr. No. 3304/2007 pending before the Judicial Magistrate, 1st Class, Gopalganj under Sections 420 and 427/34 of the Penal Code.

5. Learned Counsel for the Petitioners submits that the allegations were nothing but an attempt for coercing the company to purchase sugarcane from the complainant. There was no allegation of a nature to invoke either Section 420 or Section 427 of the Indian Penal Code.

6. The allegations in the complaint are, that the Petitioners as officials of the company, encouraged the complainant to engage in cane farming and grow more cane assuring him that they shall purchase cane from him. They issued requisition for five tyre cart loads and thereafter declined to issue requisitions

further. Cane grown by the opposite party No. 2 on such assurance thus got wasted.

7. Though the learned Counsel for the Petitioner has sought to persuade this Court on certain other grounds that the allegations were not bona fide but were an attempt to overcome the liability which the opposite party No. 2 owed to the company, this Court does not consider it necessary to go into that aspect.

8. Reading the complaint, as it is, allegedly there was contractual relationship between the parties. The Petitioners allegedly breached that contract by part performance only. As a consequence, the opposite party No. 2 allegedly suffered some loss that would give him a claim for compensation at best and not a criminal prosecution. This Court is satisfied on the face of the allegation that no offence u/s 420 or 427 of the Indian Penal Code is made out. The opposite party No. 2 did not part with any property on any assurance of the Petitioners which he would not have otherwise parted with as per the allegations in the complaint, if he was otherwise aware. There has been no deception by the Petitioners. For the like reason, there is no applicability of Section 427 of the Indian Penal Code inasmuch as the alleged refusal to pick up the balance sugarcane shall not amount to mischief causing loss or damage. Mischief would require some more positive loss act resultant in loss or damage.

9. This Court, in the facts and circumstances of the case, is satisfied that the prosecution of the Petitioners is in complete abuse of the process of the Court, more as an attempt on the part of the opposite party No. 2 to compel the Petitioner to succumb to the business claims by opposite party No. 2 and maintain the contractual relationship on his terms.

10. The application is allowed, the entire proceedings against the Petitioners are accordingly quashed.