

(2007) 05 JH CK 0039

In the Jharkhand High Court

Case No : Criminal Revision No. 363 of 1998R

Chintamani Pandey

APPELLANT

Vs

State of Bihar (now Jharkhand) and Another

RESPONDENT

Date of Decision : 10-05-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 245, 482
Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2007) 2 BLJR 2339 : (2007) CriLJ 3577

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Advocate : A.K. Trivedi, for the Appellant; D.K. Pd, Addl. P.P., for the Respondent

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—By the instant revision application, the petitioner has challenged the propriety of the order dated 18.9.1998 passed by the Sri S.P. Pandey, Judicial Magistrate, 1st Class, Dhanbad, in connection with CP Case No. 176 of 1989, whereby the prayer of the petitioner for his discharge u/s 245 Cr.P.C., was dismissed and the petitioner was directed to face trial for offences under Sections 420 and 406 of the Indian Penal Code.

1.1 The main ground in support of the prayer is that even if accepting the entire allegations in the application, no offence either u/s 420 or 406 IPC is made out against the petitioner. Further ground is that considering the facts admitted by the complainant and the witnesses, the court at Dhanbad has no territorial jurisdiction to try the case against the petitioner.

2. For better appreciation of the grounds advanced by the petitioner, the facts of the case may be briefly stated.

2.1 The case against the petitioner and others was registered on the basis of the complaint filed by the opposite party No. 2 before the learned court below alleging inter alia that the complainant and the accused persons were known to

each other and in course of their meeting him at his office at Dhanbad, they advised the complainant to purchase an electric crane. They had further persuaded the complainant to convert the electric crane into a diesel engine and for this purpose, they had also persuaded the complainant to deliver the crane to the petitioner for necessary repairs. The complainant on such inducement handed over the crane with spare parts to the petitioner who had his workshop at Durgapur. While the complainant was waiting for the delivery of his vehicle after execution of the work, its delivery was stalled by the petitioner on one pretext or the other. After awaiting for a considerable period, when the complainant did not get back his property or the price thereof, he filed his complaint for the offences u/s 406/420 IPC cognizance of which was taken by the learned trial court whereafter the complainant and his witnesses were examined at the pre-charge stage. When the stage arrived for framing of charge, the petitioner filed a petition u/s 245 Cr.P.C. for his discharge, which was rejected by the learned court below against which the petitioner has come up before this Court in this revision application. It further appears that earlier in Cr. Misc. No. 3486 of 1991(R) the petitioner had come to this Court u/s 482 Cr.P.C. for quashing of the order of cognizance and the entire criminal proceedings pending against him. By order dated 7.10.1991, the aforesaid Criminal Misc. Application was dismissed.

3. Learned Counsel for the petitioner while elaborating the grounds submits that the element of entrustment is essentially lacking even according to the entire evidence of the complainant and in absence of entrustment of any property, no offence u/s 406 IPC can be made out. Learned Counsel adds that likewise, the evidence adduced by the complainant do not even remotely suggest that the petitioner had induced the complainant to deliver the vehicle to him or that the petitioner while accepting the delivery of the vehicle for repairs had any dishonest intention and, therefore, no offence u/s 420 IPC is not made out against the petitioner. Referring to the third ground, learned Counsel submits that even according to the prosecution, the vehicle of the complainant was delivered at the petitioner's garage situated at Durgapur and the delivery of the vehicle after repairs was to be made at Durgapur and not at Dhanbad, and as such no cause of action having arisen within the jurisdiction of the court at Dhanbad, no offence can be said to have been made out against the petitioner.

4. Learned Counsel for the State on the other hand inviting attention to the earlier order passed by this Court in Cr. Misc. No. 3486 of 1991 submits that the same ground in identical terms was earlier agitated by the petitioner before this Court when he raised the controversy that on the basis of the allegation in the complaint petition, no offence u/s 406/420 IPC is made out. This Court while disposing of the aforesaid criminal Misc. petition had held that the allegation in the complaint did make out a prima facie case u/s 406/420 IPC. Therefore the petitioner cannot be allowed to raise the same issue over again in the revision application.

4.1 As regards ground of territorial jurisdiction, the learned Counsel submits that the allegation in the complaint petition suggests that the accused persons had met the complainant at Dhanbad and had persuaded him to purchase the electric crane and also induced him to undergo conversion of the engine into a diesel engine with further inducement that the conversion could be done at the petitioner's workshop at Durgapur. Such inducement having been made by the accused persons to the complainant at Dhanbad pursuant to which the complainant had sent his vehicle to the petitioner's garage at Durgapur, there is cause of action accruing to the complainant within the territorial jurisdiction at Dhanbad court also and therefore the ground of territorial jurisdiction is misconceived.

5. From the impugned order of the court below, it appears that the above grounds as advanced by the petitioner were duly considered and discussed by the learned court below and the same was rejected on the ground that a prima facie case is definitely made out for offences under Sections 406/420 IPC against the petitioner on the basis of the evidence on record.

6. Section 245 of the Code of Criminal Procedure, no doubt, enables the accused to invoke the powers of the trial court for his discharge from the trial. However, the scope of the powers u/s 245 Cr.P.C. is limited. Prayer for discharge can be allowed only if the entire evidence even if it remains un-rebutted, no offence whatsoever is made out. Such is not the situation in the instant case. Not only the trial court, but earlier this Court by order dated 7.10.1991 in Cr.Misc. No. 3486 of 1991 had observed that the allegation against the petitioner makes out, prima facie, a case u/s 406/420 IPC. In this view of the matter, the order impugned does not suffer from any impropriety or illegality

7. As regards the ground of territorial jurisdiction, it appears that the petitioner in his earlier criminal misc. application for quashing the criminal proceeding had not taken any such ground before this Court, though this ground has been taken at the stage of framing of charge, but as appears from the record, the controversy as has been raised in respect of this ground has been contested by the complainant who proposes to adduce evidence in support of his counter claim on the point of jurisdiction. As such, this controversy in itself constitutes an issue which can be resolved only at the trial when evidence is fully adduced. The learned trial court has rightly observed that this issue can be appreciated in course of the trial.

8. For the reasons stated above, I do not find any illegality or impropriety in the impugned order of the learned court below. This application is therefore sans merit. Accordingly, this revision application is dismissed. Let the lower court records be remitted back forthwith to the court below.