

(1999) 03 PAT CK 0011

In the Patna High Court

Case No : Criminal Miscellaneous No. 13799 of 1992

Dr. Rabindra Kumar Watsa @ Lalan Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-03-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Hire Purchase Act, 1972 — Section 23

Penal Code, 1860 (IPC) — Section 120B, 379, 408, 420, 468

Citation : (2000) 1 PLJR 605

Hon'ble Judges : R.N. Sahay, J

Bench : Single Bench

Advocate : Akhileshwar Prasad Sinha, for the Appellant; P.N. Pandey and Pankaj Kumar Sinha, for the Respondent

Final Decision : Allowed

Judgement

R.N. Sahay, J.—This is an application u/s 482 Code of Criminal Procedure for quashing the entire proceeding and the order dated 12.12.1991/5.2.1992 of the Chief Judicial Magistrate, Purnea, who summoned the petitioner for trial for offence punishable u/s 408, 468, 420 and 120B of the Indian Penal Code and section 23 of the Hire Purchase Act, 1972. The petitioner at the relevant time was Managing Director of M/s. Automatrix Pvt. Limited. The complainant Mahavendra Narain Choudhary is the resident of Mohalla-Amla Tola, Madhubani, P.S K. Hat in the district of Purnea. The complaint was instituted on 12.4.1991 which contains following facts. M/s. D.C.M. Toyota Pvt. Limited manufactures S.T.D. Bus. Ajay Sharma, who is accused no. 3 in the complaint petition is the Deputy Manager of Vehicle Finance Department of D.C.M. Toyota. He received a sum of Rs. 2,46,198/- on behalf of D.C.M. Toyota between 8.2.1988 and 31.10.1990. The petitioner is an Agent of D.C.M. Toyota Limited, Patna and is doing business in the name and style "M/s. Automatrix Pvt. Limited". The petitioner is a relation of the complainant Mahavendra Narain Choudhary. The petitioner had been visiting to the complainant at Patna. On account of

relationship the complainant and his father reposed confidence on the petitioner. M/s. Raj Auto Distributors, an Agent of D.C.M. Toyota Limited had office at Purnea. The petitioner is said to have suggested the complainant and his father to get S.T.D. Bus on Hire Purchase. The petitioner assured that he will arrange for hire purchase financial accommodation. The complainant arranged for money and the petitioner arranged for sale of D.C.M. Toyota S.T.D. Bus bearing Engine No. 18B-9006464 and Chasis No. BU 85-800-5117. On 8.2.1988, 18.2.1988 and 12.4.1988 advance was paid to D.C.M. Toyota Limited. Thereafter S.T.D. Bus was sold by D.C.M. Toyota to the complainant by sale letter dated 28.2.1988 with temporary registration number of the State of U.P. Raj Auto Distributors got the registration certificate issued from the office of D.T.O., Purnea bearing Registration No. Purnea BEK 9705 in which the complainant was shown owner of the Bus.

2. According to the complainant, he was the owner of the Bus in question and Allahabad Bank, Calcutta was the financier of the same. The allegation against the petitioner is that this petitioner suggested the complainant and his father to sign on some blank stamped papers and in good faith, the complainant and his father signed on blank stamped paper. The petitioner is alleged to have assured the complainant that on payment of the entire instalments name of Allahabad Bank, Calcutta would be deleted from the Registration Book. It is further alleged that a copy of the hire purchase agreement entered into at the time of sale of the alleged Bus was not supplied to him on the plea that the documents have to go to Allahabad Bank to obtain signature. The complainant never got the copy of the agreement. The complainant in good faith paid Rs. 2,46,196.00 to D.C.M. Toyota in between 8.2.1988 and 31.10.1990 and the same was accepted. A sum of Rs. 7000/- was received by Shyam Babu on behalf of D.C.M. Toyota Limited.

3. It is alleged that on 1st July, 1990 the petitioner Janardan Rai and Quarasor Ali Kauser Niaji forcibly seized the vehicle in question in Purnea and took away to Patna. The petitioner instituted a criminal complaint bearing Complaint Case No. 670 of 1990 before the Chief Judicial Magistrate, Purnea and in that case the petitioner and some other accused were summoned to face trial u/s 379 of the Indian Penal Code. The petitioner filed Cr. Misc. No. 2003 of 1991 before this Court for quashing the summons. The petitioner in that case had taken a plea that he was an agent of D.C.M. Toyota and was authorised to seize the vehicle because the D.C.M. Toyota Limited was the owner of the vehicle and the Bus was financed by a Bombay Firm. The complainant was sub-lessee of the bus which was given for three years only on sublease.

3A. According to the complainant, the sub-lease document was forged and fabricated by the petitioner. The complainant alleged that the entire amount of Rs. 2,46,198/- had been misappropriated by the accused persons. The bus after seizure was lying in Patna in the custody of the petitioner. It was contended that the complainant incurred huge loss on account of seizure. The complainant then contacted the petitioner at Patna to know why the bus had been seized.

4. As stated earlier, the petitioner had filed an application u/s 482 Cr. P.C. before this Court against the order of cognizance in the earlier complaint Case No. 670 of 1990. This Court after hearing the parties, stayed further proceedings in complaint Case No. 670 of 1990. This led to filing of second complaint on the same fact.

5. This Court in Cr. Misc. No. 2003 of 1991 quashed the complaint filed by the complainant. The order was passed on the statement of the complainant himself that the disputes between the parties have been amicably resolved. The dispute having been resolved, the complainant should not have pursued the second complaint. The petitioner has prayed for quashing of the complaint in the light of the following facts.

6. According to the petitioner, M/s. Automatrix Pvt. Ltd. is authorised representative of D.C.M. Toyota Limited like commercial vehicles. The company has been authorised to take all actions on behalf of D.C.M. Toyota Ltd. such as realisation of instalments as well as seizure of bus and recovery of bus. It is pertinent to state that before the first complaint was quashed by this Court, the petitioner had moved Anticipatory bail before the Sessions Judge in a case arising out of second complaint i.e. the present case. Before the Sessions Judge, Purnea the complainant intervened in the anticipatory bail application and a compromise was arrived at between the parties. The compromise petition contains signature of Sri Suman Kumar Sinha. Advocate for the complainant and Nityanand Saha for the petitioner. According to the terms of the compromise, Rs. 1,33,618/- was due to the complainant-opp. party which was agreed to pay on monthly instalment of Rs. 8500/- and in turn the D.C.M. Toyota on whose behalf bus had been seized, agreed to return the bus to the opp. party no. 2 in running condition. The complainant opp. party no. 2 agreed to pay the instalments positively by 15th of every month. The D.C.M. Toyota was entitled to realise interest @ 16% on the amount of payment due apart from further penal interest @ 16% in case of default. The complainant undertook to withdraw all civil and criminal cases instituted against D.C.M. Toyota including the petitioner. This will appear from Annexure-4, the order of the Sessions Judge, Purnea in Anticipatory Bail Petition No. 132/91. Thereafter the bus was handed over to the complainant as will appear from Annexure-6. The bus was handed over to the complainant on 28.10.1991 in running condition, for which the complainant executed a receipt. It appears that the complainant did not keep his promise and he did not withdraw the present complaint in which police submitted charge sheet and then this petitioner moved this Court.

7. Learned counsel for the petitioner contended that although no offence punishable under sections 408, 468, 420 and 120B Indian Penal Code and section 23 of the Hire Purchase Act, 1972 was made out against the petitioner in view of the agreement executed by the complainant in Annexure-3, but the police submitted charge sheet in the case. The Investigating Officer himself had come to the conclusion in course of investigation that it was at best a case of civil

dispute and no criminal case in view of compromise order as contained in Annexure-4. Opposite party no. 2 had also undertaken to withdraw all civil and criminal cases instituted against the petitioner. The bus was also returned to the opposite party no. 2. The second complaint was filed to harass the petitioner although the complainant should have no grievance when the bus was handed over to him in running condition. In my opinion, the contention of the petitioner's counsel is well founded and has to be accepted. The complaint was out and out malafide exercise. The complainant was playing hide and seek with the Court. The application, therefore, must succeed and is accordingly allowed. The complaint, cognizance and subsequent proceeding in K. Hat P.S. Case No. 102 of 1991 pending before the Chief Judicial Magistrate, Arrah is hereby quashed.