(2011) 01 PAT CK 0077

In the Patna High Court

Case No : Criminal Miscellaneous No. 1730 of 1999

Ideal Financing Corporation Ltd. and Others — APPELLANT

Vs

The State of Bihar and Rohit Kumar Singh — RESPONDENT

Date of Decision : 31-01-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 192, 34, 384, 418, 420

Citation : (2011) 59 BLJR 691

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—Five Petitioners, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, have prayed for quashing of an order dated 17.9.1998 passed by one Shri Shiv Shankar Jha, Judicial Magistrate, purnea in Complaint Case No. 361 of 1997/TR 2 No. 1371 of 1998. By the said order, learned Magistrate has taken cognizance of offence under Sections 384 and 420 of the Indian Penal Code.

2. The complainant, who was a Hire Purchaser, filed a complaint in the court of Chief Judicial Magistrate, Purnea vide Complaint Case No. 361 of 1997 arraying all the Petitioners as accused on accusation of commission of offences under Sections 420, 418 read with Section 34 of the Indian Penal Code. It was disclosed in the complaint petition that he had approached the Accused No. 1 i.e. Financial Company for getting a bus financed. According to the complainant, the negotiation was initiated through Accused No. 5 and there after, the Company including Accused Nos. 2 to 4 agreed to finance a bus on Hire Purchase basis. Accordingly, a bus bearing Engine No. 697D 28 M 93112757, Chesis No. 359-35 OM 93-109374, Registration No. BR-39-8539 on initial payment made by the complainant was purchased. As per agreement, the total amount of Rs. 6,08,332/- was to be paid by the complainant in between 7th December,1993

and 7th December,1996. It was 3 alleged by the complainant that by 1.10.1996, the complainant had already paid a total sum of Rs. 6,21,750/- and nothing remained to be paid by the complainant. However, the accused persons did not issue certificate to this effect. The complainant disclosed that previously some differences arose between the complainant and accused persons regarding accounting and the Company/accused made a reference to Arbitrator whereby the complainant was noticed by the Arbitrator to appear before him and file his show cause. On being enquired, the accused wrote a letter to the complainant''s man (Karpartas), Shri Mukun Singh showing the details of total amount recoverable from the complainant. After receipt of the notice from the Arbitrator, with a copy of the statement of claim, the complainant''s Karpartas went to Calcutta and approach the accused persons. However, the accused persons persuaded him to deposit Rs. 1,30,000/-, which was paid in cash and draft. After receipt of said money, it was assured by the accused persons that they will sent clearance certificate to the complainant to Purnea.

4 It was alleged that said money of Rs. 1,30,000/- was realized by accused persons fraudulently and dis-honestly in conspiracy with each other. Subsequently, the vehicle of the complainant, while plying from Jogbani to Purnea and came to Araria Bus Stand, the Accused No. 5 (Petitioner No. 5) with the police help seized the vehicle and kept the same under police protection. After coming to know, the complainant rushed to Araria and from police station, he learnt that Accused No. 5 had got an order from Chief Judicial Magistrate, Araria for providing police protection to him for seizure of the vehicle, which was kept in their custody. Subsequently, the complainant came to know that Civil Court, Calcutta, by an order dated 10.11.1995, had appointed one Smt. Mukti Dutta as Receiver to seize the vehicle and said Smt. Mukti Dutta had authorized the Accused No. 5, an employee of Accused No. 1/Company to act as the authorized agent of the Receiver and to seize the vehicle. Accordingly, with the help of police, the seizure was conducted. It was alleged by the complainant that an 5 amount of Rs. 1,30,000/- was fraudulently cheated from the Petitioners by the accused persons conspiring with each other. After filing of the complaint, the complainant was examined on S.A. by the Chief Judicial Magistrate and after conducting enquiry to some extent i.e. after examining two witnesses, the Chief Judicial Magistrate, Purnea transferred the complaint to the court of Shri Shiv Shankar Jha, Judicial Magistrate, Purnea for further enquiry exercising power u/s 192 of the Indian Penal Code. Before the transferee court, one more witness was examined on behalf of the complainant and after examining the materials available on record, the learned Magistrate, by its order dated 17.9.1998, took cognizance of offence under Sections 384 and 420 of the Indian Penal Code against all the accused persons/Petitioners and directed for summoning them to face trial.

3. Aggrieved with the order of cognizance, the aforesaid Petitioners approached this Court by filing the present petition, which was admitted on 30.7.1999 and while admitting, it was directed that 6 during the pendency of the application,

interim order passed on 10.5.1999 shall continue.

4. While questioning the impugned order of cognizance as well as initiation of entire criminal proceeding in Complaint Case No. 361 of 1997, at the very outset, Shri Rajiv Sinha, learned Counsel for the Petitioner, argued that on bare perusal of the complaint petition as well as admission of the complainant in its complaint, no criminal offence is made out. It was further submitted that the present complaint was filed purposely with a view to prevent the Petitioner No. 1 i.e. Company from realizing the dues, which was required to be cleared by the complainant. It was submitted by Shri Rajiv Sinha, learned Counsel for the Petitioner that on reading of the entire complaint petition no offence under the penal law is made out against the accused Petitioners on the face of the admitted facts. In the said complaint petition it is admitted that the vehicle in question, bearing Registration No. BR-39-8539, was financed under Hire Purchase Agreement from the Ideal Financing 7 Corporation Ltd., of which the Petitioner Nos. 2 and 3 are Directors, Petitioner No. 4 is Manager-cum-Authorised Signatory and Petitioner No. 5 is an employee. The dues were admittedly not paid for which an arbitration proceeding was initiated in terms of the Hire Purchase Agreement. Further, the vehicle in question was seized pursuant to judicial order dated 10.11.1995 issued by the City Civil Court, Calcutta, appointing Receiver to seize the vehicle in question as the complainant defaulted in payment of dues. As such it is evident that the seizure of the vehicle on 19.6.1997 was due to default in payment of the dues under bonafide right and agreement of hire purchase and accordingly no offence under the penal law is made out. It was further argued that the complainant had falsely alleged in the complaint petition that the accused person induced the complainant-opposite party to pay a sum of Rs. 1,30,000/- with an assurance to pass the ownership of the said vehicle to the complainant and to issue Hire Purchase Termination Certificate. In fact by registered legal notice dated 20.10.1995 8 the opposite party was required to pay to the Petitioners a sum of Rs. 3,09,343/- as detailed in the said notice, failing which legal proceeding including referring the matter to arbitration in terms of the relevant agreement for recovery of the dues shall be taken up. The complainant opposite party failed to response to the said legal notice whereafter legal proceeding for appointment of receiver and seizure of the vehicle in question was taken up before the City Civil Court, Calcutta in Misc. Case No. 2435 of 1995 (M/s Ideal Financial Corporation Ltd. v. Rohit Kumar Singh). The said City Civil Court, Calcutta passed order dated 10.11.1995 appointing Smt. Mukti Dutta, Advocate as receiver in respect of the vehicle in question and taking possession of the said vehicle. The vehicle in question was taken possession on 19.6.1997 and kept at Araria Police Station for protection and safety. Learned Counsel for the Petitioner has also referred to paragraph-11 of the petition wherein he had given the break up of dues against the complainant and total amount, which was to be realized from the complainant according 9 to the Petitioners was Rs. 2,49,284/- as on 11.1.1999.

5. Shri Rajiv Sinha, in view of the facts and circumstances as well as facts

enumerated in the complaint petition, submits that the entire criminal proceeding as well as impugned order of cognizance is liable to be set aside. Shri Sinha further argued that in a case of Hire Purchase Agreement, criminal prosecution is not permissible. He has heavily relied on an apex court judgment in this context reported in AIR 1979 SC 859 (Trilok Singh and Ors. v. Satyadeo Tripathi). He has further relied on a single Bench order of this Court reported in Mohan Singh, R. Prasad @ Rakeshwar Prasad and Ajay Kumar Sinha Vs. The State of Bihar . Accordingly, it has been prayed to set aside the order of cognizance as well as entire proceeding in Complaint Case No. 361 of 1997.

6. Shri Kumar Uday Singh, learned Counsel appearing on behalf of opposite party No. 2, has vehemently opposed the prayer of the Petitioners. In this case, a detailed counter affidavit was also filed on behalf of opposite party No. 2. Learned 10 counsel for opposite party No. 2, while referring to averments made in the counter affidavit, has submitted that total amount of Rs. 6,21,750/- was already paid by the complainant in 25 instalments from 17.12.1999 to 1.10.1996. Learned Counsel for opposite party No. 2 has emphasized that the accused persons in the garb of issuance of Hire Purchase Termination Certificate had induced the complainant for payment of additional Rs. 1,30,000/- despite clearance of all the dues earlier. It was further submitted by Shri Kumar Uday Singh that the Petitioners have approached this Court at initial stage of a criminal proceeding wherein at the moment only order of cognizance was passed by the learned Magistrate after conducting thorough enquiry and as such it would not be appropriate to interfere with the impugned order that too, while exercising power u/s 482 of the Code of Criminal Procedure. It was submitted that power u/s 482 of the Code of Criminal Procedure is basically required to be exercised in exceptional cases and it is not a case, which can be categorized as 11 exceptional one. Accordingly, it was submitted to reject the present petition.

7. Shri Shailendra Kumar, learned Additional Public Prosecutor, has supported the stand taken by Shri Kumar Uday Singh, learned Counsel for the complainant/ opposite party No. 2.

8. Besides hearing learned Counsel for the parties, I have also perused the materials available on record. In the complaint petition itself, the complainant has categorically disclosed that the vehicle in question was seized by the Petitioner No. 5 with the help of police as per the order of the court. The complainant himself has disclosed such fact in the complaint petition. So far as allegation of realization of excess payment of Rs. 1,30,000/- is concerned, the court is of the opinion that such allegation cannot constitute a criminal offence. On the basis of facts and materials available on record of the case, the court is of the opinion that in a civil dispute, the complainant had tried to give a colour of criminal offence and the learned Magistrate, acting on such complaint, has committed an error.

9. In the facts and circumstances, the court is of the opinion that order of cognizance is not sustainable in the eye of law. A criminal court may not be

allowed to be abused for purely civil and accountancy dispute.

10. Accordingly, the order of cognizance dated 17.9.1998 passed by shri Shiv Shankar Jha, Judicial Magistrate, Purnea as well as entire criminal proceeding in Complaint Case No. 361 of 1997 is hereby set aside and petition stands allowed.