
(1998) 08 PAT CK 0010

In the Patna High Court

Case No : Criminal Miscellaneous No. 11479 of 1993

Ishwar Chandra and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 20-08-1998

Acts Referred:

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

Citation : (1998) 3 PLJR 322 : (1999) 1 RCR(Criminal) 615

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Advocate : Ajay Kumar Mathur, for the Appellant; Nagendra Kumar Roy, for the Respondent

Final Decision : Allowed

Judgement

Narayan Roy, J.—Heard learned counsel for the petitioners and also learned counsel for the complainant-opposite party no. 2. By this application u/s 482 of the Code of Criminal Procedure, the petitioners have prayed for quashing the entire criminal prosecution launched against them u/s 406 and 420 of the Indian Penal Code including the order taking cognizance dated 12.7.1993 in Complaint Case No. 732(c) 92/71/93.

2. Learned counsel appearing on behalf of the petitioners submitted that even on the face of the complaint petition, it would appear that there was an agreement entered into in between the parties on 13.10.1984 and pursuant to the agreement, the vehicle in question was handed over to the complainant on hire purchase and, therefore, it manifestly makes it clear that it is a case of civil liability and the petitioners cannot be held liable for criminal charges. Learned counsel further submitted that before filing of the complaint petition, the opposite party no. 2 had filed another complaint petition which was sent to the police for institution of a case and the first information report was duly instituted and the police after due investigation submitted final report which was accepted

by the learned Magistrate on 29.9.1992 and thereafter cognizance has been taken on the basis of the protest petition filed by the opposite party no. 2 treating it as a complaint. Learned counsel in support of his proposition that it is a case of civil liability, has relied upon the decisions in the case of Trilok Singh and others vs. Satya Deo Tripathi (AIR 1979 Supreme Court 850) and in the case of Sharad Agrawal & ors. vs. The State of Bihar and others (1993 (2) BLJ 235). Learned counsel appearing on behalf of the opposite party no. 2, however, submitted that even if there was an agreement, the petitioners cannot shirk their liability of the criminal charges and there are sufficient facts disclosed in the complaint petition making out a case u/s 406 and 420 of the Indian Penal Code.

3. It appears that the learned counsel appearing on behalf of the opposite party no. 2 is not denying existence of the agreement which appears to be the basis for hire purchase of the vehicle in question. Since there is already an agreement in between the parties, in my opinion, the complainant has civil remedy and the petitioners, in that view of the matter, can not be held liable for criminal charges. In the case of Trilok Singh and others vs. Satya Deo Tripathi (supra) the Apex Court has held that a proceeding initiated for criminal consequence was clearly an abuse of process of the court as there was already a hire-purchase agreement in between the parties. Similar is the situation in the case at hand and the ratio laid down by the Apex Court appropriately applies in the facts and circumstances of this case. Again, the same view has been reiterated by this Court in the case of Sharad Agrawal & others vs. The State of Bihar & ors. (supra) that when there is an agreement, launching of criminal prosecution shall be an abuse of process of the court. Seeing the legal propositions and noticing facts aforesaid, must be held in this case that the criminal prosecution launched against the petitioners is an abuse of process of the court and the same is liable to be quashed. Without going into other questions raised at the Bar, I, therefore, allow this application only on the ground of finding it a case of civil consequence and quash the entire criminal prosecution launched against the petitioners.