

(2006) 11 PAT CK 0150

In the Patna High Court

Case No : Criminal Miscellaneous No. 2283 of 2005

Jagdish Khattar and Another

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 03-11-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 202, 406, 409, 420

Citation : (2008) 1 PLJR 8

Hon'ble Judges : Madhavendra Saran, J

Bench : Single Bench

Advocate : R.K. Giri and Kinkar Kumar, for the Appellant; S. Azeem For the State, for the Respondent

Final Decision : Allowed

Judgement

Madhavendra Saran, J.—This application u/s 482 of the Code of Criminal Procedure (in short as the Code) has been filed for quashing the order dated 21.8.2002 passed by Shri Arun Kumar Srivastava, Judicial Magistrate, 1st Class, Patna in Complaint Case No. 571 (C) of 2001 whereby and whereunder he has taken cognizance of the offences punishable under sections 406, 409 and 420 of the Indian Penal Code and directed for issuance of summons against the petitioners. The case of the prosecution, in short, as put in the petition of complaint is that the complainant M/s Ashok Leyland Finance Ltd. is a company incorporated under the Indian Companies Act, 1956 having its corporate office at Sudersan Building 86, Chamiers Road, Chennai and operating in the State of Bihar through its Regional Office situated at 607, Luv Kush Tower, Exhibition Road, PS. Gandhi Maidan, District Patna and is engaged in the business of financing and miscellaneous purchase. It is said that accused No. 1 is a firm and authorised dealer of accused No. 4, Maruti Udyog Ltd. Accused Nos. 5 and 6 i.e. two petitioners are the principal officers of Maruti Udyog Ltd. and incharge of its day to day activities. During usual course of business the complainant company required vehicles of Maruti make to be financed to the complainant's customers

in the year 1998. It is alleged that accused No. 1 M/s Johal Tractors came to know about the requirement of complainant company and approached the complainant for supply of Maruti vehicles. The complainant was approached by accused No. 3 Shri N.S. Chauhan, Assistant Manager, Johal Tractors at the complainant's Patna Office, who induced the complainant firm by informing that they are in a position to deliver more than 20 Maruti Vehicles within a period of one month and in case of delay they would pay 2% monthly interest. It is further alleged that accused No. 3 further assured the complainant that there will be no problem in dealing and accused No. 6 Regional Manager, Maruti Udyog Ltd., Park Street, Calcutta also assured the complainant on behalf of Maruti Udyog Ltd. that the assurances given by accused No. 3 are true and worthy of believing. The complainant believing their assurances confirmed bulk purchase of minimum 10 Nos. of Maruti 800 CC Cars and 10 Nos. of Maruti Omni Vans and accordingly made payment of Rs. 37,30,000/-. It is further alleged that after receiving above payment accused persons began to delay the supply of Maruti Vehicles on one pretext or the other. After a delay of many months when the complainant began to request for refund of his money the accused persons delivered seven vehicles at the interval of several months. In October, 1999 the complainant again requested for refund of its balance amount but the accused persons did not do so and till December, 2000 the accused persons were required to refund to the complainant a sum of Rs. 12.67 lacs approximately after making deductions for the vehicles supplied by them. Legal notice was also given to the accused persons but the amount was not returned.

2. It appears that the complainant was examined on solemn affirmation and during inquiry u/s 202 of the Code two witnesses were examined and the learned Magistrate finding that there was sufficient material to proceed against the accused persons under sections 409, 420 and 406 of the Indian Penal Code, issued summons against them.

3. It has been argued that the petitioner No. 1 is Managing Director of Maruti Udyog Limited and is merely concerned with the policy matters of the company. He is not directly concerned with day to day functioning of the company. Petitioner No. 2 is the Regional Manager of M/s Maruti Udyog Ltd. and is based at Kolkatta looking after the matters of the eastern zone. Learned counsel submitted that the alleged transaction which was made at the time of booking of the vehicles was between the complainant and accused Nos. 1, 2 and 3. The transaction made between the complainant and the dealer (accused No. 1) was independent of the transaction made between the dealer (accused No. 1) and the petitioner's company. In this connection he referred to clause-18 of the Dealership agreement and submitted that it is clearly mentioned therein that the company i.e. Maruti Udyog Limited will not be liable for any failure, delay or error in delivery or any consequential loss arising therefrom, howsoever, caused. He submitted that two petitioners cannot be held responsible for any omission or commission made by dealer who is not an agent/representative of the company. Learned counsel also pointed out that Maruti Udyog Limited does not deliver the

vehicles directly to the customers nor any payment is received directly from the customers and as such there is no transaction between the customers and the Maruti Udyog Limited Company of which petitioners are the officers.

4. In spite of service of notice, the opposite party No. 2 has not chosen to contest the matter.

5. Learned A.P.P. on the other hand supported the impugned order.

6. From the supplementary affidavit filed by the petitioners it appears that the alleged Bank drafts were never entrusted to these petitioners rather the same were entrusted to M/s Johal Tractors (accused No. 1) vide true photocopy of the money receipts Annexure-6 series.

7. As per dealership agreement accused No. 1 M/s Johal Tractors is the dealer of Maruti Udyog Ltd. It is mentioned in the said agreement that the dealer is not the agent or the representative of the company for any purpose and the dealer shall not describe or represent itself as such. Then clause-18 of the agreement is very much relevant as it says that the company will not be liable for any failure, delay or error in delivery or any consequential loss arising therefrom.

8. In the complaint petition and also in the statement of witnesses nothing specific has been alleged against the present two petitioners. The bank draft for booking of the vehicles were prepared in the name of M/s Johal Tractors (accused No. 1) and not in the name of petitioners' company. Such being the position, the present case against the petitioners is not maintainable. The continuation of present proceeding against the petitioners, in my considered opinion will be an abuse of the process of the court. In the facts and circumstances of the case, this application is allowed and the impugned order of cognizance as against the petitioners is only quashed.