
(2009) 08 JH CK 0056
In the Jharkhand High Court

Jageshwar Prasad

APPELLANT

Vs

The State of Jharkhand and Nitai Kumar Dasgupta

RESPONDENT

Date of Decision : 05-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 482
Penal Code, 1860 (IPC) — Section 385, 417

Citation : (2009) 08 JH CK 0056

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prashant Kumar, J.—In this application petitioner prayed for quashing the order dated 23.5.2006 in connection with Complaint Case No. 124 of 2006 corresponding to T.R. No. 1241 of 2006 pending in the court of Sri Amit Shekhar, Judicial Magistrate, 1st Class, Giridih whereby and whereunder, cognizance u/s 385 and 417 of the IPC was taken against the petitioner. Petitioner further prayed for quashing of entire criminal proceeding of aforesaid case.

2 It is alleged that the petitioner who is Sub Divisional Officer, (Telephone) had issued fake, false and forged telephone bill in the name of complainant in spite of the fact that the complainant had already paid the bill for those period. It is further alleged that the telephone connection of complainant was disconnected by the petitioner for non payment of aforesaid forged, false and fabricated bill. It is alleged that the aforesaid bills were issued in the name of complainant with an intention to cheat him with some ulterior motive.

3. It appears that the said complaint was sent to the court below for inquiry u/s 202 of the Cr.P.C. and the learned court below after inquiry, come to the conclusion that prima facie, case u/s 385 and 417 of the IPC is made out. Accordingly, the court below directed for issuance of summon against the petitioner vide order dated 23.5.2006.

4. It is submitted by learned Counsel for the petitioner that from perusal of entire complaint petition as well as the statement of complainant on S.A. and also the statement of witness examined during inquiry, no offence against the petitioner is made out. It is submitted that the allegation made in the complaint petition is so absurd and improbable that no prudent man can reach to a conclusion that there is sufficient ground for proceeding against the accused-petitioner. It is submitted that the issuance of process in the instant case is an abuse of process of court and therefore the same cannot be sustained by this Court.

5. It appears from the supplementary affidavit that the O.P. No. 2 had received notice on 11.7.2009 but in spite of the same, he did not choose to appear and oppose this case.

6. Having heard the submission, I have gone through the record of the case. From the perusal of the impugned order, I find that the court below had come to the conclusion that prima facie an offence u/s 385 and 417 of the IPC is made out. Section 385 of the IPC provides that if any person put another person in fear or attempt to put any person in fear of any injury with a view to commit extortion, he shall be liable to be punished u/s 385 of the IPC. Whereas Section 417 provides that if any body commits the offence of cheating he will be punished with an imprisonment to the extent of one year or with fine or with both.

7. From perusal of entire complaint petition, the statement of complainant on S.A. and also the statement of witnesses examined during inquiry (Anexure-4), I find that there is nothing in it to show that the petitioner, at any point of time, threatened the complainant or put him in fear of any injury with a view to commit extortion. Likewise there is nothing in the complaint petition as well as the statement of complainant and witnesses that the petitioner had ever deceived the complainant either by making false or misleading representation or fraudulently or dishonestly induced him to deliver any property. In the entire complaint petition as well as the statements of complainant and witnesses, the only thing against this petitioner is that he had disconnected the telephone connection of complainant even though the complainant had already cleared all the outstanding dues. Thus the aforesaid allegations do not constitute offences u/s 385 and 417 of the I.P.C.

8. It has been held by their Lordship of Supreme Court in State of Haryana and others Vs. Ch. Bhajan Lal and others, that if the allegations made in the complaint petition do not disclose the commission of any offence and make out a case against the accused and if the allegations made in the complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused, the High Court while exercising the power u/s 482 of the Cr.P.C. can quash the criminal proceeding initiated against the accused-petitioner.

9. In the instant case, as noticed above, from the allegations made in the complaint petition, no offence u/s 385 and 417 of the IPC is made out. Moreover in the complaint petition, only an allegation has been made that the telephone connection has been disconnected on the behest of petitioner for non payment of dues. From these allegations, no prudent person can come to a conclusion that the accused petitioner has committed any offence.

10. Under the said circumstance, I find that learned magistrate had not applied his mind properly on the facts of the case and had wrongly come to the conclusion that prima facie offence u/s 385 and 417 of the IPC is made out against the petitioner. Thus the issuance of process against the petitioner by the impugned order is an abuse of the process of court.

11. In the result, this application is allowed. The impugned order dated 23.5.2006 as well as the entire criminal proceeding in connection with Complaint Case No. 124 of 2006 corresponding to T.R. No. 1241 of 2006 pending in the court of Sri Amit Shekhar, Judicial Magistrate, 1st Class, Giridih, is hereby quashed.