
(2005) 11 PAT CK 0042
In the Patna High Court
Case No : Criminal Misc No. 28256 of 2004

Jay Nath Prasad	Vs	APPELLANT
The State of Bihar and Another		RESPONDENT

Date of Decision : 24-11-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 379, 384, 406, 420

Citation : (2006) 1 PLJR 457

Hon'ble Judges : Rajendra Prasad, J

Bench : Single Bench

Advocate : Gopal Govind Mishra, for the Appellant; N.K. Prasad and S.B.N. Singh for O.P. No. 2 and Mr. Bishweshwar Ram, for the Respondent

Final Decision : Allowed

Judgement

Rajendra Prasad, J.—This application has been filed for quashing order dated 4.6.2003 passed by Sri S. Ram, Judicial Magistrate, Arrah at Bhojpur, in Complaint Case No. 1440C/ 2002 u/s 420, 406, 384 and 379 I.P.C. whereby the learned Magistrate has taken cognizance and issued process against the petitioner. Contention of learned counsel for the petitioner is that even if the facts stated in the complaint are taken as it is the same do not constitute an offence u/s 406 I.P.C. under which learned Magistrate took cognizance against the petitioner and others named in the complaint petition. Learned counsel for the petitioner submitted that the facts alleged in the complaint indicate that the complainant alongwith petitioner and others had started running a Chimni Bhatia and the complainant had share in the sale proceeds of bricks but the petitioner and others named in the complaint did not pay to the complainant and so such facts do not indicate that the complainant in any manner entrusted any of his property with the petitioner and other named persons in the complaint petition. Learned counsel for the petitioner further pointed out that the complainant has filed a title suit praying for a decree to the extent of his share in the business and the complainant may get relief in that suit.

2. Having regard to the facts stated in the complaint petition indicating civil nature of case and the complainant also filed title suit for a decree of his share in the business, I am of the view that the facts alleged in the complaint petition do not make out a prima facie case u/s 406 I.P.C. against the petitioner and others and so I find merit in this application. In the result, the order dated 4.6.2003 passed in Complaint Case No. 1440C/2002 by the Judicial Magistrate, Arrah at Bhojpur taking cognizance against the petitioner and other persons named in the complaint petition is, hereby, quashed and this application is allowed.