

(1999) 11 PAT CK 0061

In the Patna High Court

Case No : Criminal Miscellaneous No. 13779 of 1995

Jaydeyal Banka and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 11-11-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 204, 482
Penal Code, 1860 (IPC) — Section 409

Citation : (2000) 1 BLJR 285 : (2000) 2 PLJR 52

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Narayan Roy, J.—Heard Counsel for the parties.

2. This application u/s 482 of the Code of Criminal Procedure (hereinafter referred to as "the Cr. P.C.") has been filed for quashing the entire criminal prosecution launched against the petitioners u/s 409 of the Indian Penal Code.

3. It appears that the petition of complaint was filed by the complainant-opposite party No. 2 before the Chief Judicial Magistrate, Sasaram and on the basis of the complaint petition, Complaint Case No. 152 of 1994 was registered by the learned Magistrate and the learned Magistrate on the basis of the allegations levelled in the complaint petition and statement of the complainant on solemn affirmation took cognizance of the offence on 14-9-1994 u/s 409. of the Indian Penal Code.

4. Learned Counsel for the petitioners submitted that even at the face of the complaint petition, no offence whatsoever is made out against the petitioners and the allegation levelled against the petitioners appears to be inherently improbable and highly absurd. Learned Counsel further submitted that the petitioners were financiers for purchase of a diesel Jeep and according to the Motor Vehicles Act, it was made clear in the registration book itself that the

vehicle in question is hypothecated to the Financier Company and in the owner book, the name of the Financier Company was mentioned. Learned Counsel further submitted that on account of the alleged theft of Jeep in question, the financier had claimed insurance amount from the Insurance Company and the claim of the petitioners was allowed and certain payments were made and the Complainant for getting the claim himself came out with the present complaint petition making out a false case against the petitioners.

5. Learned Counsel for the opposite party No. 2, on the contrary, submitted that the complaint petition discloses sufficient facts making out an offence u/s 409 of the Indian Penal Code and the question urged by the petitioners shall be considered in course of trial.

6. I have perused the complaint petition and the order taking cognizance, At the face of the complaint petition, the allegation levelled against the petitioners appears to be highly improbable and absurd and at best in can be gathered from the statements made in the complaint petition that the Complainant had certain grievance against the petitioners for non-payment of insurance amount to him. The allegation levelled against the petitioners, in that view of the matter, must be held to be of civil consequence and at best the complainant could have claimed money from the Insurance Company itself but in no way it can be said to be of criminal wrong on the part of the petitioners.

7. In the case of the State of Haryana and others Vs. Ch. Bhajan Lal and others, , the apex Court has held that where the allegations made in the complaint petition 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 continuance of the criminal proceeding must be held to be an abuse of the process of the Court. Again, in the case of Punjab National Bank and others Vs. Surendra Prasad Sinha, , the apex Court has observed that judicial process should not be an instrument of oppression or needless harassment. The Court should be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complainant as vendetta to harass the persons needlessly.

8. In the case at hand, it appears that the complaint petition has been filed out of personal grudge and vendetta just to harass and humiliate the petitioners. In this view of the matter, the issuance of process against the petitioners will be an abuse of process of the Court. The learned Magistrate, as it appears from the impugned order, has not applied judicial mind before issuing process against the petitioners. Issuance of process u/s 204 of the Cr. P.C. is a question of judicial determination and it is incumbent upon the learned Magistrate to apply his judicial mind to the contents of the complaint petition. The Magistrate is also required to scrutinise the statements made in the complaint petition and if it appears to him that the complaint petition has been filed out of personal grudge and vendetta making it an instrument of oppression or needless harassment, the

learned Magistrate should exercise his powers judiciously and cautiously.

9. For the reasons and discussions made and in view of the legal propositions noticed above, I find sufficient force in the submissions of the learned Counsel for the petitioners. Consequently thereof, the en-, tire criminal prosecution launched against the petitioners is hereby quashed. This application accordingly, is allowed.