
(1987) 05 P&H CK 0041

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 1447-M of 1987

Lalan Singh

APPELLANT

Vs

State of Haryana and ors.

RESPONDENT

Date of Decision : 03-05-1987

Acts Referred:

Citation : (1987) 2 PLR 395 : (1988) 2 RCR(Criminal) 595

Hon'ble Judges : Pritpal Singh, J

Advocate : Ajay Lamba, A.S. Grewal, R.L. Sarin, Lakhinder Singh, A.S. Chadha,
Advocates for appearing Parties

Judgement

Pritpal Singh, J.

1. The impugned complaint dated April 21, 1985 (Annexure P1) and the consequent summoning order of the Chief Judicial Magistrate, Faridabad, dated July 25, 1986 (Annexure P2) are sought to be quashed in this petition by Lalan Singh.

2. It is alleged in the complaint that the complainant Company is engaged in the manufacture of gasstoves, grillers and other allied products in Faridabad. At the instance of petitioner Lalan Singh accused No. 1, the complainant Company despatched goods worth Rs. 66,000/ to Patna through Jamshedpur Transport Corporation, accused No. 2. The documents of title were sent through Oriental Bank of Commerce. The agreed terms of the transaction of the sale were that the petitioner will pay the price of the goods to the bank and then the aforesaid transport company will deliver the goods to him. In violation of these conditions the transport company delivered the goods to the petitioner although the latter did not pay the price to the Bank. Some other transactions were also made between the parties and some payments were made by the petitioner. Accounts were gone into on December 26, 1985 and it was found that a sum of Rs. 35,000/ and odd was outstanding against the petitioner. Some agreement was also arrived at between the parties according to which the petitioner promised the complainant company to collect some gasstoves and grillers from a number of

dealers to return the same to the complaint company. The petitioner, however, failed to do so.

3. The trial Magistrate, on the allegations contained in the complaint, supported by the preliminary evidence, summoned the petitioner under Section 406, Indian Penal Code.

4. It is contended on behalf of the petitioner that from the allegations contained in the complaint no offence under Sections 406, Indian Penal Code, is made out against the petitioner. This plea is not without foundation. To constitute an offence under Section 406, Indian Penal Code, two facts have to be alleged and proved. Firstly, that the complainant entrusted some property with the accused and secondly that the latter dishonestly misappropriated the property. In the present case the allegations contained in the complaint, do not fulfil these conditions. There is no allegation of entrustment of property to the petitioner. The contents of the complaint bear out that it is a case of breach of contract of sale which is a purely civil dispute. The petitioner is alleged to have taken delivery of goods purchased by him without paying the price in violation of term's or the contract of sale.

5. In my view, therefore, the allegations contained in the impugned complaint bring to light only breach of contract on the part of the petitioner. The ingredients of Section 406, Indian Penal Code are not existing. Consequently, this petition is allowed and the impugned, complaint (Annexure P 1) 1) with the summoning order (Annexure P2) are quashed visavis the petitioner.