(2013) 05 JH CK 0055

In the Jharkhand High Court

Case No : Criminal Revision No. 1051 of 2012

Md. Rahim Ansari @ S.K. Rahim Ansari @ Rahim Ansari @ S.K. Rahim and Md. Ramjan Ansari @ S.K. Ramjan Ansari @ Ramjan Ansari @ S.K. Ramjan — APPELLANT

Vs

The State of Jharkhand — RESPONDENT

Date of Decision : 05-05-2013

Acts Referred:
Penal Code, 1860 (IPC) — Section 120B, 34, 406, 409, 420

Citation : (2013) 05 JH CK 0055

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : Pandey A.N. Roy, for the Appellant;

Final Decision : Allowed

Judgement

Harish Chandra Mishra, J.—Heard learned counsel for the petitioners and learned counsel for the State. Petitioners are aggrieved by the order dated 23.11.2012 passed by Sri S.N. Singh, Learned Judicial Magistrate, 1st Class, Lohardaga, in Lohardaga P.S. Case No. 103 of 2010, corresponding to G.R. No. 373 of 2010, whereby on hearing on the point of charge, the Court below has found sufficient materials in the case diary for framing charge against the accused petitioners for the offence u/s 406 /34, 409 /34, 420 /34 and 120B of the Indian Penal Code and has framed the charge accordingly, fixing the case for evidence.

2. The petitioners have been made accused in Lohardaga P.S. Case No. 103 of 2010, corresponding to G.R. No. 373 of 2010. The case was instituted on the basis of the written information given by the authorised representative of one Paragon Finance Ltd., having its office at Ranchi, wherein it is alleged that both these petitioners had approached the finance company for financing one tractor and trailer on the hire-purchase basis. It is stated in the FIR that the payments of some installments were also made, but subsequently the payment was stopped and a considerable sum of money became due. The FIR also shows that

finally in order to make the payment of money, they also sold the vehicle and made part payment to the company, but the entire payment was not made. Claiming that the petitioners were having fraudulent intention at the inception of the deal, the FIR was lodged against the petitioners. It appears that after investigation, the police filed charge-sheet against the petitioners and the cognizance was also taken by the Court. After taking cognizance, the charge was framed against the accused petitioners by order dated 23.11.2012.

3. Learned counsel for the petitioners has submitted that the impugned order passed by the Court below is absolutely illegal, in as much as, the material against the petitioners have not been discussed in the order passed by the Court below. It has been submitted that the FIR clearly shows that the matter relates to business transaction between the parties and some payments were also made by the petitioners. Lastly when the entire dues could not be paid, vehicle was also sold away and some payment was made, but there was still dues against the company. It is submitted by the learned counsel that the vehicle was actually sold away by the representative of the finance company.

4. In the back drop of these facts, it is apparent that the petitioners were making the payment of installments to the company and the dispute between the petitioners and the company, if any, is due to non-fulfillment of contract, which prima facie appears to be of civil in nature. The allegation in the FIR that the petitioners were having fraudulent intention at the time of inception of the deal, is to be judged on the basis of the materials collected against the petitioners during investigation and there is no discussion of any such material in the impugned order dated 23.11.2012. If there is no material to show that the petitioners were having fraudulent intention at the very inception of the deal, the dispute between the parties is primarily of a civil nature, and compelling the petitioners to face the criminal trial, shall be misuse of the process of the Court. As there is no discussion in the impugned order about any material to show that there was fraudulent intention on the part of the petitioners at the inception of the deal, the same cannot be sustained in the eyes of law. In view of the aforementioned discussions, the impugned order dated 23.11.2012 passed by Sri S.N. Singh, Learned Judicial Magistrate, 1st Class, Lohardaga, in Lohardaga P.S. Case No. 103 of 2010, corresponding to G.R. No. 373 of 2010, is hereby set-aside and the Court below is directed to pass the order afresh in accordance of law. This application is accordingly, allowed with the direction as above.