

(2012) 04 JH CK 0197

In the Jharkhand High Court

Case No : Criminal M.P. No. 1099 of 2009

Mohan Himmatsingka and another

APPELLANT

Vs

State of Jharkhand and another

RESPONDENT

Date of Decision : 10-04-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 34, 379

Citation : (2012) 04 JH CK 0197

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Jitendra Singh, for the Appellant; R.S. Majumdar For the Opp. Party no. 2, for the Respondent

Final Decision : Allowed

Judgement

R.R. Prasad, J.—Heard learned counsel appearing for the petitioners and learned counsel appearing for the State and also learned counsel appearing for the opposite party no.2. This application has been filed for quashing of the order dated 16.12.2008 passed by the learned Judicial Magistrate, 1st Class, Bermo at Tenughat in Complaint case no.229 of 2008 whereby and whereunder cognizance of the offences punishable under Sections 323/34 and 379/34 of the Indian Penal Code has been taken against the petitioners.

2. Learned counsel appearing for the petitioners submits that the complainant approached petitioner no.1 who happens to be the one of the partners of M/s. R.A.Himat Singka & Company for sanctioning loan to him for purchasing two vehicles under the hire purchase agreement. As per the request, advances were made to the complainant for purchasing two vehicles. Accordingly, one vehicle (truck) bearing registration no.JH-09G-7411 was purchased by the complainant in his name whereas other vehicle (truck), bearing registration no.JH-09G-7511 was purchased in the name of the wife of the complainant. When the complainant failed to make payment of the premium, both vehicles were taken possession of by the petitioners on 22.11.2007 and at the time of taking

possession, inventory was prepared which has been annexed as Annexure 4. The driver of the vehicle also put his endorsement regarding surrender of the vehicle to the petitioners over Annexure 5. Subsequently, an information regarding re-possession of both the vehicle was given to the concerned police station. Thereupon, the complainant paid a sum of Rs. 9000/-against the re-possession charge on 3.12.2007 and on such payment, the vehicles were released in favour of the complainant. Only thereafter the compliant case was lodged on 17.6.2008 putting allegation that though the vehicles were sold to the complainant but the documents relating to it were never given to the complainant for about six months, as a result of which, the complainant could not ply those vehicles, for which he suffered a huge loss.

3. Further it has been alleged that on 15.6.2008 when the drivers were plying the vehicles, it were intercepted at in between Peterwar to Jainamore near Khanjo river where the petitioners did assault the driver and then snatched away Rs. 50,000/-from the complainant. On such allegation, complaint case bearing no. 229 of 2008 was registered under Sections 323/34 and 379/34 of the Indian Penal Code. After holding enquiry, cognizance of the offence as alleged was taken. That order is under challenge.

4. Learned counsel appearing for the petitioners submits that the allegation made in the complaint case is actuated with malice for the reason that the petitioners had earlier repossessed the vehicles and then on payment of Rs. 9000/-the vehicles were released but thereafter no payment was made of the premium and in order to avoid payment of the premium and further with a view to get the adjustment of Rs. 50,000/-this kind of allegation has been levelled. Thus under these circumstances, the order taking cognizance is fit to be quashed.

5. As against this, learned counsel appearing for the opposite party no.2 submits that it is not a case that the complainant did file complaint when the vehicles were repossessed in terms of hire purchase agreement rather it is a case of the complainant that when the complainant got the vehicles released after making payment, the petitioners the other day intercepted the vehicles in the way and snatched away Rs. 50,000/-from the complainant after assaulting the driver. The said allegation during enquiry when was found prima facie true cognizance was taken which never warrants to be interfered with.

6. Having heard learned counsel appearing for the petitioners, it appears to be admitted position that the opposite party no.2 had entered into hire purchase agreement with the petitioners whereby the loan was advanced to complainant who purchased two vehicles. On account of non-payment of the premium, vehicles were repossessed. However, those vehicles were released on making payment of re-possession charge.

7. It further appears from the complaint that money was due to be paid to the petitioner in order to liquidate the amount of the loan taken by the complainant.

8. Under the situation, the allegation levelled against the petitioners that the

petitioners other day intercepted the vehicles and took away Rs. 50,000/-after assaulting the drivers appears to be quite improbable and at the same time, whatever allegations are there these seem to be actuated with malice. Accordingly, the order 16.12.2008 is hereby set aside. In the result, this application is allowed.