
(2007) 02 PAT CK 0147

In the Patna High Court

Case No : Criminal Miscellaneous No. 23742 of 2006

Nand Kishore Thakur and Another

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 07-02-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 406, 420

Citation : (2007) 3 PLJR 33

Hon'ble Judges : Madhavendra Saran, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Madhavendra Saran, J.—Heard Learned Counsel for the petitioners, learned A.P.P. on behalf of the State and also Learned Counsel for opposite party No. 2. In this miscellaneous application there is prayer for quashing the order dated 24.9.2005 passed by Sri S. Rajak, Judicial Magistrate, 1st Class, Katihar in Complaint Case No. 1741/05 whereby and whereunder he has taken cognizance under Sections 420, 406 and 120B of the Indian Penal Code against the petitioners and others.

2. It appears that the complainant/ opposite party No. 2 Manoj Kumar Yadav filed a petition of complaint vide Complaint Case No. 1741/05 in the Court of Chief Judicial Magistrate, Katihar against the present two petitioners and four others for offences punishable under Sections 406, 420 and 120B of the Indian Penal Code.

3. The case of complainant, in short, as put in the petition of complaint is that accused Pankaj Singh, Nand Kishore Thakur and Vikram Thakur, in the first week of September, 2002 contacted the complainant and assured that Mahendra and Mahendra is an old and respectable company and it also finances a loan upto rupees one lac with 0% interest, Rs. 1.5 lacs to Rs. 2 lacs with interest @ 5%, Rs. 2 lacs with interest @ 10% and Rs. 3 lacs with interest @ 13.5%. Newspaper cutting, hand bill, colour photographs etc. were also shown to the complainant in

support of above loan condition. The complainant-opposite party No. 2 after being convinced, entered into an agreement with the company for loan of Rs. One lac on 0% interest on 10.9.2002. The loan was only Rs. 1,22,000/- which has already been paid but accused persons directed the complainant to deposit excess interest amounting to Rs. 21,038/- and as such the complainant says that he has been cheated as there was no agreement for payment of interest.

4. The submission of Learned Counsel for the petitioners is that so far as taking loan and interest is concerned that was completely between the complainant and the company concerned and the present two petitioners have nothing to do with it. His further submission is that at the time of occurrence, petitioner Nand Kishore Thakur was dealer whereas other petitioner Vikram Thakur was Manager of dealer of Mahendra and Mahendra, Tractor Division, Katihar and the complainant took loan after being satisfied with the terms and conditions as put by the Company. His further submission is that this Court in Cr. Misc. No. 8770/06 by order dated 30.11.2006 has quashed the order of cognizance against other four accused persons and the case of petitioners is on much better footing. Learned Counsel lastly pointed out that on the basis of allegation a case of civil nature at best is made out.

5. Learned Counsel for opposite party No. 2, on the other hand, supported the impugned order and submitted that no interference by this Court is required.

6. After hearing both the parties and examining the complaint petition and other papers I am also of the view that allegations which have been made in the petition of complaint is completely civil in nature arising out of contractual relation in between the company and the complainant. On the basis of allegations no criminal case is made out against the petitioners and therefore the continuation of criminal proceeding against the petitioners would amount to abuse of process of the Court. In the above situation, this application is allowed and the order taking cognizance dated 24.9.2005 as against the petitioners is hereby quashed.