(1997) 09 PAT CK 0029

In the Patna High Court

Case No : Criminal Miscellaneous No. 18548/96

Niranjanlal Todi APPELLANT

Vs

The State of Bihar and Another RESPONDENT

Date of Decision : 19-09-1997

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 192
Penal Code, 1860 (IPC) — Section 420, 467, 477A

Citation : (1998) 1 PLJR 564

Hon'ble Judges : Nagendra Rai, J

Bench : Single Bench

Advocate : Balraj Kishore, for the Appellant; Binod Kumar, for the Respondent

Final Decision : Allowed

Judgement

Nagendra Rai, J.—The present application has been filed for quashing the order dated 10.6.96 passed by the Judicial Magistrate 1st Class in Complaint Case No. 93 (C)/1996 taking cognizance undec Sections 420, 467, 477A I.P.C.

2. The complainant opposite party filed a complaint petition alleging inter alia that he contacted accused No. 5 Sri Kanhaiya Lal Agrawal, a proprietor of the Agrawal Auto Finance, Khagaria for purchasing a tractor on loan whereupon he introduced him to accused No. 6 Bhanu Pratap Singh, an authorised dealer of H.M.T. Tractor and accused Nos. 2 and 4, namely, Pradeep Sharma and Sanjay Kumar Shukla, the then Area Managers of Diwakar Pvt. Ltd. The accused Nos. 5 and 6 took signature of the complainant on a blank stamp paper on the pretext that an agreement was to be entered into between the complainant and the Financial Corporation with regard to the loan for the purpose of tractor. They told that on payment of Rs. 68000/- tractor will be delivered to him and the remaining amount will be paid later on. Accordingly, on 2.10.93 complainant deposited Rs. 68,000/- at the counter of Paras Agricultural Dealer and in acknowledgement thereof a Kachha receipt was given to him. Later on a receipt with revenue stamp was given showing payment of Rs. 62,000/-. Thereafter, the

tractor was delivered to the complainant by the accused No. 6 Bhanu Pratap Singh. There was some mechancial defects in the tractor. Inspite of the complaints made by him no steps were taken to remove the defects of the tractor. Thereafter, on 26.11.93 a receipt of purchase of the tractor in the name of the complainant was issued in which the price of the tractor was shown Rs. 1,70,363.41 paise. On 21.12.93 a letter was sent by Diwakar Credit Ltd. to the complainant and according to the said letter the complainant was required to pay 1st to 10th instalments @ Rs. 9100/- per month and 11th to 22nd monthly instalment @ Rs. 7800/-per month and 23rd instalment of Rs. 7040/- The complainant had to pay a sum of Rs. 1,91,640/- which included the insurance money, two years interest @ 22% and the agreement expenses being Rs. 2100/-. The financed money was only Rs. 1,31,000/-. It was further stated that he paid the amounts in terms of the agreement on 13 occasions as detailed in the complaint petition. The detailed amount paid by him comes to Rs. 2,54,440/-. The complainant wanted to know as to whether any amount is due or not and requested Diwakar Finance Credit Ltd. to state as to whether the amount is due or not but no reply in this connection was given. Later on a further demand of Rs. 13,800/-was made on the allegation that the said amount he has to pay as guarantor of Ghanshyam Kr. Nirala. According to the complainant neither he knows Ghanshyam Kr. Nirala nor he ever became his guarantor and as such a further demand of Rs. 13,800/- amounted to cheating and falsification of records and accounts.

3. On the basis of the complaint petition the Chief Judicial Magistrate Khagaria took cognizance and transferred the case u/s 192 Code of Criminal Procedure to the learned Magistrate and thereafter an enquiry was also made wherein the complainant examined three witnesses and by the impugned order the process has been issued against the Petitioner and others.

4. Learned Counsel for the Petitioner contended that even if the entire allegations are accepted no criminal case of cheating or forgery in made out. Elaborating his submission he contended that even according to the allegation made in the complaint there was hire purchase agreement between the complainant and Diwakar Finance Credit Pvt. Ltd. through the other accused. The dispute is whether the entire amount of loan has been paid by the complainant or some amount is due and other dispute is whether the complainant is liable to pay the amount of another hirer/loanee only because he stood as guarantor.

5. According to the complainant the allegation against the Petitioner is that he has charged more money than due from him and has also taken signature of the complainant on a plain stamp paper fraudulently at the time of agreement and as such the allegations against the Petitioners constitutes an offence of cheating and forgery.

6. After going through the records it appears that it cannot be disputed that the complainant took a tractor on loan. The Petitioner is the proprietor of Diwakar Finance Credit Ltd., which is engaged in financing the loan to purchase the

vehicle. It also appears that in pursuance of an agreement the complainant took loan and he has paid 13 instalments. The grievance of the complainant is that the company in question has charged more money than due to him and inspite of the request made by him the Petitioner has not done the final accounting. It is also asserted that he is not liable to pay any amount against any hirer/loanee only by virtue of being a guarantor.

7. The materials on the record show that there is arbitration clause with regard to the dispute.

8. In my view, the aforesaid allegations made against the Petitioner donot attract the ingredient of Sections 420, 467 and 477A I.P.C. because there is no allegation against this Petitioner, who is proprietor of Diwakar Finance Credit Ltd., that he took signature etc. on plain stamp paper of the complainant. The said allegation is alleged against other accused persons, namely, accused Nos. 5 and 6. The dispute appears to be of civil nature as the controversy is about the final accounting as well as about liability of the complainant as guarantor. There is nothing on the record to show that on false representation Petitioner induced to part with money. Thus, in my view, the prosecution of the Petitioner is an abuse of the process of the Court and, accordingly, the same is quashed.

9. In the result, the application is allowed.