
(2000) 10 PAT CK 0015

In the Patna High Court

Case No : Criminal Miscellaneous No. 11392 of 1997

Parimal Chowdhary @ P.S. Choudhary

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 25-10-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2000) 3 BLJR 2310

Hon'ble Judges : B.N. Singh "Neelam", J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.N. Singh "Neelam", J.—After hearing the learned lawyers appearing on behalf of the parties, this present application is being disposed of which is so filed by the present petitioner, namely, Parimal Chowdhari alias P.S. Chawdhari, for quashing the proceeding as against him so initiated on the basis of the complaint case so lodged bearing complaint case No. 880(c)/87. Tr. No. 73/77 in which the learned Judicial Magistrate, 1st Class (Sri. S.K. Upadhyaya), Chapra, has taken cognizance of the offence under Sections 406 & 420 of the Indian Penal Code, as indicated finding prima facie material against the present petitioner and accused No. 2, i.e., Manager, Lohia machine S.T.D. Registered Office 3 & 4 Panki Industrial Estate, Kanpur. Copy of the complaint-petition along with the impugned order are filed for perusal.

2. On behalf of the petitioner, it is pointed out that as far as the present petitioner is concerned he simply happened to be one of the employees of M/s. Tiwari Bechar, Kankarbagh, Patna, which was authorised distributor of M/s Lohiya Machinery Limited at Kanpur whose Manager has been impleaded as accused No. 2 in the said complaint-petition and when an application was so filed on behalf of the complainant for purchase of Vespa Ex Scooter by depositing Rs. 500 in advance that was sent to the concerned accused No. 2 at Kanpur. By referring to

Annexure 3, it is further pointed out that it was the concern of accused No. 2 who had sent reply to the complainant dated 29.6.1983 stating that after furnishing the application, it was not found acceptable, the advance of Rs. 500 was returned along with a letter vide enclosed refund order No. R/000 4687 dated 29.6.1983. It is further pointed out on behalf of the petitioner that if there was any defect in the draft so sent because of which the payment was not so received by the complainant it was incumbent on the part of the complainant as to take steps for realisation of the same from accused No. 2 and since the present petitioner or its concern had absolutely nothing to do till the allotment was so made because he was only responsible for supply of the same being the distributor after such application being accepted by Accused No. 2 concerned, cognizance of offence so taken against accused No. 1 figuring here as petitioner filing this application u/s 482, Cr.P.C. has merit and, in that light, at least, the proceeding against him be, thus, quashed.

3. On behalf of the complainant, it is pointed out that the present complainant is suffering because neither he got the Vespa Ex Scooter nor the refund of the advance amount being paid to him which was of Rs. 500. It is further pointed out that since the application was so filed at Kankarbagh Tiwary Bechar's Office though might have been disputed to accused No. 2 concern it is, in that light, that accused No. 1 was also made a party in the complaint petition so filed.

4. As detailed above, after hearing the learned lawyers appearing for the parties, I have carefully gone through the contents of the complaint-petition with that of the impugned order and, particularly, the contents of Annexure-3 placed at page 14 of this application. I find much of substance in the argument so advanced by the learned Counsel for the petitioner. In that light, as against the present petitioner, above named, who figures in the complaint-petition as accused No. 1 the proceeding against him only arising out of complaint case bearing No. 880 of 1997 stands quashed. This application is so allowed.

5. By looking into the order dated 6.8.1997, it transpires that the further proceeding was stayed by this Court. Since accused No. 2 figured in the complaint-petition and there is specific allegation against him, the proceeding so stayed against him will continue against whom the cognizance of offence has already been taken.