
(2004) 08 GAU CK 0020

In the Gauhati High Court

Case No : Criminal Revision Petition No. 686 of 2003

Pramod Kumar and Another

APPELLANT

Vs

Naresh Auto Finance Co.

RESPONDENT

Date of Decision : 09-08-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 420, 422, 424, 506

Citation : (2005) 3 GLR 138

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : None, for the Appellant; G.N. Sahewalla and A. Jalan, for the Respondent

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—The complainant-Opposite party instituted Complaint Case No. 4224/2003, the case of the complainant-opposite party herein being, briefly stated, thus: The petitioner Nos. 1 and 2, in the present revision, as hired and guarantor respectively, approached the complainant, who are in the business of financing the motor vehicles, to finance purchase of a Truck on the basis of hire-purchase agreement. Being induced by the representations, made by the two accused, the complainant advanced the finance and according by, a truck, as sought for by the two accused, was purchased and the same was registered as AS-01-C-0734. The finance was made available to the accused-petitioners on the basis of a hire-purchase agreement, which was entered into by the complainant, relying on the assurances and undertakings given to the complainant by the two accused. In the certificate of registration, the name of the complainant stands registered as the financier. The loan advanced by the complainant was to be repaid in 24 installments. The accused No. 1 failed to repay any installment in time and, after making delayed payment of three installments, ceased to make any payment. When the demand for payment and also for inspection of the vehicle, in question, were raised by the complainant, both the accused refused to

pay their dues and did not allow inspection of the vehicle; rather, they threatened the representative of the complainant with dire consequences. When the complainant made further inquiries, he came to learn that the accused had no business worth the name and that both the accused had made false representations of their solvent position. The accused have dishonestly moved the vehicle and has concealed the same in the premises of the petitioner No. 1 where, contrary to the terms of agreement existing between the parties, the representative of the complainant was not allowed to go and inspect.

2. By orders, dated 4-9-2003 and 6-9-2003, passed by the learned Sub-Divisional Judicial Magistrate, Kamrup, Guwahati, in Complaint Case No. 4224C/2003 aforementioned, cognisance of offences u/s 420/422/424/506/34 IPC was taken and search warrant was issued. Aggrieved by these orders, the two accused have approached this Court for setting aside the order aforementioned and also for quashing of the complaint, as a whole.

3. None has appeared on behalf of the petitioners, though the matter was called for hearing on several occasions. However, heard Mr. G N Sahewalla, learned senior counsel, assisted by Mr. A. Jalan, learned counsel for the opposite party. Also heard Mr. F. H Laskar, learned Additional Public Prosecutor for the State.

4. It is not contended in the present revision petition that the complaint does not disclose commission of any offence. What is contended by the accused-petitioners before this Court is that the allegations made in the complaint are false. The truth falsity and/or veracity of the accusations made in a complaint can be decided only by the Court, which is in seisin of the complaint. It is trite that a complaint, if read as a whole discloses commission of offence, such a complaint cannot be quashed unless the accusations made therein are inherently improbable or ex facie mala fide. No such case for interference could be made out by the accused-petitioner. On the veracity of the allegations made in the complaint, I have consciously refrained myself from making any observations lest it affects the out-come of the complaint. Suffice it to mention here that in the face of the contents of the complaint, no case of quashing of the complaint could be made out by the complainant.

5. Though it has been contended in the revision petition that the petitioner could not pay the dues as the vehicle had met with an accident, it needs to be pointed out that this is an aspect of the case, which can be taken into account at the trial and not at this stage.

6. In the case at hand, the complaint clearly discloses that on the failure by the accused-petitioners to make payment of the installments within time and when the payment of installment was completely stopped by the petitioners, the complainant made inquiry and learnt that the accused had no business worth the name and that they had dishonestly kept concealed the vehicle in the premises of the accused No. 1. Whether these allegations are true or false is a question, which can be decided only at the trial. At this stage of the complaint case

aforementioned and until the time, the evidence are adduced on record, it cannot be said that the complaint discloses no offence u/s 420/422/424 with Section 34 IPC.

7. Considering, therefore, the matter in its entirety, I find no merit in this revision and the revision is accordingly dismissed.

8. Send back the case record with a copy of this judgment and