

(2012) 05 PAT CK 0050

In the Patna High Court

Case No : Criminal Miscellaneous No. 6847 of 2007

Rahul Wadhawan, Satish Acharya and Umesh Arora

APPELLANT

Vs

Ramanuj Bharti and The State of Bihar

RESPONDENT

Date of Decision : 04-05-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 482
Penal Code, 1860 (IPC) — Section 120B, 379, 406, 415, 418

Citation : (2012) 05 PAT CK 0050

Hon'ble Judges : Ashwani Kumar Singh, J

Bench : Single Bench

Advocate : Navendu Kumar, for the Appellant; Nand Kishore Pd. Sinha For the Opposite Party No. 2 and Mr. Matloob Rub, Assistant Public Prosecutor For the State, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice Ashwani Kumar Singh

1. Heard Mr. Navendu Kumar, learned counsel appearing on behalf of the petitioners, Mr. Nand Kishore Prasad Sinha, learned counsel appearing on behalf of the opposite party no. 1 and Mr. Matloob Rub, learned A.P.P. appearing on behalf of the State. The petitioners, while invoking jurisdiction of this court u/s 482 of the Code of Criminal Procedure, have prayed for quashing of Criminal Complaint No. 479 of 2006 corresponding to T.R. No. 278 of 2006 including the order dated 30.5.2006 passed in the aforesaid case by Mr. D.S. Srivastava, the learned Judicial Magistrate, 1st Class, Gaya by which finding a prima facie case to be made out under sections 418 and 465 of the Indian Penal Code the petitioners and one another have been summoned for trial.

2. The prosecution has been launched on the basis of a complaint instituted by the opposite party no. 1 Ramanuj Bharti, who has alleged that since he desired to purchase a truck, the co-accused Satbir Singh, who was engaged in transport business, approached him at Gaya and offered his truck bearing registration no.

HR-38J-2300 for sale in his favour to which he immediately agreed. It was agreed between them that the remaining installments due to be paid to the financier for re-paying the loan shall be paid by the complainant to get the vehicle transferred in his name. In pursuance to the agreement with co-accused Satbir Singh, the complainant paid Rs. 3,34,500/- (three lakh thirty four thousand five hundred) to Satbir Singh in between 10.2.2005 to 21.7.2005 by way of debit voucher and freight payment memos. Despite the payments made by the complainant, co-accused Satbir Singh neither handed over the vehicle to him nor returned back the amount and, thus, the complainant filed a money suit on 12.8.2005 in the court of Principal Sub.Judge, Gaya against co-accused Satbir Singh which was numbered as Money suit No. 13 of 2005.

3. It has further been alleged by the complainant that in the meantime on 17.9.2005 legal notices were sent to M/s GE Capital Transportation Financial Services Limited (hereinafter to be referred to as "the company") disclosing that all the payments made by Satbir Singh were as a matter of fact made by the complainant. In the meantime, the aforesaid truck was seized by the company and kept in the yard of the company at Bodh Gaya. On 18.11.2005 an agreement was entered into between the complainant and the co-accused Satbir Singh by which it was agreed that the truck in question would be handed over to the complainant-opposite party no. 1 and, accordingly, a power of attorney was executed by Satbir Singh in favour of the complainant to possess the vehicle and ply the same. Subsequently, taking into notice the duly executed power of attorney, petitioner no. 3, namely, Umesh Arora gave no objection certificate and directed his agent Mr. Tripathi to release the vehicle in question in favour of the complainant and Mr. Tripathi in pursuance of the direction given by petitioner no. 3 handed over the vehicle to the complainant-opposite party no. 1 on 5.1.2006 on the condition that the complainant would pay the due installments directly in favour of the company. The complainant has also alleged that several post dated cheques of HDFC Bank, New Delhi, each amounting to Rs. 18,609/- issued under the signature of the complainant were handed over to petitioner no. 3 Umesh Arora. The post dated cheques were for the period commencing from January 2006 to January 2008. However, on 21.3.2006 when the vehicle in question was carrying consignment of coal from Jharia to Bulandsahar the same was intercepted by Pankaj Motors, Agra and without assigning any reason the said vehicle was detained at the yard of the company in question. The complainant thereafter approached co-accused Satbir Singh and petitioner nos. 1 and 2, who are officers of the company but the vehicle was not released in his favour. The petitioners, on enquiry, replied that there are outstanding dues against the vehicle in question and that is why the same has been detained. The complainant has, thus, alleged that besides payment of altogether Rs. 3,34,500/- to co-accused Satbir Singh he had paid Rs. 59,447/- to the company in question on 19.12.2005. He has also stated that besides the aforesaid payment some other payments were also made to Mr. Tripathi, an agent of the company. The complainant (opposite party no. 1) claims that the accused persons fraudulently

and dishonestly committed breach of trust by accepting payments from him and subsequently depriving him from custody of the vehicle.

4. The complainant was examined on oath and in course of enquiry u/s 202 of the Code of Criminal Procedure three witnesses namely, Gauri Shankar, Manoj Kumar Gupta and Surendra Pandey were examined by the learned Magistrate. After examining the complainant on oath and holding enquiry, the learned Magistrate found a prima facie case to be made out u/s 418 and 465 of the Indian Penal Code and summoned the accused persons for trial.

5. Learned counsel for the petitioners submits that even if the entire allegations made in the complaint are taken to be true, the same would not constitute any offence so far as the petitioners are concerned. The company in question namely GE Capital Transportation Financial Services Limited is a non-banking company having its registered office at New Delhi. It is a company incorporated under the Indian Companies Act, 1956 and, thus, the same is a juristic person having a right to sue with liabilities to be sued. The petitioner nos. 1 and 2 namely, Rahul Wadhawan and Satish Acharya are vice presidents of the company whereas petitioner no. 3, namely, Umesh Arora was earlier working as an Assistant Manager in the company but has left the job since November, 2006. It is further submitted on behalf of the petitioners that the co-accused Satbir Singh had taken three loans of Rs. 5,01,065/-, Rs. 4,33,603/- and Rs. 3,48,069/- for purchase of commercial vehicles from the company. From the loan amounts, disbursed on 5.8.2005, commercial vehicles (truck) bearing Registration No. HR-38J-2300, HR-38J-0566 and HR-38K-2180 were purchased and hypothecated as security in favour of the company vide agreement No. TNGURRCVZ00223323, TNGURRCVZ00223324, NGURRCVZ00223325 respectively. The company entrusted Satbir Singh with the said trucks/commercial vehicles on executing Master Security and Loan Agreements, Gurantees and several other documents in favour of the company. In terms of the agreement the vehicles stood hypothecated to the company till repayment of the entire loan amount. The hirer Satbir Singh undertook that he shall not, without prior written consent of the company part with the possession of any of the commercial vehicles, remove any of the collaterals from India or sell, rent, lease, mortgage, grant a security interest in or otherwise transfer or encumber any of the commercial vehicles.

6. It is submitted that the hirer Satbir Singh, a co-accused defaulted in payment with regard to the loan taken for purchase of the vehicle in question. The company issued a notice of demand. Despite receipt of notice from the company, the outstanding amount was not paid by Satbir Singh and, thereafter, the company decided to exercise its contractual rights and repossession of the vehicle in question and the same was peacefully repossessed by authorized representative of the company exercising its contractual right of cross default liability of loan. The vehicle in question was repossessed on 21.3.2006. It is also submitted that after repossession of the vehicle in question the authorized representative of the company also informed the local police on 21.3.2006 itself.

The company only recognized Satbir Singh as a hirer/lessee as he was hirer/lessee as per the documents executed between the parties.

7. It has next been submitted that the complainant (opposite party no. 1) admittedly having dispute with Satbir Singh has filed a frivolous complaint in the court of learned Chief Judicial Magistrate making the petitioners accused, though, no offence has been committed by them. In the complaint itself the complainant admits that he had filed money suit for recovery of money against co-accused Satbir Singh on 12.8.2005 in the court of Principal Sub.Judge, Gaya being Money Suit No. 13 of 2005 for recovery of certain payments made in between 10.2.2005 to 21.7.2005 by way of debit vouchers and freight payment memos totaling to Rs. 3,34,500/- only.

8. Learned counsel for the petitioners submits that the company never allowed Satbir Singh to sell the vehicle to opposite party no. 1 (complainant). The terms of agreement clearly stipulates that the loanee shall not, without prior written consent of the company part with the possession of the vehicle, remove any of the collaterals from India or sell, rent, lease, mortgage, grant a security interest in or otherwise transfer or encumber the vehicle. Hence, even if Satbir Singh may have taken any consideration from the complainant, the same was in violation of the agreement and, as such, the alleged transaction was illegal and had no legal force. The payment of few installments by the complainant on behalf of Satbir Singh to the company in respect of finance availed by co-accused Satbir Singh was their internal arrangement and such payments were accepted by the company only in the account of Satbir Singh and the same does not give any right or title in respect of the vehicle to the complainant. The vehicle was always till its repossession on 21.3.2006 standing in the name of Satbir Singh and was hypothecated in favour of the company in question and was never registered or transferred in the name of opposite party no. 1.

9. It is further submitted that the electronic mail dated 4th January, 2006 annexed with the complaint of opposite party no. 1 is merely an instruction issued to its agent Mr. Tripathi to release the vehicle to the hirer Satbir Singh or 3rd party in the capacity of representative of Satbir Singh as he was having an authority vide power of attorney to take possession on behalf of Satbir Singh. The petitioner no. 3 while issuing these instructions had never issued any "No Objection Certificate" in favour of opposite no. 1.

10. It is, thus, submitted that the petitioners were not in any manner concerned with the entire transactions between the complainant and co-accused Satbir Singh. The entire dispute, if any, is between accused no. 1 Satbir Singh and the complainant.

11. On the other hand, learned counsel appearing on behalf of opposite party no. 1 submits that the co-accused Satbir Singh is a necessary party and since he has not been made party in the present case, the application is fit to be rejected. However, he does not dispute the fact that the vehicle in question was financed

by the company in the name of Satbir Singh and the same was hypothecated as a security in favour of the company but since several payment of installments were made within the knowledge of the petitioners, they committed breach of trust by depriving him from retaining the vehicle. The accused persons conspired together and duped the complainant in a planned manner and, thus, the court has rightly found a prima facie case being made out against them under sections 418 and 465 of the Indian Penal Code.

12. Having heard the submissions advanced on behalf of the rival parties, I shall now quote the relevant sections of the Indian Penal Code. Section 418 of the Indian Penal Code falls in Chapter XVII which pertains to offences against property.

Section 418 of the Indian Penal Code reads as under:

418. Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.--- Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

13. The essential ingredients of the offence u/s 418 of the Indian Penal Code are as follows: (a) the accused cheated a person; (b) at the time of offence the accused was bound by law or legal contract to protect the interests of the person whom he cheated, (c) The obligation related to the transaction involving the cheating; (d) The accused had knowledge that his act was likely to cause wrongful loss to the person cheated and whose interests he was bound to protect.

14. The offence of cheating is defined in section 415 of the Indian Penal Code. So far as it is relevant section 415 of the Indian Penal Code reads as under:

415. Cheating.-- whoever, by deceiving any person, fraudulently or dishonestly induces the persons so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"

15. The essence of cheating is that there should be deception either by express words or implied by conduct which may be direct or indirect or dependent upon facts and circumstances of each case. Section 415 of the Indian Penal Code consists of two distinct parts. The first part contemplates where by deception practiced upon a person the accused dishonestly or fraudulently induces that person to deliver property to any person or to consent that any person shall retain any property. The second part, on the other hand, envisages where by deception practiced upon a person the accused intentionally induces that person

to do or omit to do anything which he would not do or omit to do, if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. The offence under second part of the section cannot be made out in absence of any evidence to show that the accused had any intention of causing damage or harm to the victim in body, mind, reputation or property.

16. A conjoint reading of section 415 and 418 of the Indian Penal Code makes it clear that in the present case even from the admitted facts of the complainant, there is nothing to suggest that the petitioners in any manner induced the opposite party no. 1 fraudulently or dishonestly or opposite party no. 1 parted with any property in favour of the petitioners out of such inducement or deception. There is nothing to suggest that the petitioners cheated the complainant with knowledge that wrongful loss may be caused to the person whose interest they were bound to protect and, thus, no offence u/s 418 of the Indian Penal Code would be attracted so far as the petitioners are concerned.

17. The other section under which the learned Magistrate has taken cognizance of the offence is section 465 of the Indian Penal Code. Section 465 of the Indian Penal Code falls in Chapter XVIII which pertains to offences relating to documents and property marks.

18. Section 465 of the Indian Penal Code prescribes punishment for forgery. Forgery has been defined u/s 463 of the Indian Penal Code which also falls in Chapter XVIII of the Indian Penal Code and reads as under:

463. Forgery. - Whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

19. From a bare reading of the definition of forgery it is apparent that forgery means making of a false document with intent to cause damage or injury to the public or to any person. Thus, apart from making a false document, in order to attract the offence of forgery the accused should intend to cause damage or injury either to public or to any person or to support any claim or title or to cause any person to part with property. Unless there is element of fraud, making of a false document would not amount to forgery because one of the intents contemplated in the section is to commit fraud or that fraud may be committed.

20. Section 464 of the Indian Penal Code defines "making a false document". So far as it is relevant section 464 of the Indian Penal Code reads as under:

A person is said to make a false document or false electronic record.

Firstly—who dishonestly or fraudulently -

(a) Makes, signs, seals or executes a document or part of a document;

- (b) Makes or transmits any electronic record or part of any electronic record,
- (c) Affixes any electronic signature on any electronic record;
- (d) Makes any mark denoting the execution of a document or the authenticity of the electronic signature,

with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly-Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly - Who, dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him, he does not know the contents of the document or electronic record or the nature of alteration.

21. The above provisions indicate that the condition precedent for forgery is "making a false document or false electronic record or part thereof". This case does not relate to any false electronic record. The petitioners have not made any false document or have conspired for preparation of any false document or valuable security etc. From the contents of the complaint itself it is apparent that no fraud has been committed on the part of the petitioners. Thus, in my view, offence u/s 465 of the Indian Penal Code is also not made out in the facts and circumstances of the case against the petitioners.

22. Even otherwise in the instant case admittedly the company has repossessed the vehicle delivered to the hirer under the hire purchase agreement. The element of dishonest intention which is essential element to constitute an offence under the Penal Code is lacking. The hirer has not filed any complaint rather the hirer entered into some sort of agreement with the complainant which was apparently bad in the eye of law as in terms of agreement he could not have sold the vehicle or give it on rent, lease, mortgage, grant a security interest in or otherwise transfer or encumber the vehicle in question till it was under hypothecation of the company.

23. In this regard I may place my reliance on a judgment of the Hon''ble Apex Court in case of Sardar Trilok Singh and Others Vs. Satya Deo Tripathi, . In that case, the parties had entered into a hire purchase agreement. The complainant alleged that the accused, in a high handed manner during his business came to

his house and forcibly removed the truck and thereby committed an offence of dacoity. The police investigated the case and submitted a final report. The accused filed his objection before the learned Magistrate but the objection was not considered. The accused filed a revision before the sessions court which was dismissed. Thereafter, the accused filed a petition u/s 482 of the Cr.P.C. to quash the proceeding. The matter was summarily dismissed by the High Court and the matter went to the Hon''ble Supreme Court at the instance of the accused. In paragraph-5 of the judgment, the Hon''ble Supreme Court has observed as follows:

We are clearly of the view that it was not a case where any processes ought to have been directed to be issued against any of the accused. On the well settled principles of law it was a very suitable case where the criminal proceeding ought to have been quashed by the High Court in exercise of its inherent power. The dispute raised by the respondent was purely of a civil nature even assuming the facts stated by him to be substantially correct. Money must have been advanced to him and his partner by the financier on the basis of some terms settled between the parties. Even assuming that the agreement entered on March 29, 1973 was duly filled up and the signature of the complainant was obtained on a blank form, it is to be noticed that the amount of the two monthly instalments admittedly paid by him was to the tune of Rs. 3566/- exactly at Rs. 1783/- per month. The complaint does not say as to when these two monthly instalments were paid. In the first information report which he had lodged he had not stated that the third monthly instalment was payable on July 31, 1973. Rather, from the statement in the first information report it appears that the instalment had already become due on July 28, 1973 when the complainant went out of Kanpur according to his case. The question as to what were the terms of the settlement and whether they were duly incorporated in the printed agreement or not were all questions which could be properly and adequately decided in a civil court. Obtaining signature of a person on blank sheet of papers by itself is not an offence of forgery or the like. It becomes an offence when the paper is fabricated into a document of the kind which attracts the relevant provisions of the Penal Code making it an offence or when such a document is used as a genuine document. Even assuming that the appellants either by themselves or in the company of some others went and seized the truck on July, 30, 1973 from the house of the respondent they could and did claim to have done so in exercise of their bona fide right of seizing the truck on the respondent's failure to pay the third monthly instalment in time. It was, therefore, a bona fide civil dispute which led to the seizure of the truck. On the face of the complaint petition itself the highly exaggerated version given by the respondent, the appellants went to his house with a mob armed with deadly weapons and committed the offence of dacoity in taking away the truck was so very unnatural and untrustworthy that it could take the matter out of the realm of civil dispute. Nobody on the side of the respondent was hurt. Even a scratch was not given to anybody.

24. It would further place my reliance on the judgment rendered by the Hon''ble

supreme Court in the case of Charanjit Singh Chadha and Others Vs. Sudhir Mehra, . In that case the appellants were running a non-banking financial institution. The respondent entered into a hire purchase agreement with the appellants on 3.5.1994 where-under the motor vehicle was handed over to the respondent. The total consideration agreed to be paid by the respondent was Rs. 3,02,884/- and the respondents made an initial payment of Rs. 69,308/- and the balance amount was to be paid in 36 monthly installments of Rs. 8,400/- each starting from 3.6.1994. According to the respondent, he had been paying installment regularly. The respondent filed a criminal complaint before the learned Judicial Magistrate, Amritsar on 3.12.1998 alleging that the motor vehicle in question had developed some trouble and it was entrusted to a motor mechanic on 14.9.1996 for carrying out repairs and in the night of 16.9.1996 the appellants forcibly took away the vehicle from the motor mechanic and, thus, committed the offence under sections 406, 420 and 120B of the Indian Penal Code. Pursuant to the complaint, the learned Magistrate took cognizance of the offence and issued summons to the appellants. The appellants filed a petition u/s 482 of the Cr.P.C. before the High Court of Punjab and Haryana to quash the complaint proceeding. The appellants had taken a plea that the respondent had committed default in paying installment and, therefore, the appellants were constrained to terminate the hire purchase agreement and the respondent surrendered the motor vehicle to the appellants. The High Court declined to quash the proceeding and held that the allegations in the complaint were capable of making out a punishable offence specially u/s 379 of the Indian Penal Code and, therefore, the petition u/s 482 of the Cr.P.C. was dismissed. Aggrieved by the said order, the appellants moved before Hon"ble Supreme Court. The Hon"ble Supreme Court after hearing the parties in paragraph-17 of the judgment observed as follows:

The hire-purchase agreement in law is an executory contract of sale and confers no right in rem on the hirer until the conditions for transfer of the property to him have been fulfilled. Therefore, the repossession of goods as per the term of the agreement may not amount to any criminal offence. The agreement (Annexure p-1) specifically gave authority to the appellants to repossess the vehicle and their agents have been given the right to enter any property or building wherein the motor vehicle was likely to be kept. Under the hire-purchase agreement, the appellants have continued to be the owners of the vehicle and even if the entire allegations against them are taken as true, no offence was made out against them. The learned Single Judge seriously flawed in his decision and failed to exercise jurisdiction vested in him by not quashing the proceedings initiated against the appellants. We, therefore, allow this appeal and set aside the impugned judgment. The complaint and any other proceedings initiated pursuant to such complaint are quashed.

Taking into consideration the arguments advanced on behalf of the parties, facts of the case and the law laid down by the Hon"ble Apex Court as noted herein above, I am of the view that allowing the present prosecution to continue as

against the petitioners would be a gross abuse of process of the court. There is absolutely no material on record on the basis of which the petitioners could have been summoned to face trial. The grievance of the complainant, if any, was against co-accused Satbir Singh. The petitioners act of omission or commission in seizing the truck on failure to make payment of due instalment to the company by Satbir Singh was their bona fide right. The dispute, if any, was of civil nature. It was incumbent upon the Magistrate before issuing process against the petitioners to find out whether they would be legally responsible for the offence charged for. Apparently, the criminal proceeding as against the petitioners is maliciously instituted with an ulterior motive. In the result, the applications stands allowed and Complaint Case No. 479 of 2006 (T.R. No. 278 of 2006) pending before the court of Sri D.S. Srivastava, learned Judicial Magistrate, 1st Class, Gaya, Bihar and any other proceedings initiated pursuant to such complaint so far as the petitioners are concerned are hereby quashed.