

(2012) 07 JH CK 0091
In the Jharkhand High Court
Case No : Criminal M.P. No. 316 of 2012

Rajesh Kumar Chouhan and another	Vs	APPELLANT
State of Jharkhand and another		RESPONDENT

Date of Decision : 16-07-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 34, 405, 418

Citation : (2012) 4 JCR 294

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Rajan Raj, for the Appellant; Shailesh, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

R.R. Prasad, J.—This application has been filed for quashing of the entire criminal proceeding of Complaint Case No.1035 of 2010 including the order dated 12.8.2011 whereby and whereunder the Judicial Magistrate, Dhanbad took cognizance of the offences punishable under Sections 418, 323 and 405/34 of the Indian Penal Code against the petitioners. The case of the complainant-opposite party no.2 is that the petitioner no.2 along with her husband Rajesh Kumar Chouhan (petitioner no.1) approached the complainant and offered to sell one LPT Truck, bearing registration no.JH-10C-7544 for a valuable consideration of Rs.6,71,000/- by representing that the petitioner no.2 is the owner of the truck. The complainant having accepted the proposal entered into an agreement which was reduced in writing. At the time of agreement, a sum of Rs.50,000/- was paid and thereby all the necessary papers relating to vehicle were given to the complainant and the complainant even took possession of the vehicle. Subsequently, a sum of Rs.2,50,000/- was paid to the petitioner, on assurance being given by him that he would transfer the truck in the name of the complainant. Thereafter the complainant spent a sum of Rs.56,000/- for the maintenance of the truck.

2. Further case of the complainant is that in course of time, the complainant came to know that the petitioner no.2 never happens to be the owner of the truck as the truck had been financed by some financier, who repossessed the truck on 3.4.2010. In such situation, when the complainant approached and raised his grievance before the petitioners, they gave assurance that outstanding amount would be paid to the financier by 9.5.2010 and thereupon the vehicle would be transferred in the name of the complainant but instead of doing so the petitioners took possession of the truck and sold it fraudulently to some other person, information of which was given to the local police station but it did not take any action. Thereupon, he petitioners along with others came to the residence of the complainant and asked for Rs.2,00,000/- as ransom and also misbehaved with him. At the same time, threat of dire consequences was also extended.

3. On such allegation, complaint was registered as Complaint Case No. 1035 of 2010 in which cognizance of the offences punishable under Sections 418, 323 and 405/34 of the Indian Penal Code was taken against the petitioners which order is under challenge.

4. Mr. Rajan Raj, learned counsel appearing for the petitioners submits that accepting the entire allegation to be true, no offence of cheating is made out as the petitioners had never induced the complainant fraudulently or dishonestly to part with the money for the purpose of purchasing the truck.

5. Learned counsel further submits that the complainant though in his complaint petition has made allegation that accused persons did represent that they are the owner whereas the truck had been financed by some financier which supposedly, according to the complainant, was never disclosed but the written agreement, copy of which has been annexed in this application sufficiently does indicate that the factum of vehicle being financed had been disclosed by the petitioner as one of the terms of the agreement was that the petitioner would procure "no dues certificate" from the financier and then would transfer the vehicle. Thus, there does not appear to be any dishonest intention on the part of the petitioner from the very beginning, which is sine qua non, to hold the accused person guilty for the commission of offence of cheating.

6. In this regard, learned counsel has referred to a decision rendered in a case of Joseph Salvaraj A. Vs. State of Gujarat and Others, .

7. Having heard learned counsel appearing for the petitioners and learned counsel appearing for the State and on perusal of the record, it does appear that it is the case of the complainant that the complainant did enter into an agreement for purchasing a truck for a valuable consideration when it was represented by the petitioners that they are owner but the petitioners were never the owner as the vehicle had been financed by some financier, who repossessed the vehicle. On the other hand, it is the case of the petitioners that the fact that the vehicle had been financed, had been conveyed to the

complainant at the time of agreement. This stand has been taken by the petitioners as there has been stipulation in the agreement that the petitioners would procure "no objection certificate" from the financier and then they would transfer the vehicle. At the same time, it has also been stipulated in the said agreement that if there happens to be any dues outstanding against the vehicle, petitioners would be compensating the complainant.

8. In such situation, it is hard to accept the submission made on behalf of the petitioners that factum of vehicle being financed by the financier had been disclosed at the time of entering into an agreement as stipulation is also there in the agreement to the effect that if there happens to be any dues, petitioners would be compensating the complainant which obviously does suggest that impression may have been given that no dues is outstanding against the vehicle. However, these issues can only be determined when parties lead their evidences during trial.

9. Thus, in the facts and circumstances of the case, it cannot be said at this stage as to whether the petitioners had had any intention right from the beginning to cheat the complainant or not ? Under the circumstances, the order dated 12.8.2011 taking cognizance never warrants to be interfered by this Court.

Accordingly, this application stands dismissed.