
(2012) 02 PAT CK 0027

In the Patna High Court

Case No : Criminal Miscellaneous No. 18520 of 2003

Ratan Kumar Sinha

APPELLANT

Vs

The State of Bihar and Eqbal Ahmed

RESPONDENT

Date of Decision : 22-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202
Penal Code, 1860 (IPC) — Section 406

Citation : (2012) 02 PAT CK 0027

Hon'ble Judges : Rajendra Kumar Mishra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Honourable Mr. Justice Rajendra Kumar Mishra

1. It appears that both the aforesaid applications were listed together on 6.2.2012 and the order was passed in both the applications but inadvertently, in order No. 5 dated 6.2.2012 cause title of Criminal Misc. No. 29449 of 2006 has not been typed.

Accordingly, order No. 5 dated 6.2.2012 is modified to the extent that it includes Criminal Misc.No. 29449 of 2006.

2. Both these applications bearing Criminal Misc. No. 18520 of 2003 filed on behalf of the petitioner, Ratan Kumar Sinha and Criminal Misc. No. 29449 of 2006 filed on behalf of the petitioners, Shital Kumar Mishra and Sanjay Kumar, have been filed against the order dated 7.5.2003 passed in Complaint Case No. 1001 of 2002/Trial No. 927 of 2003 by the court of Sri A.K. Verma, Judicial Magistrate, First Class, Aurangabad, summoning the accused-petitioners, on inquiry u/s 202 of the Code of Criminal Procedure, finding prima facie case u/s 406 of the Indian Penal Code, hence, both these applications have been heard together and are being disposed of by this common judgment.

3. In brief, the case is that the opposite party No. 2, Eqbal Ahmed, filed the

complaint petition, numbered as Complaint Case No. 1001 of 2002 in the court of the Chief Judicial Magistrate, Aurangabad against the accused-petitioner, Ratan Kumar Sinha (in Criminal Misc. No. 18520 of 2003 and the accused-petitioners, Shital Kumar Mishra and Sanjay Kumar (in Criminal Misc. No. 29449 of 2006), who respectively are said to be the General Manager, State Manager and Field Officer of Ashok Leyland Finance Limited (hereinafter referred to as "the Finance Company"). The opposite party No. 2 has alleged in the complaint petition that in between September 1999 to September 2000, he got the three trucks bearing Registration Nos.BR-26G-8888, BR-26G-0888 and HR-38-9404 financed by the Finance Company. After getting the three trucks, he started to pay installments in time by drafts, cheque or cash. Out of the aforesaid three trucks, he surrendered one truck bearing Registration No. HR-38-9404 in the Finance Company in March, 2001 and obtained receipt for the same from the Finance Company. So far as trucks bearing Registration Nos.BR-26G-8888 and BR-26G-0888 are concerned, unfortunately, due to some family and business problems, he failed to pay the some installments in time. The accused-petitioners without giving any notice or warning seized the truck bearing Registration No. BR-26G-0888 at Ranchi on 10.11.2001 and they also seized the paper of the truck bearing Registration No. BR-26G-8888, in course of returning from Ranchi. Therefore, the opposite party No. 2 parked the truck bearing Registration No. BR-26G-8888 in the campus of the Finance Company. Later on, the accused-petitioners on 28.8.2002 permitted the opposite party No. 2 to take the truck bearing Registration No. BR-26G-8888 alongwith its paper on making the payment of Rs. 35,977/-. Later on 28.10.2002 at about 3 P.M., the accused-petitioner No. 2, Sanjay Kumar Singh, of Criminal Misc. No. 29449 of 2006 came at his residence situated at Aurangabad and informed him about the presence of the accused-petitioner, Ratan Kumar Singh, of Criminal Misc. No. 18520 of 2003 and the accused-petitioner No. 1, Shital Kumar Mishra, of Criminal Misc. No. 29449 of 2006, at bus stand petrol pump near by-pass in course of journey of Varansi and told to call him with at least Rs. 50,000/- to release the truck bearing Registration No. BR-26G-0888. Accordingly, the opposite party No. 2 after arranging the cash Rs. 50,000/- went near the bus stand petrol pump and talked about the release the truck bearing Registration No. BR-26G-0888 with the accused-petitioners and handed over cash Rs. 50,000/- to the accused-petitioner No. 1, Shital Kumar Mishra, of Criminal Misc. No. 29449 of 2006, in presence of the other two accused-petitioners, on which they assured to release the truck on returning from Varansi, then he made request to them to return the money but he was abused by them. The opposite party No. 2 further alleged that in spite of fulfillment of installment of truck bearing Registration No. BR-26G-8888 and issuing the "No Objection Certificate? the accused-petitioners also filed an Arbitration case at Calcutta against him and the guarantor of the vehicle. It is also alleged by the opposite party No. 2 that the accused-petitioners had given threatening for dire consequences in case of making pairvi in the Arbitration case. As such, the accused-petitioners under conspiracy cheated the opposite party No. 2 taking Rs. 50,000/-.

4. After filing of the complaint petition by the opposite party No. 2, on inquiry u/s 202 of the Code of Criminal Procedure, the court of Sri A.K. Verma, Judicial Magistrate, First Class, Aurangabad, summoned the accused-petitioners, finding prima facie case u/s 406 of the Indian Penal Code through the impugned order dated 7.5.2003.

5. Learned counsel appearing on behalf of the petitioners made submission that, in fact, the opposite party No. 2 made request to adjust the amount of Rs. 72,131/- received on sale of vehicle bearing Registration No. BR-26G-0888 by transferring the said amount in his favour to the account of Agreement No. BP 3764H and also assured that after adjustment of the said amount in Agreement No. BP 3764 H, he would pay the balance amount of Rs. 35,977/-. Accordingly, permission was granted by the Patna branch of the Finance Company and the opposite party No. 2 made payment of balance amount of Rs. 35,977/- to the Finance Company in respect to Contract No. BP 3764H and receipt bearing No. RBP 0552910 dated 28.8.2002 was granted to the opposite party No. 2, which would appear from Annexure-"17? to the Criminal Misc. No. 18520 of 2003, and the opposite party No. 2 also handed over the letter towards full and final settlement of the three trucks on the same day, which would appear from Annexure-"18? to the Criminal Misc. No. 18520 of 2003. Learned counsel for the petitioners in the light of the aforesaid submissions, thus, made further submission that the opposite party No. 2 has filed this complaint case with oblique motive only to harass the petitioners, who are officials of the Finance Company, after settlement of the agreement in respect to purchase of all the three trucks.

6. On the other hand, while the learned counsel for the opposite party No. 2 made submission that the learned Magistrate has rightly summoned the accused-petitioners on perusal of the complaint petition, solemn affirmation of the opposite party No. 2 and the statements of the witnesses, as recorded in course of inquiry, through the impugned order but he has not disputed the Annexures-"17? and "18? to the Criminal Misc. No. 18520 of 2003, which are in respect to the payment of Rs. 35,977/- to the opposite party No. 2 for satisfaction of all the three agreements relating to purchase of three trucks.

7. The complaint petition discloses the allegation that on 28.10.2002, the accused-petitioners took cash Rs. 50,000/- from the opposite party on giving assurance to him to release the truck bearing Registration No. BR-26G-0888 but on taking the money they told him to release the truck after returning from Varansi and when the opposite party No. 2 made requested to return the money, he was abused by them.

In paragraph-5 of the complaint petition, it is stated by the opposite party No. 2 that the accused-petitioners asked to release the truck bearing Registration No. BR-26G-8888 on payment of Rs. 35,977/- till 28.8.2002. Annexure-"17? to the Criminal Misc. No. 18520 of 2003 is the receipt issued by the Finance Company to the opposite party No. 2 regarding receiving of Rs. 35,977/- on 28.8.2002 and

Annexure-18, to the Criminal Misc. No. 18520 of 2003 is the letter dated 28.8.2002 in the name of Manager of the Finance Company written by the opposite party No. 2 regarding settlement of Contract Nos. BP 4024 H, BP 3764H and BP 4353 H by the opposite party No. 2 on paying Rs. 35,977/- towards full and final settlement regarding three contracts of the trucks. As such, after full and final settlement regarding the three contracts by the opposite party No. 2 with the Finance Company, the question of demanding cash Rs. 50,000/- by the accused-petitioners from the opposite party No. 2 on 28.10.2002 for releasing the truck bearing Registration No. BR-26G-0888, does not arise and the complaint petition appears to have been filed with oblique motive only to harass the petitioners.

8. Under the facts and circumstances, the impugned order dated 7.5.2003 passed in Complaint Case No. 1001 of 2002/Tr. No. 927 of 2003 by the court of Sri A.K. Verma, Judicial Magistrate, First Class, Aurangabad, is hereby quashed and both the applications are allowed.