
(2016) 01 JH CK 0006
In the Jharkhand High Court
Case No : W.P. (Cr.) No. 279 of 2015

Reyaz Ahmad Khan and Others	Vs	APPELLANT
State of Jharkhand		RESPONDENT

Date of Decision : 04-01-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 406, Section 420, Section 424

Citation : (2016) 1 AIRJharR 369

Hon'ble Judges : Prashant Kumar, J.

Bench : Single Bench

Advocate : Pandey Neeraj Rai, for the Appellant; J. Rahman, JC to GP-III and Gautam Kumar, for the Respondent

Final Decision : Allowed

Judgement

Prashant Kumar, J.—1. This application has been filed for quashing the order dated 02.08.2014 passed by Judicial Magistrate-Ist class, Jamshedpur in Complaint Case C/1 No. 623/2014, whereby and whereunder he took cognizance against the petitioners under sections 406/420 of the Indian Penal Code. It is submitted by learned counsel for the petitioners that from perusal of complaint petition and other materials available on the record, no offence made out under sections 406/420 of the Indian Penal Code. Thus, the impugned order cannot be sustained.

2. On the other hand, Sri Gautam Kumar, learned counsel for the respondent No. 2 submits that at paragraph No. 11 of the complaint petition, respondent No. 2 specifically stated that the petitioners started a business of brick kiln in the name and style of M/s. A.K. Bricks and for the said business, he took Rs. 2,60,000/- from the partnership firm, namely, M/s. Shamshad Ahmad Khan. It is further submitted that at paragraph No. 16 of complaint petition, the complainant stated that on 27.10.2011, a separate deed of partnership executed, which is in English and in the said deed, due to some ulterior motive, petitioners incorporated a paragraph that any amount kept in the bank account will be drawn by the joint

signature of two partners. It is further stated that because of the said Clause, complainant was not able to draw any amount from the bank. Accordingly, it is submitted that the aforesaid allegation made out a case under sections 406/420 of the Indian Penal Code.

3. Having heard the submissions, I have gone through the records of the case.

4. From perusal of paragraph 11 of the complaint petition, I find that the complainant-respondent No. 2 had not entrusted any money to the petitioners, rather it is alleged that petitioners had taken money from the partnership firm, namely, M/s. Shamshad Ahmad Khan for using the same for his personal business. There is no averments in the complaint petition to show that the aforesaid amount never returned to the partnership firm. Moreover, there is no allegation that complainant had entrusted any property to the petitioners. The allegation that in the reconstituted deed of partnership, a Clause has been inserted whereby any amount can be withdrawn from the bank by the joint signature of two partners will also does not make out an offence under section 420 of the Indian Penal Code, because the aforesaid Clause shows that the bona fide of the petitioners that no single partner can withdraw money from the bank. It further appears that before filing of the present case, petitioners had already filed a complaint case vide case No. C/1317/2012, corresponding to G.R. No. 433/2012 under sections 406/420/424 of the Indian Penal Code, which is still pending in the court. Thus, it is clear that the present case has been filed with a view to take revenge from the petitioners.

5. Considering the aforesaid fact and circumstance, I find that the continuation of the present criminal proceeding against the petitioners is an abuse of the process of the court. In the result, this writ application is allowed and the impugned order dated 02.08.2014 is quashed.