
(2022) 09 PAT CK 0035

In the Patna High Court

Case No : Criminal Miscellaneous No. 51862 Of 2022

Shankar Motors Pvt Ltd

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 30-09-2022

Acts Referred:

Indian Penal Code, 1860 — Section 34, 405, 406, 420
Code Of Criminal Procedure, 1973 — Section 482

Citation : (2022) 09 PAT CK 0035

Hon'ble Judges : Ashwani Kumar Singh, J

Bench : Single Bench

Advocate : Jitendra Prasad Singh, Bhanu Pratap Singh

Final Decision : Allowed

Judgement

1. Heard Mr. Jitendra Prasad Singh, learned counsel for the petitioner and Mr. Bhanu Pratap Singh, learned Additional Public Prosecutor appearing for the State.

2. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the first information report relating to Bhagalpur Industrial Area P.S. Case No.119 of 2020 dated 24.10.2020 registered under Section 406 and 420 read with 34 of the Indian Penal Code (for short 'IPC').

3. Mr. Jitendra Prasad Singh, learned counsel for the petitioner submitted that the instant first information report is an abuse of the process of the Court. He contended that even if the entire allegations made in the first information report are believed to be true, the same would constitute no cognizable offence. He contended that from perusal of the first information report, it would be evident that the informant had not paid the price of the vehicle except the advance money of Rs.51,000/-and, hence, he cannot allege that after payment of the price of the vehicle, the vehicle was not handed over to him. Lastly, he contended that in case there is any dispute between the parties, it is primarily a dispute of civil nature for which no criminal case could have been launched.

4. Mr. Bhanu Pratap Singh, learned Additional Public Prosecutor for the State submitted that whether an offence is made out or not would be seen by the police during investigation of the case. He contended that once a cognizable offence was reported to the police, it was incumbent upon the police to institute the first information report and investigate the same. According to him, it is not a fit case where the Court should interfere with the first information report. He contended that if allegations made in the first information report are found false, the police would submit final report after investigation.

5. I have heard the parties and the perused the first information report, which has been marked as Annexure-1 to the present application.

6. It has been alleged by the informant in his written report on the basis of which the first information report was lodged on 24.10.2020 that on 28.10.2018, he had approached the Manager of Shankar Motors Pvt. Ltd., Sabour, Bhagalpur for purchase of a Safari Storme VX vehicle. The showroom price of the vehicle as per quotation was Rs.14,67,219/-. He paid Rs.51,000/- through cheque to Shankar Motors Pvt. Ltd. for which receipt was granted to him on 31.10.2018. Thereafter, he approached to the HDFC Bank for loan. The accused person assured him for supply of the vehicle on 05.11.2018 but, it was not supplied to him. It has further been alleged that the informant approached the dealer of the vehicle several times and made a complaint in this regard on the toll free number of the company, but no steps had been taken by them for the redressal of grievance. It is also alleged that due to non-supply of the vehicle, he has sustained a loss of Rs. 1 crore.

7. On the basis of the aforesaid allegations, the impugned Bhagalpur Industrial Area P.S. Case No.119 of 2020 was registered under Sections 406 and 420 read with 34 of the IPC and investigation was taken up.

8. In the background of the facts noted above, it has to be seen as to whether the offences punishable under Sections 406 and 420 of the IPC are attracted against the petitioner or not.

9. Section 406 of the IPC prescribes the punishment for the offence of 'criminal breach of trust'. The offence of 'criminal breach of trust' has been defined under Section 405 of the IPC, which is extracted hereinbelow:-

"405. Criminal breach of trust.-Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust"."

10. A careful reading of Section 405 IPC shows that a criminal breach of trust involves following ingredients:-

(a) a person should have been entrusted with property or entrusted with dominion over property;

(b) that person dishonestly misappropriated or converted that property to his own use; or dishonestly used or disposed of that property or willfully suffered any other person so to do;

(c) that such misappropriation, conversion, use or disposal was in violation of any direction of law prescribing the mode in which such trust was discharged.

11. It would, thus, appear that for the offences punishable under section 406 IPC, the prosecution must prove:-

(i) that the accused was entrusted with property or with dominion over it; and

(ii) that he (a) dishonestly misappropriated it, or (b) dishonestly converted it to his own use, or

(c) used it, or (d) disposed of it in violation of any direction of law prescribing the mode in which such trust was discharged.

12. The offence punishable under Section 420 IPC reads as under:-

"420. Cheating and dishonestly inducing delivery of property.- Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

13. The essential ingredients of Section 420 IPC are:-

(i) cheating;

(ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable or being converted into a valuable security; and

(iii) mens rea of the accused at the time of making the inducement.

14. It is not the case of the informant that he had paid the full showroom price of the vehicle in question rather the allegation is that he had paid Rs. 51,000/- as advance for purchase of the vehicle. The admitted case of the informant is that the quoted price of the vehicle in question was Rs.14,67,219/- and he had paid only the advance amount of Rs.51,000/-. Under such circumstance, if the vehicle was not handed over to the informant by the dealer, no case constituting the offences under Sections 406 or 420 of the IPC can be made out.

15. There is nothing to suggest in the first information report that the petitioner after having been entrusted with the property dishonestly misappropriated it or

converted that property to his own use. There is also nothing to suggest that there was any inducement on the part of the petitioner or that the intention to deceive the informant was there right from the beginning of the deal.

16. It has rightly been submitted by the petitioner that the dispute, if any, is purely of civil nature.

17. I am of the opinion that the allegations made in the first information report are malicious in nature and under the facts and circumstances of the case, the prosecution of the petitioner for the offences under Sections 406 and 420 of the IPC would not be justified. I am of the further opinion that filing of the first information report is malafide and unwarranted. The remedy of the informant lies only in civil law and institution of the criminal case is nothing but an abuse of the process of the Court.

18. In that view of the matter, the first information report of Bhagalpur Industrial Area P.S. Case No.119 of 2020 is quashed. The application is allowed.