

(1997) 01 PAT CK 0058

In the Patna High Court

Case No : Criminal Miscellaneous No. 13964 of 1996

Shri K. Shridhar Rao and Others

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 21-01-1997

Acts Referred:

Penal Code, 1860 (IPC) — Section 420

Citation : (1997) 01 PAT CK 0058

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Ashutosh Jha, for the Appellant; Ramesh Kumar Singh, for Opp.
Party No. 2, Ashok Kumar Choudhury, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—Heard Mr. Ashutosh Jha, learned Counsel for the Petitioners.

2. The Petitioners have challenged the order dated 10.7.1996 passed by Judicial Magistrate, 1st Class, Bhagalpur in Complaint Case No. 860 of 1995 by which learned Magistrate took cognizance of an offence u/s 420 of the Indian Penal Code against the Petitioners. The aforesaid complaint case arise out of a complaint filed by opposite party No. 2 making certain allegations against the Petitioners. From the complaint petition it appears that the Petitioners took on lease certain premises belonging to the complainant for the purpose of godown for a fixed period of five years and an agreement to lease was executed incurring certain terms and conditions of tenancy. Paragraphs 6, 7, 8 and 9 of the complaint petition are worth to be quoted hereinbelow:

Para 6: That to further convince and allure, the accused person made regular payment of the rent till last hut for the reasons best known to the accused persons, they have not complied the formalities pertaining to the lease Agreement which has given rise to file this complaint and serious apprehension.

Para 7: That the complainant has received notice for vacation of the godown on

22.12.1995.

Para 8: That upon the vacation of the godown by the accused persons, it would cause heavy loss, harassment and mental agony to the complainant because she would have no any other alternative but to dismantle the structure as the same would be useless after vacation.

Para 9: That in this way the accused persons by adopting such calculated, malafide, sinister design have criminally breached the trust of the complainant and have cheated her ultimately putting her to immense loss, harassment and mental agony.

3. The complainant's case is that because of the vacation of godown by the Petitioners before expiry of five years the complainant sustained heavy loss, harassment and mental agony. It was also alleged that by the above act the complainant, in fact, has been cheated by the Petitioners. On the basis of this allegation made in the complaint together with the consistent statements recorded in S.A. learned Magistrate took cognizance of the impugned order.

4. From persual of the complaint petition I do not find, any fact, which is the result of cheating by the Petitioners. It is, in fact, a simple case of dispute between the landlord and tenant. Even assuming that the Petitioners have committed breach of the terms of tenancy then complainant has remedy available in civil law but no offence u/s 420 of the Indian Penal Code is made out. Learned court below has not taken a correct approach of law and have failed to consider the nature of liability of the Petitioners in the event the allegations made by the complainants are true.

5. In that view of the matter, I allow this application and quash the impugned order dated 10.7.96 taking cognizance of an offence u/s 420 of the India Penal Code against the Petitioners.