
(2012) 04 PAT CK 0074

In the Patna High Court

Case No : Criminal Miscellaneous No. 26289 of 2009

Sita Ram Sharma and Another

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 17-04-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 406

Citation : (2012) 3 PLJR 485

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar, J.—Heard Shri Rajini Kant Jha, Learned Counsel for the petitioners, Shri Pramod Kumar Pandey, learned Additional Public Prosecutor as well as Shri Vivekanand Singh, who has appeared on behalf of opposite party No. 2/complainant. Two petitioners, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, have prayed for quashing of an order dated 14.1.2009, whereby the learned Judicial Magistrate, 1st Class, Bhagalpur has taken cognizance of offence so far as petitioners are concerned u/s 406 of the Indian Penal Code and in respect of one another accused, namely, Mukesh Sharma, cognizance u/s 138 of the N.I. Act has been taken in Complaint Case No. 1772 of 2007.

2. It was submitted by Learned Counsel for the petitioners that the allegation was pertaining to business transaction in between the complainant and petitioners and as such Section 406 of the Indian Penal Code is not applicable in the facts and circumstances of the present case. It was submitted that the complainant has not disclosed that from the very inspection, intention of the petitioners was to cheat the petitioners and as such order of cognizance is not sustainable so far as petitioners are concerned.

3. In support of his argument, Learned Counsel has relied on an order passed by the Apex Court reported in 2005(10) SCC 261 (Hotline Teletubes and Components Ltd. & Others vs. State of Bihar). On aforesaid ground, it has been prayed to set aside the order of cognizance so far as two petitioners are concerned.

4. It was further submitted that it was a case under the Sale of Goods Act and not a case u/s 406 of the Indian Penal Code due to the reason that it was not a case of entrustment.

5. Shri Vivekanand Singh, Learned Counsel appearing on behalf of opposite party No. 2 has opposed the prayer of the petitioners. He submits that in the complaint petition, it was specifically asserted that two petitioners and one Mukesh Sharma were closely related with each other and they persuaded the complainant to hand over some Sari on sale to the accused persons to the tune of Rs. 1,10,792/-. At the time of purchase, a meager amount was paid and thereafter, the complainant started to approach the accused persons to refund the entire money. Out of total consideration amount, Rs. 90,390/- remained outstanding for which the complainant approached the accused persons. Even the complainant visited the shop of the petitioners and one Mukesh Sharma at Bombay where all the three accused persons were present and thereafter, one of the accused Mukesh Sharma handed over a cheque for an amount of Rs. 5,000/- and odd, which was presented before the Bank and same turn dishonoured, since there were insufficient fund in the account. Thereafter, legal notice was issued and in view of non-clearing the amount, the present complaint petition was filed by the complainant. It was submitted by Shri Singh that right from the very beginning, intention of the accused persons was not fair and due to that reason, the accused persons had committed the offence of criminal breach of trust. Even on demand, the complainant was assaulted by the accused persons.

6. After going through the materials available on record and the impugned order, it is evident that though allegation was made for assault, the learned Magistrate has not taken cognizance for such offence. Only cognizance order was passed u/s 406 of the Indian Penal Code against two petitioners and Section 138 of the Negotiable Instruments Act against one another accused, who was none else but close relative and associate of the petitioners as disclosed in the complaint petition.

7. From the materials available on record, the court is of the opinion that intention of the accused persons was to cheat the complainant and the material on record suggests commission of offence u/s 406 of the Indian Penal Code. In view of peculiar facts of the case, the court is of the opinion that petitioners may not get any help from the Hotline Teletubes & Components" case (supra). I do not find any merit in the present petition. The petition stands dismissed.