
(2007) 01 PAT CK 0176

In the Patna High Court

Case No : Criminal Miscellaneous No. 24281 of 2005

Subesh Kumar and Another

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 03-01-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 406, 420

Citation : (2007) 2 PLJR 219

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Advocate : Wasi Ahmad Khan, for the Appellant; Anil Kumar No. 6, for the Respondent

Final Decision : Allowed

Judgement

Mridula Mishra, J.—Heard counsel for the petitioners, the State as well as counsel for opposite party no. 2. 2005 (sic--Order?) passed by C.J.M., Nalanda in Bihar P.S. Case No. 269 of 2004/G.R. No. 1784 of 2004 whereby cognizance has been taken for offence under Sections 406, 420/120B of the Indian Penal Code against the petitioners.

2. As per the prosecution case accused no.1 and 2 (not the petitioners) came to the house of the informant and requested for a loan of Rs. 20,000/-. The complainant gave Rs. 20,000/- to opposite party nos.1 and 2. After six months Rs. 5,000/- was returned but the remaining Rs. 15,000/- has not been returned and accused nos. 3 and 4 assured that the money will be returned by accused nos.1 and 2. Since the money was not returned this case has been instituted.

3. Counsel for the petitioner States that from a bare perusal of the complaint petition it is apparent that no offence under Sections 420, 406 and 120B of the Indian Penal Code is made out against the petitioner, as there is neither any entrustment to the petitioners nor any allegation that the petitioners have conspired to cheat the complainant.

4. Counsel for the opposite party states that since the petitioners are related to other accused persons, they are responsible for repayment of the loan amount.

5. Considering the allegations in the complaint petition and the material available on record, prima facie case under Sections 406, 420 and 120B of the Indian Penal Code is not made out against the petitioners and there is no allegation that from very inception there was any intention on the part of the petitioners to cheat the complainant. Simple allegation is that they assured that the money will be returned by accused nos.1 and 2. Considering the fact that ingredients for making out prima facie offence is missing, the order taking cognizance is illegal. Accordingly the order dated 8.4.2005, passed by C.J.M., Nalanda in Bihar P.S. Case No. 269 of 2004 G.R. No. 1784 of 2004 is quashed and this application is allowed.