

(2006) 01 PAT CK 0107

In the Patna High Court

Case No : Criminal Miscellaneous No. 35687 of 2002

Suryadev Pandey and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 12-01-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 482
Penal Code, 1860 (IPC) — Section 307, 379, 406, 504

Citation : (2006) 2 PLJR 303

Hon'ble Judges : Rekha Kumari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rekha Kumari, J.—This is an application u/s 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) for quashing the order dated 17.9.2002 passed by the learned Sub-divisional Judicial Magistrate, Sikrahana at Motihari in Complaint Case No. C-86 of 2002 by which he has taken cognizance under sections 406, 379 and 504 of the Indian Penal Code against the petitioners. The case of the complainant, in short, is that there was an agreement between the parties for executing a sale deed in favour of the complainant and consideration money to the tune of Rs. 29,500/- was paid to the petitioners. It is further stated that the complainant purchased stamp paper and got the contents of the sale deed written by the deed writer and waited for the petitioners for execution of the sale deed but they did not turn up. Thereafter, they went on evading execution of the sale deed and ultimately the deed was not registered. Later on it was learnt that the petitioners gave the land in lease to some other persons. The petitioners then returned the consideration money to the complainant, but in spite of request did not return the cost of the stamp paper. On the date of occurrence, the complainant went to the house of the petitioners who refused to return the amount and also abused him and one of them fired at him and another snatched away the golden chain.

2. Learned counsel for the petitioners submitted that the complaint petition itself shows that the entire consideration money was paid. Therefore, there was no occasion for the complainant to demand any further amount and the petitioners to commit the offence. He further submitted that as the land was not sold to the complainant-Opposite Party No. 2, he being aggrieved, has instituted this case with false allegations. He also submitted that no offence u/s 406 I.P.C. is made out on the allegations made.

3. It is well settled that at the time of cognizance and issuance of summons, the Magistrate has only to see whether the allegations in the complaint petition disclose any offence and whether there is, prima facie evidence to proceed against the accused persons. At this stage, the Magistrate would not weigh the evidence to ascertain the truth or falsity of the allegations.

4. The impugned order shows that the learned Magistrate after perusing the complaint petition, statement of the complainant on S.A. and the statements of the witnesses examined u/s 202 of the Code has found a prima facie case under sections 406, 379 and 504 of the Indian Penal Code against the petitioners. The allegation in the complaint also discloses the offence under sections 307 and 504 I.P.C. and if not u/s 406 of the Indian Penal Code. Therefore, I do not think it proper to interfere with the impugned order. The petitioners would be at liberty to raise the objections as to whether the offence u/s 406 I.P.C, or any other offence is made out or not against the petitioners at the time of framing of charge. With the above observation, this application is dismissed.