
(2012) 01 PAT CK 0109

In the Patna High Court

Case No : Criminal Miscellaneous No. 33925 of 2002

Tata Engineering and Locomotive Company Limited and M/s.
Phooltas Autos Private Limited

APPELLANT

Vs

The State of Bihar and Tulsi Singh Singh

RESPONDENT

Date of Decision : 31-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 482
Penal Code, 1860 (IPC) — Section 120B, 420

Citation : (2012) 01 PAT CK 0109

Hon'ble Judges : Rajendra Kumar Mishra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Honourable Mr. Justice Rajendra Kumar Mishra

1. This application, u/s 482 of the Code of Criminal Procedure, has been filed on behalf of the petitioners to quash the order dated 21.6.2002 passed in Complaint Case No.565(C) of 2002/T.R. No.1441 of 2002 by the court of Sri S.N. Tiwary, Judicial Magistrate, First Class, Patna, summoning the accused, named in the complaint petition, including the petitioners, on inquiry u/s 202 of the Code of Criminal Procedure, finding prima facie case under Sections 420 and 120-B of the Indian Penal Code against them.

2. In brief, the case is that the opposite party no.2, Tulsi Singh, filed the Complaint Case No.565(C) of 2002 in the court of the Chief Judicial Magistrate, Patna, alleging therein that he purchased a Tata Sumo DLX vehicle manufactured by the accused-petitioner no.1, a reputed company, from the show room of its authorized dealer, accused-petitioner no.2 on 17.2.1999. The purchased vehicle was registered in the District Transport Office, Patna, having its Registration No.BR 1P/3735. The vehicle was under warranty for the period of 18 months from the date of delivery of the vehicle, i.e., 17.2.1999. According to the warranty condition, the vehicle was brought in the workshop of the accused-

petitioner no.2, for three free services. Apart from the above, whenever any of the trouble arose, the said vehicle was always brought to the workshop of the accused-petitioner no.2. While in pursuant to the advertisement of the vehicle by the accused-petitioner no.1 and also by accused nos.2 and 3, Regional Manager, Regional Sales Office of M/s. Tata Engineering and Locomotive Company Limited (TELCO), Jamshedpur, and the Regional Manager Vehicle, TELCO Regional Office, Appeejay House, 5th Floor, Block No.1, 15 Park Street, Kolkatta-700016, the opposite party no.2 discussed with the accused no.4, the Assistant Manager TELCO, Sub Regional Office, 109, Adharshila Complex, 3rd Floor, South Gandhi Maidan, Patna, and decided to purchase one Tata Sumo DLX vehicle but unfortunately, the vehicle started giving trouble well within the warranty period in the year 1999 itself. As a result of that, in December, 1999, engine of the vehicle was got repaired at the workshop of the accused-petitioner no.2 and in course of repairing some parts of the engine were replaced. When again the vehicle started giving trouble in the month of August, 2000, after covering the distance of about 14 kilometers, then piston and ring set alongwith other important parts of the engine were got replaced but even then the defect could not be removed. The further case of the opposite party no.2 is that he, being the politician, had purchased the vehicle to move in his locality without trouble and had invested the heavy amount but due to trouble in the vehicle he could not attend the social function in time. The opposite party no.2 further alleged that he always approached the accused persons for replacement of the vehicle or to return the price of the vehicle but there was no response in spite of sending the legal notice also to them. As such, the opposite party no.2 had been cheated by the accused-petitioners and its other officials, named in the complaint petition, and had to suffer heavy loss.

3. After filing of the aforesaid complaint petition by the opposite party no.2, Tusli Singh, on inquiry u/s 202 of the Code of Criminal Procedure, the court of Sri S.N. Tiwary, Judicial Magistrate, First Class, Patna, summoned the accused, named in the complaint petition, including the petitioners, finding prima facie case under Sections 420 and 120-B of the Indian Penal Code against them.

4. Learned counsel appearing on behalf of the petitioners made submission that if the allegation, as made in the complaint petition, is taken to be at its face value and accepted to be true, the ingredients for constituting the offence under Sections 420 and 120-B of the Indian Penal Code are lacking and the dispute appears to be of civil in nature. Learned counsel for the petitioners further made submission that prior to the filing of the present complaint case bearing Complaint Case No.565(C) of 2002 on 2.4.2002, the opposite party no.2 had filed the Complaint Case No.655 of 2000 before the District Forum for redressal of Consumer Disputes, Patna, for replacement of the engine/ vehicle but that fact has not been disclosed by the opposite party no.2 in the complaint petition.

5. On the other hand, learned counsel for the opposite party no.2 made submission that the learned Magistrate has rightly summoned the accused,

named in the complaint petition, including the petitioners finding prima facie case under Sections 420 and 120-B of the Indian Penal Code.

6. On bare perusal of the complaint petition, it appears that the allegation, as made in the complaint petition against the accused-petitioners, is not to replace the vehicle/ not to return the price of the vehicle in spite of repeated demands. It has specifically been stated in paragraph-11 of this application that the opposite party no.2 has also filed Complaint Case No.655 of 2000 before the District Forum for Redressal of Consumer Disputes, Patna, for replacement of the engine/ vehicle. This fact has not been controverted in the counter affidavit filed on behalf of the complainant-opposite party no.2. Moreover, the averments of the complaint petition, on the basis of which the impugned order has been passed, does not disclose the ingredients for constituting the offence under Sections 420 and 120-B of the Indian Penal Code rather the averments would amount to civil liability inter se the parties. As such, the impugned order, summoning the petitioners for the offence u/s 420 and 120-B of the Indian Penal Code, appears to be completely abuse of the process of the court.

7. Accordingly, the impugned order dated 21.6.2002 passed in Complaint Case No.565(C) of 2002 /T.R. No.1441 of 2002 by the court of Sri S.N. Tiwary, Judicial Magistrate, First Class, Patna, with respect to the petitioners, is hereby quashed and the application is allowed.