

(2010) 07 JH CK 0102
In the Jharkhand High Court
Case No : Criminal M.P. No. 1594 of 2006

Uma Shankar Gopalka

APPELLANT

Vs

The State of Jharkhand and Sunil Kumar

RESPONDENT

Date of Decision : 20-07-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 420

Citation : (2010) 07 JH CK 0102

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—Heard counsel for the petitioner and counsel for the State.

2. From the office report it appears that though the Opposite Party No. 2 has received the notice issued to him and has filed his appearance through lawyer, but in spite of repeated calls, both today as also on the last date, no one has appeared on behalf of the Respondent No. 2 to offer any contest.

3. From the facts stated by the counsel for the petitioner, it appears that a complaint was filed by the Opposite Party No. 2 before the court below and on the basis of the statement containing certain allegations, the learned court below took cognizance against the petitioner for the offence u/s 420 of the Indian Penal Code.

4. The admitted facts of the case as per the complaint of the Opposite Party No. 2 is that the petitioner happens to be a financier. The Opposite Party No. 2 had obtained a loan of Rs. 6 lakhs from the petitioner for the purchase of a Trailer? The Trailer was purchased with the amount borrowed from the petitioner and the same was registered in the State of Haryana. A hire-purchase agreement was drawn up and in terms of the agreement, the complainant/borrower was required to repay the loan amount in equal monthly installments. The documents pertaining to the hire-purchase agreement was admittedly executed by the

complainant in favour of the financier.

The complainant has claimed that he has repaid the entire amount of loan together with interest thereon and though, according to his calculations, no further amount was due from him, yet, the financier has raised a further demand for a sum of Rs. 78,000/- and has threatened to seize the Trailer for realization of the alleged outstanding dues. The complainant has alleged that the petitioner has misused the documents executed by the complainant in order to create some fabricated evidence in support of the additional demand of money though the complainant, according to his calculations, does not owe any money to the financier.

5. Learned Counsel for the petitioner argues that from the entire averments in the complaint petition, no offence u/s 420 of the Indian Penal Code can be made out by any stretch of imagination and, as it appears from the impugned order, the learned court below has passed the impugned order without considering the evidences on record and without application of judicial mind. Learned Counsel argues that the dispute is exclusively a civil dispute and no criminal liability can be attracted against the petitioner. To buttress his arguments, learned Counsel refers to the averments of the complaint petition, and also to the statements of the complainant recorded on solemn affirmation in course of enquiry conducted by the court below. Learned Counsel explains, in his statements before the Magistrate, the complainant has admitted that he was not aware of the fact that in terms of the agreement, interest was payable also on the outstanding dues accumulated due to default in payment of the periodical installments and that the complainant has also admitted the fact that there were occasions when he had defaulted in payment of monthly installments.

6. Learned Counsel for the State, on the other hand, submits that from the averments as mentioned in the complaint petition and the statement made on solemn affirmation, it transpires that the thrust of the allegation is that the petitioner being the financier, had obtained some documents from the complainant and has converted the same in order to raise some illegal demand and wrongful loss to the petitioner.

7. I have heard counsel for the parties and I have also gone through the materials available on record including the complaint petition as also the statement of the complainant recorded on solemn affirmation in course of enquiry conducted by the Magistrate. From the entire facts and circumstances it does appear that admittedly the complainant had obtained a loan from the petitioner for the purchase of a Trailer and a hire-purchase agreement was executed by and between the complainant and the petitioner/financier. Admittedly, though the borrowed amount was to be repaid by the complainant in regular monthly installments, but he had defaulted in payment of the monthly installments. It is also admitted that as per the terms of the agreement, the borrower was liable to pay interest on the accumulated defaulted amounts of installments. In any case, the only allegation against the petitioner is that a

further demand of Rs. 78,000/- has been made by the petitioner from the complainant. The complainant appears to have disputed the amount on the belief that he does not owe any such amount to the petitioner. It is apparent from the above facts that the dispute relates to accounting and in this view of the matter, it is exclusively in the nature of a civil dispute which, does not attract any criminal liability.

8. From the perusal of the impugned order of the court below it appears that even without considering the admission in the statements of the complainant, the court below has proceeded to take cognizance for the offence u/s 420 of the Indian Penal Code and issued summons directing the petitioner to face trial. It is apparent that while passing the impugned order, the learned court below has not applied its judicial mind to the facts and circumstances of the case.

9. In the light of the facts and circumstances and the discussions made above, I find merit in this application. Accordingly, this application is allowed. The impugned order of cognizance dated 09.08.2004 and the entire criminal proceeding, following the order of cognizance, pending against the petitioner in the court of Sri Y.K. Singh, Judicial Magistrate, 1st Class, Jamshedpur or his successor vide Complainat Case No. 536 of 2004 (T.R. No. 1983 of 2004), is hereby quashed.