
(2001) 09 PAT CK 0024

In the Patna High Court

Case No : Criminal Miscellaneous No. 31493 of 2000

Wellington Commercial Ltd. and Another

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 28-09-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 482

Citation : (2002) 1 PLJR 93

Hon'ble Judges : P.K. Deb, J

Bench : Single Bench

Advocate : N.K. Agrawal, for the Appellant; Pankaj Kumar Singh, for the Respondent

Judgement

P.K. Deb, J.—Heard.

2. This is a petition u/s 482 of the Code of Criminal Procedure praying for quashing the entire criminal proceeding including the order of cognizance in Complaint Case No. 888 of 1996 in respect of the Petitioners alone.

3. As per the complaint case on a hire purchase agreement the Opposite Party No. 2 had Purchased a Mini Bus bearing Registration No. BR 09M 5666 and as per the agreement, the price of the vehicle was to be paid on several installments-but such installments had not been paid properly, the agreement was rescinded to by the Petitioner-financer and then as per the agreement itself, the Petitioner moved before the City Civil Court in Kolkata and as per the order of that Court, Receiver in the name of Abha Singh, Advocate, the accused No. 3 was appointed, who took possession of the vehicle and then made over to the Petitioner financier. It is alleged by the complainant that he has made all payments but the Petitioners with ulterior motive got the vehicle seized and then sold it to one Deepak. Kumar by forging the signature of the concerned complainant opposite party No. 2. Hence, the complaint case was filed and after enquiry u/s 202 Code of Criminal Procedure cognizance has been taken and then processes were issued against the Petitioners and afterwards warrant of arrest

has also been issued. By an order dated 1.12.2000 further proceedings in the complaint case had been stayed by a Bench of this Court. Petitioner Nos. 1 and 2 are the Financier Company and the Director of the Financier Company respectively. According to the Petitioners when they moved before the City Civil Court then legally the vehicle was seized by the Receiver and then made over to the Petitioners and then it was sold as the agreement between the Petitioners and the complaint opposite party No. 2 had long been rescinded to. It has further been submitted that as per the agreement and as per the order of the City Civil Court already the matter of dispute was referred to the arbitrator to the knowledge of the complainant but he did not appear and then an ex parte award was passed by which the vehicle was given in possession of the Petitioners and the complainant was asked to make some payments more but instead of going by or abiding by the award, the complainant has filed this criminal case. On one hand there is claim from the side of the Petitioners that the hire purchase agreement had already been rescinded and an award has already been passed by the arbitrator as per the agreement itself. On the other hand the complainant's plea is that he had made all payments and by forging his signature the sale has been made to one Deepak Kumar. When the award is there and possession had been given in favour of the Petitioners then the question of forging etc. does not arise at all.

4. The whole position remains that there is an agreement of hire purchase between the two which is nothing but an executory agreement and it has been held that for non-compliance of any conditions or terms of the agreement or contract, there cannot be any criminal proceeding. It was further held that the Hire Purchase Act as enunciated had never been received the sanction of the President of India. In a recent judgment, the Hon"ble Supreme Court in Criminal Appeal No. 883 of 2001 (Charanjit Singh Chadha v. Sudhir Mehra) has held that criminal case in such circumstances is not maintainable as executory contract is there between the two and the dispute can only be resolved in appropriate forum either in the Civil Court as per the Agreement before the Arbitrator or arbitration proceedings itself. Here it appears that already arbitration proceedings were there. According to the complainant when he approached the City Civil Court for releasing of the vehicle in this favour, the same was not entertained as by that time Petitioners had withdrawn the petition from the City Civil Court. It is the contention of the learned Counsel for the Petitioners that when already an award has been passed then definitely the petition before the City Civil Court became infructuous and as such the same was withdrawn by the Petitioners. Be it what it may, in view of the recent judgment of the Apex Court, as mentioned above, the cognizance taken against the Petitioners alone cannot be said to be legal. Hence, the same is quashed in respect of the Petitioners alone. Thus the criminal proceedings in Complaint Case No. 888/1996 pending before Magisterial Court at Purnea shall be construed as quashed in respect of Petitioner Nos. 1 and 2 alone.