

Dinesh Sharma Vs. The State of Jharkhand and Anr

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Court : Jharkhand

Decided On : Jan-25-2017

Appellant : Dinesh Sharma

Respondent : The State of Jharkhand and Anr

Advocate for Pet/Ap. : Mr. Navneet Sahay

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr.M.P. No. 2331 of 2015

----- 1. Dilip Goyel, S/o Late Hansraj Goyel, Proprietor of A.S.L. Enterprises Limited, A-7, 2nd Phase, Adityapur Industrial Area, Town Jamshedpur, P.O. & P.S.- Adityapur, District- Seraikella Kharsawan.

2. Akshay Goyel, S/o Dilip Goyel, R/o A-7, 2 nd Phase, Adityapur Industrial Area, Town Jamshedpur, P.O. & P.S.- Adityapur, District- Seraikella Kharsawan. ...

Petitioners Versus 1. The State of Jharkhand 2. Ram Kishan Sharma, R/o of C/o Rekha Devi, Dimna Road, Near Hira Hotel, House No. 73, Mango, P.O. & P.S.- Mango, Town Jamshedpur, East Singhbhum. ... Opp. Parties With Cr.M.P. No.

376 of 2016 ----- 1. Dinesh Sharma, S/o Dharam Nath Sharma, R/o A-7, 2nd Phase, Adityapur Industrial Area, P.O. & P.S.- Adityapur, District- Seraikella Kharsawan. ...

Petitioner Versus 1. The State of Jharkhand 2. Ram Kishan Sharma, R/o of C/o Rekha Devi, Dimna Road, Near Heera Hotel, House No. 73, Mango, P.O. & P.S.- Mango, Town Jamshedpur, District- East Singhbhum. ... Opp. Parties -----

CORAM : HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY

----- For the Petitioners : Mr. Navneet Sahay, Advocate For the O.P. No.

2. : Mr. R.P. Singh, Advocate ----- 05/25.01.2017 Heard Mr. Navneet Sahay, learned counsel for the petitioners and Mr. R.P. Singh, learned counsel appearing for the opposite party no.

2. Since both the matter arises out of the same Complaint Case the same are being disposed of by this common order. In these applications petitioners have prayed for quashing of the entire criminal proceedings in connection with Complaint Case No. 332 of 2014 including the order dated 07.10.2015 passed by the learned Sub-Divisional Judicial Magistrate, Jamshedpur by which cognizance has been taken against the petitioners for the offences punishable u/s 406, 471, 420, 384, 409, 467, 468, 323 of the Indian Penal Code. -2- The complaint case was instituted by the opposite party no. 2 in which it was alleged that the petitioner has induced the complainant to the purchase of Tata Aria vehicle and as per the terms and conditions the warranty period was for a period of three years from the date of purchase. It has been alleged that some mechanical defect developed in the vehicle and it was taken to the accused persons who advised him to take it before the authorized service centre but subsequently the authorized dealer refused to give any response to the complainant on the ground that the warranty period has lapsed. It has been alleged that legal notice was also sent to the accused persons who denied the entire matter. Lastly the complainant has alleged that in spite of the non-expiry of the warranty period the defects in the vehicle was not removed and it was refused by the accused persons. Based on the aforesaid allegation a Complaint Case No. 332 of 2014 was instituted. After conducting an inquiry u/s 202 of the Cr.P.C. and by examining the complainant on solemn affirmation as well as the witnesses cognizance was taken for the offences punishable u/s 406, 471, 420, 384, 409, 467, 468, 323 of the I.P.C. It has been submitted by the learned counsel for the petitioners that the Complaint Petition itself would reveal existence of a civil dispute. It has also been submitted that infact the complainant had purchased a test drive vehicle for which the warranty period was six months and since six months has already elapsed and when the complainant had approached the dealer for removal of the mechanical defect which had developed in the car such refusal on the part of the dealer was in terms

and conditions agreed upon between the petitioners and the opposite party no.

2. Learned counsel for the petitioners submits that even otherwise there is no cause for initiation of a complaint case as the opposite party no. 2 has an alternative remedy before the appropriate forum for redressal of his grievance. Mr. R.P. Singh, learned counsel appearing for the opposite party no. 2 has vehemently opposed the prayer made by the petitioner and has submitted that on the garb of selling a new -3- vehicle the opposite party no. 2 was duped by the petitioner and he had purchased a test drive vehicle. It has been submitted that since the dealer had refused to service the vehicle on the pretext that the warranty period has already elapsed a legal notice was sent to the accused persons and from their reply it could be deciphered that the vehicle which was sold to the opposite party no. 2 was indeed a test drive vehicle. It has been stated that the act of the petitioners do suggest an offence of criminal breach of trust and cheating as well as forgery and therefore the learned court below has properly appreciated the materials available on record before taking cognizance and summoning the petitioners to face trial. Submission which has been advanced by the learned counsel for the opposite party no. 2 does not find place in the allegations made in the Complaint Petition. Nowhere in the Complaint Petition it has been stated that on being induced by the petitioners the complainant was forced to purchase a test drive vehicle and not a new vehicle. The complainant himself has admitted in the Complaint Petition that as per general terms and conditions of the purchase the warranty period of the vehicle was for a period of three years and the vehicle was never produced for service within the aforesaid period of three years. Even if it is assumed that the vehicle which was sold to the petitioner was a test drive vehicle the warranty period for a test drive vehicle as could be deciphered from the terms and conditions of financing the test drive vehicle is for a period of six months. The Complaint Petition thus does not reveal any mens- ria on the part of the petitioner as a perusal of the Complaint Petition only makes out a case which could at best invite civil consequences. Non servicing of the vehicle within the statutory period of warranty or even if it is assumed that the dealer had refused to service the vehicle within the warranty period can in no way lead the petitioners to be involved in criminal prosecution. The Complaint case thus if allowed to continue would result in miscarriage of justice and would be an abuse of the process of Court. -4-

Accordingly, in view of what has been stated above, this application is allowed and the entire criminal proceedings in connection with Complaint Case No. 332 of 2014, including the order dated 07.10.2015 passed by the learned Sub-Divisional Judicial Magistrate, Jamshedpur by which cognizance has been taken against the petitioners for the offences punishable u/s 406, 471, 420, 384, 409, 467, 468, 323 of the I.P.C., are hereby, quashed and set aside. These applications stand allowed. (R. Mukhopadhyay, J.) Alok/-

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