

Rakesh Agarwal and ors. Vs. the State of Bihar and anr.

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Court : Patna

Decided On : Nov-30-2006

Judge : Ghanshyam Prasad, J.

Appellant : Rakesh Agarwal and ors.

Respondent : The State of Bihar and anr.

Judgement :

Ghanshyam Prasad, J.

1. Heard.

2. The petitioners have filed this application under Section 482 Cr.P.C. for quashing of the order of cognizance dated 27.1.2006 passed by Judicial Magistrate, Biharsharif, Nalanda in Complaint Case No. 1271(C) of 2005, Trial No. 1774 of 2006 thereby and thereunder the learned Magistrate has taken cognizance against the petitioners under various sections of the I.P.C.

3. The relevant facts of this case is that the petitioners are associated with Non Banking Financial Institution name and styled as Zenith Credit Limited, Kolkota. The complainant-opposite party No. 2 entered into a hire purchase agreement with the aforesaid company for purchase of a truck bearing No. WB-37A-3925. The hire purchase amount was to be returned to the company in 34 instalments. The opposite party No. 2 paid some instalments. However, later on he defaulted in

payment of the instalments.

4. According to the prosecution story on 18.1.2005 the truck met with accident and became un-plyable as a result of which some instalments were not paid to the company. While the truck was still in garage for repairing the petitioners entered into the garage and obstructed the truck from plying on the road for a week. The complainant-opposite party No. 2 any how managed to pay Rs. 75.000/- to the accused-petitioners towards instalment and promised to pay the remaining amount of instalments after receipt of the insurance claim. Inspite of it, the petitioners on 1.12.2005 in the morning on the point of pistol snatched key of the truck from its driver and forcibly and stealthly drove away the truck. They also snatched Rs. 22.000/- from pocket of the driver.

5. With the above allegations, the opposite party No. 2 lodged complaint case before the court of C.J.M., Nalanda. After enquiry under Section 202 Cr.P.C., the learned Judicial Magistrate took cognizance against the petitioners under various sections of the I.P.C. and issued summons to face trial. The petitioners have challenged their prosecution for the alleged offence.

6. It is submitted on behalf of the petitioners that their prosecution for the alleged offence is nothing but abuse of process of the court. The real fact is that the company of the petitioners on being approached by the opposite party No. 2 advanced money to him under hire purchase agreement for purchase of truck. The amount was to be re-paid by the opposite party No. 2 in 34 instalments. The hire purchase agreement(Annexure-2) was accompanied with an agreement of arbitration(Annexure 2/A). As the opposite party No. 2 defaulting in payment of instalments, the company invoked the arbitration clause and filed a Misc. Case No. 2632 of 2004 before City Civil Court, Kolkota. The court appointed Receiver for taking possession of the truck(Annexure-3). On the basis of the above order, the agent of the Receiver with the help of the local police took possession of the truck (Annexure-5). Inventory was also prepared bearing signature of the driver of the truck(Annexure-6). Thereafter, this false case has been filed by the opposite party No. 2 in order to pressurise the company to come to his terms.

7. The learned Counsel for the petitioners referred to several decisions of the apex court including Charanjit Singh Chadha and Ors. v. Sudhir Mehra reported in 2001(7) SCC 417 and submitted that re-possession of goods as per the term of the agreement does not amount to any criminal offence and, therefore, impugned order of cognizance is apparently illegal and bad in law.

8. The above cited case (Supra) is also based on hire purchase agreement. On the basis of the term of the agreement, the goods in question was re-posessed by the financial company and, accordingly, the owner of the goods filed criminal case against the officers of the company. The Hon'ble apex court in paragraph-17 of the judgment held as follows:

17.- The hire purchase agreement in law is an executory contract of sale and confers no right in rem on the hirer until the conditions for transfer of the property to him have been fulfilled. Therefore, the re-possession of goods as per the term of the agreement may not amount to any criminal offence. The agreement (Annexure P-1) specifically gave authority to the appellants to re-possess the vehicle and their agents have been given the right to enter arty property or building wherein the motor vehicle is likely to be kept. Under the hire purchase agreement, the appellants have continued to be the owners of the vehicle and even if the entire allegations against them are taken as true, no offence was made out against them. The learned Single Judge seriously flawed in his decision and failed to exercise jurisdiction vested in him by not quashing the proceedings initiated against the appellants. We, therefore, allowed this appeal and set aside the impugned judgment. The complaint and any other proceedings initiated pursuant to such complaint are quashed.

9. From the above discussions of the facts and circumstances, the documents as well as the settled principle of law, it is quite clear that the prosecution, of the petitioners who are associated with the financial company is not tenable in the eye of law and it is fit to be quashed. Accordingly, this application is allowed. The order in question alongwith the entire criminal proceeding is hereby quashed.