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Court : Jharkhand

Decided On : Jun-18-2002

Reported in : 2002(50)BLJR1549

Judge : D.N. Prasad, J.

Acts : [Code of Criminal Procedure \(CrPC\) 1973](#) - Sections 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 420

Appeal No. : Cr. M.P. No. 231 of 2002

Appellant : Munna

Respondent : State and anr.

Advocate for Def. : APP

Advocate for Pet/Ap. : Rajesh Kumar, Adv.

Disposition : Petition allowed

Judgement :

ORDER

D.N. Prasad, J.

1. By the Court.--This application has been filed under Section 482 of the Code of Criminal Procedure for quashing the order taking cognizance dated 6.11.2001,

whereby and whereunder the learned Court below took cognizance for the offence under Section 420, IPC in connection with Complaint Case No. 1015 of 2001.

2. The prosecution case in brief is that the complainant opposite party No. 2 is the partner of Firm M/s. Kamalakant Paul & Sons at Giridih. The said firm deals in Sunmica, laminated glass, plywood, Modi float glass, Modi mirror and more items. The accused/ petitioner was the authorised representative of M/s. Glass King & Furnishing House, Bhagalpur and he used to purchase various items from the complainant's shop. It is further alleged that on 26.2.2000, the petitioner/ accused purchased plywood, glass and sun-mica worth Rs. 1,53,658.82 and paid only a sum of Rs. 1,05,000/- by way of demand draft and for the balance amount of Rs. 48,658.82 paise the accused/petitioner promised to pay by 10.3.2000. It is further claimed that in-token of his promise, the accused petitioner signed a hand note showing balance amount of Rs. 48,658.82. The complainant demanded the dues several times but the accused/ petitioner did not pay the said dues. Hence, a legal notice was also issued and thereafter the complaint case was filed.

An enquiry was made under Section 202, Cr PC and the Court below took cognizance for the offence under Section 420, IPC.

3. The learned counsel appearing on behalf of the petitioner, at the very outset, submitted that no case under Section 420, IPC is made out on the allegation as alleged, as there is no whisper or allegation about cheating and even if there is a dues of the said amount that cannot constitute an offence for cheating. It is further alleged that allegation as made out in the complaint is also of civil nature and utmost allegation against the petitioner is that he has not paid the balance amount and it is open for the complainant to realise the said amount by filing a Money Suit.

4. On the other hand, the learned APP contended before me that a dues of Rs. 48,000/- and odd is lying with the accused and the accused person is not even trying to pay back the said amount.

5. Notice was also issued against the complainant by registered cover to which the petitioner also filed an affidavit but inspite of the notice issued to the complainant, none appeared on his behalf.

6. From going through the complaint apparently there is only allegation about dues of Rs. 48,000/- and odd against the petitioner, Nowhere any allegation is made about committing cheating as well as apparently there appears the said dues is in respect of simple transaction about purchase and sale of the article. The allegation as made out appears to be of civil nature.

7. Thus. I find that the learned Court below committed error in taking cognizance by the order impugned, which is fit to be quashed. In the result, I find merit in this application, which is allowed. The impugned order dated 6.11.2001 is, hereby, quashed.

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