

Md. Rustam and ors. Vs. the State of Bihar and Md. Shamim Ahmad Son of Late Ali Akbar

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Court : Patna

Decided On : Jun-30-2009

Judge : Abhijit Sinha, J.

Acts : Indian Penal Code (IPC) - Sections 120B, 384, 406, 420, 427 and 468

Appeal No. : Cr. Misc. No. 3056 of 2008

Appellant : Md. Rustam and ors.

Respondent : The State of Bihar and Md. Shamim Ahmad Son of Late Ali Akbar

Advocate for Def. : Jharkhandi Upadhaya, A.P.P. for the State,; K.K. Tiwari and;

Advocate for Pet/Ap. : Sajid Salim Khan, Adv.

Judgement :

ORDER

Abhijit Sinha, J.

1. The six F.I.R. named accused of Daudnagar P.S. Case No. 184 of 2005 have prayed for the quashing of the order dated 16.7.2007 passed therein by the learned Chief Judicial Magistrate, Aurangabad, whereby he has taken cognizance under Sections 420, 406, 427, 468 and 120B IPC against the petitioners.

2. One Md. Shamim Ahmad, impleaded herein as O.P. No. 2, had initially filed Complaint Case No. 852 of 2005 which on being transmitted to the concerned P.S. the aforesaid P.S. Case came to be registered under Sections 420, 406, 427, 384, 468 and 120B IPC.

3. According to the prosecution case the informant's truck bearing registration No. JH - 11B - 6230 was taken on lease by accused Nos. 1, 2 and 4 by means of a patta on condition that a sum of Rs. 16,000/- would be paid to him every month for use of the truck but only a sum of Rs. 6,000/- was paid till November, 2003 and a sum of Rs. 90,000/- remained outstanding. It is alleged that on intervention of well wishers an affidavited agreement was entered into by which they agreed to pay the full amount within 10 days time but this too was violated. According to the informant this was a clear case of violation of the terms of the patta and agreement. It is further alleged that during his absence the accused persons induced his son, Md. Arif Hussain, to enter into another agreement on 11.8.2004 with accused Nos. 2, 4 and 5 whereunder a sum of Rs. 12,000/- per month was to be paid for use of the truck but again no money was paid and the terms of the contract was violated. It is also alleged that on 30.10.2004, accused Nos. 3 and 5 misrepresenting themselves as owners of the truck loaded 300 bags of cement at Tata and instead of sending the consignment to its destination they themselves looted the consignment at Hazaribagh and sold off the same and misappropriated the sale proceeds. On demand by the company the accused issued two cheques both of which were dishonoured. It is alleged that now the company was asking the informant to lodge a case against the accused persons. Seeing no way out, the son of the informant filed a a sanha on 25.1.2005 before the Sub-Divisional Magistrate narrating all the earlier events and when the police started making enquiries they sold the truck fraudulently to accused Nos. 6 and 7 and started blackmailing the informant.

4. Denying the allegations of the informant it was submitted on behalf of the petitioners that the dispute appears to be one of civil nature and they could not be fastened with criminal liability. In this connection it was submitted that while granting bail to some of the petitioners this Court in its order dated 9.4.2007 passed in Cr. Misc. No. 15422 of 2007 had categorically observed that 'the dispute

appears to be of civil nature'. This was further sought to be buttressed by drawing my attention to Annexure 4 which is the informant's application before the District Consumer Forum at Aurangabad praying for compensation for violation of agreement.

5. Although O.P. No. 2 has appeared no show cause or counter affidavit has been filed on his behalf. It was sought to be submitted on his behalf that the narration of the F.I.R. and the fact that the police has submitted a charge sheet clearly makes out a case of criminal liability.

6. Admittedly the primary grievance of the petitioners is the violation of the terms of the agreement. This apparently brings the matter within the fold of civil liability. The alleged overt acts appears to be superficial to give criminal trappings to a civil matter. Even the allegation of the accused surreptitiously selling off his truck appears to be false for the sale deed appended as Annexure 2 to the application shows the informant to have signed as a witness to the sale deed.

7. In the peculiar nature of the case and the discussions made above, this application succeeds. Accordingly, the impugned order taking cognizance is hereby quashed.

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