

Santosh Kumar. Vs. State of Bihar.

Santosh Kumar. Vs. State of Bihar.

SooperKanoon Citation : sooperkanoon.com/916530

Court : Patna

Decided On : Apr-15-2011

Judge : Sheema Ali Khan, J.

Acts : Indian Penal Code (IPC) - Sections 327, 406, 420, 504, 34

Appeal No. : CRIMINAL MISCELLANIOUS NO. 36055 OF 2006; CRIMINAL MISCELLANIOUS NO. 36267 OF 2006; CRIMINAL MISCELLANIOUS NO. 36524 OF 2006

Appellant : Santosh Kumar.

Respondent : State of Bihar.

Advocate for Def. : MR. JHARKHAND UPADHYAY, Adv.

Advocate for Pet/Ap. : MR. CHITTRANJAN SINGH; MR. AMISH JHA, Advs.

Judgement :

1. Heard Counsel for the petitioners and the A.P.P. appearing on behalf of the State. Nobody appears on behalf of the Opposite Party No. 2 to pursue this matter.

2. The petitioner Sidharth @ Sidharth Kumar Jha is the Branch Head of Karvy Stock Broking Ltd. at Begusarai whereas petitioner Santosh Kumar is the Dealer of Karvy Stock Broking Ltd. at Begusarai. The petitioners Abhinav Prasad @ Abhinav is the Regional Manager, Himanshu Joshi is the Divisional Manager, Nitin

Saxena is the Vice President, whereas Nalini Tilak is the Divisional Staff of Karvy Stock Broking Ltd. The petitioners of Criminal Misc. No. 36367 of 2006 are working and living in the State of Uttar Pradesh and have no connection directly with the affairs in the Begusarai Branch.

3. The allegations in the complaint petition are that the complainant Dilip Kumar Mishra had deposited by various cheques a sum of Rs. 1.6 lakhs for the purpose of buying shares. It is the case of the complainant that he had instructed the petitioner Santosh Kumar to trade in shares. It is admitted on behalf of the complainant that he did not have a trading account in his name till 10.01.2006 with the Karvy Stock Broking Ltd. He only had a Demat Account. As such, the trading took place in the name of one Annu Kumar. It is alleged that the company has caused loss to the complainant and has also caused mental harassment. This complaint case was filed on 05.04.2006.

4. The complainant had also filed Consumer Complaint Case No. 21 of 2006 before the District Consumer Forum, Begusarai on 01.04.2006. This fact has not been mentioned in the complaint petition. During the pendency of this case, the Consumer Court has disposed of the complaint by dismissing it. While disposing of the case, the facts as narrated in the complaint petition have been mentioned. Besides which, the Consumer Court had the opportunity to examine the accounts and the receipts granted by Karvy Stock Broking Ltd. It has been recorded by the Consumer Court that all the receipts were granted in the name of Annu Kumar and that the trading license of Annu Kumar was utilized for trading in the stock market with the money that was deposited with the company i.e. a sum of Rs. 1.6 lakhs. It has been noted by the Consumer Court that Annu Kumar has not been made party in the case filed before the District Consumer Forum. Only Annu Kumar who can certify to the facts with respect to the utilization of his trading license and the money by the Company. It is admitted that the complainant did not have trading license and, therefore, no stocks could have been purchased and sold by the Company for the complainant.

5. Considering these facts and findings of the Consumer Court, it is obvious that no offence would have made out against the petitioners as the petitioners had not

utilized the trading account of the complainant/Opposite Party No. 2 for the purpose of buying or selling stocks and as such, there could not have been any loss incurred to the complainant.

6. Considering the aforesaid facts, this Court find that in fact the ingredients of Section 327, 406, 420 and 504/34 of the Indian Penal Code would not be attracted in the facts of this case as the complainant did not have the trading license for stocks with the Karvy Stock Broking Ltd., where the petitioners are posted on various posts.

7. In the circumstances, I quash the order dated 20.05.2006 passed in Complaint Case No. 551 C of 2006 pending before the Judicial Magistrate, 1st Class, Begusarai.

8. In the result, these three applications are allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com