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(2013) 2 JLJR 287

Jharkhand High Court

Case No: Criminal M.P. No. 617 of 2010

Prashant Bothra	APPELLANT
Vs	
State of Jharkhand and Another	RESPONDENT

Date of Decision: Aug. 22, 2012

Acts Referred:
Penal Code, 1860 (IPC) â€" Section 323, 406, 420

Citation: (2013) 2 JLJR 287

Hon'ble Judges: Rakesh Ranjan Prasad, J

Bench: Single Bench

Advocate: A.K. Das, for the Appellant; Gauri Devi for the O.P. No. 2, for the Respondent

Judgement

R.R. Prasad

1. Heard learned counsel appearing for the petitioner and learned counsel appearing for the opposite party No. 2. This application has been filed

for quashing of the entire criminal proceeding of C/1 case No. 1160 of 2007 including the order dated 19.8.2008 passed by the then Judicial

Magistrate, Jamshedpur whereby and whereunder cognizance of the offences punishable under Sections 420, 406, 323 of the Indian Penal Code

has been taken against the petitioner.

2. Before adverting to the submissions advanced on behalf of the parties, case of the complainant needs to be taken notice of.

3. It is the case of the complainant that the complainant had supplied two mobile cranes on hire to M/s. Konihoor Steel Pvt. Ltd to which the

petitioner is the Director. Subsequently, another crane was also placed for the services of M/s. Konihoor Steel Pvt. Ltd on hire. After completion

of the work, the complainant submitted bills of Rs. 1,52,892/-for its payment but that was not paid, in spite of several reminders being given for

making payment.

4. It has been further stated that on account of non-payment of the said bills, the complainant could not deposit the monthly instalments to the

financer, as a result of which the financer seized both the cranes.

5. Further allegation is that on 16.7.2007 when the complainant came to the office of the accused person, this petitioner directed other accused not

to allow the complainant to enter inside the gate and then it has also been alleged that the accused persons did assault the complainant with fists

and slaps.

6. However, with respect to the occurrence took place on 16.7.2007, it appears from perusal of the statement made on solemn affirmation of the

complainant that the accused person brought the complainant outside of the gate of the office by holding his coller on the instruction of the

petitioner. On the said allegation, Complaint case bearing C/1 case No. 1160 of 2007 was registered, upon which cognizance of the offences

punishable under Sections 406, 420, 323 of the Indian Penal Code was taken against the petitioner, vide order dated 19.8.2008 which is under

challenge.

7. Learned counsel appearing for the petitioner submitted that taking the entire allegation made in the complaint to be true, no offence is made out

either u/s 420 or 406 of the Indian Penal Code as the petitioner has never been alleged to have involved the complainant fraudulently and

dishonestly to give services of crane on hire.

8. It was further pointed out that for same cause of action the complainant had approached to the Permanent Lok Adalat putting forth the claim

which has been made in the complaint but the claim laid by the complainant was not found to be tenable and therefore, that application was

dismissed. This fact has been suppressed by the complainant relating to filing of a case before the Permanent Lok Adalat.

9. As against this, learned counsel appearing for the opposite party No. 2. submitted that the petitioner having taken services of the crane supplied

by the complainant did not make payment and thereby the petitioner has certainly committed offence under Sections 406 and 420 of the Indian

Penal Code and that it is true that no specific allegation is there in the statement made by the complainant in his solemn affirmation with respect to

assault being made upon the complainant but it is very much there in the complaint that the accused persons assaulted the complainant with fists

and slaps and thereby the complaint does disclose about the commission of offence u/s 323 of the Indian Penal Code.

10. So far the offence under Sections 406 and 420 is concerned, that never appears to have been made out even if entire allegations made in the

complaint are taken to be true as the petitioner has never been alleged to have fraudulently and dishonestly deceived the complainant in having

services of the cranes for the Company and therefore, the court has certainly committed illegality in taking cognizance of the offences punishable

under sections 406 and 420 of the Indian Penal Code.

11. So far the offence u/s 323 is concerned, it is true in the statement made by the complainant in his solemn affirmation no specific allegation is

there that all the accused persons assaulted the complainant with fists and slaps but the allegation is there in this respect in the complaint petition

that the accused persons assaulted the complainant with fists and slaps.

12. In such situation, the court never seems to have committed illegality in taking cognizance of the offence u/s 323 of the Indian Penal Code.

13. Thus, only that point of the order whereby cognizance has been taken under Sections 406 and 420 of the Indian Penal Code against the

petitioner is hereby quashed. Under the circumstances, this application is allowed in part.