(2006) 09 PAT CK 0086

Patna High Court

Case No: Criminal Miscellaneous No. 19908 of 2006

Lal Mohan Jha and Another		APPELLANT
	Vs	
The State of Bihar and Another		RESPONDENT

Date of Decision: Sept. 19, 2006

Acts Referred:

- Penal Code, 1860 (IPC) - Section 406, 420

Citation: (2007) 1 PLJR 194

Hon'ble Judges: Barin Ghosh, J

Bench: Single Bench

Advocate: Mr. Mukesh Kumar 3, for the Appellant; R.K.P. Yadav For the State, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Barin Ghosh, J.

Heard. It appears that the petitioners obtained loan from Punjab National Bank, S.S.I. Branch, Boring Road, Patna and secured the same by hypothecating in favour of the said Bank the stocks of their business lying in their shop. Petitioners lodged a First Information Report with Budha Colony Police Station alleging that all their stocks have been stolen. The Police investigated into the matter and submitted a report in the final form before the Magistrate concerned wherein it was stated that the incident of theft as reported is true, but the Police has not been able to trace out the culprits. If a criminal offence has been committed, the investigation is not completed until such time the criminal or the criminals has or have been identified. It is impossible for the State and its Police Department to state that although a crime has been committed, but it is unable to solve the crime or to identify the criminal. It is even more surprising that after all their stocks were looted and a report in the final form was filed, the petitioners did not take any exception thereto.

Petitioners became active, when a First Information Report lodged by the Bank against the petitioners in the self same Police Station resulted in filing of a charge-sheet against the petitioners, on which cognizance was taken, by filing the present application, whereby the order taking cognizance has been challenged. The said state of affairs clearly demonstrates that the petitioners somehow managed to procure the first report of the Police in final form for the purpose of making an attempt to avoid their liability to Punjab National Bank. Inasmuch as the Police in the report in final form has not identified the criminals, that report is of no value to the petitioners. They cannot place any reliance upon the said report, for in law, the said report cannot be looked at. If that report is brushed aside then there is nothing on which the Court can interfere in the matter of taking cognizance by the Magistrate against the petitioners.

2. The application is, accordingly, dismissed. Having regard to the importance of the matter, as noted above, the Department is directed to forward a copy of this order to the Home Secretary, State of Bihar for the purpose of taking appropriate action in respect of Officer responsible for bringing such a report in final form and thereby black painting the entire police force of the State. The learned counsel for the petitioners submitted that in relation to hypothecated goods, no offence u/s 420 or 406 can be made out. The learned counsel for this proposition wanted to site the Judgment of the Hon''ble Supreme Court in the Central Bureau of Investigation, SPE, SIU (X), New Delhi Vs. Duncans Agro Industries Ltd., Calcutta, . There cannot be any dispute that hypothecation is a floating charge. Accordingly, the charge on hypothecated goods does not crystallize until such time a demand is made for recovery of money advanced against the security of such hypothecated goods and the time to pay the money has lapsed. The trader, who has hypothecated goods as a security in favour of a lender is free to deal with such hypothecated goods until such time, as mentioned above, the charge crystallizes and accordingly, no offence is committed by the trader if he deals with such hypothecated goods. In the instant case, however, the distinction is that the petitioner did not deal with the hypothecated goods, but surreptitiously removed the same and represented that the goods have been stolen. That is the distinction and accordingly, the learned Magistrate has rightly taken cognizance.