

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.12780 of 2013

Arising Out of PS.Case No. -1841 Year- 2009 Thana -DARBHANGA COMPLAINT CASE
District- -

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1. Ranvir Singh S/O Late Kamal Nath Thakur R/O Village-Dudahpura,
P.S. and Distt.-Samastipur
2. Uma Shankar Singh S/O Mathura Prasad Singh R/O Village-
Madhurapur, P.S.-Brahmpura, Distt.-Muzaffarpur

.... Petitioner/s

Versus

1 The State of Bihar
2. Abhay Singh Pesar S/O Shri Ram Subhag Singh R/O Village-Mohalla-
Kaidarabad, Molviganj, P.S.-Lalit Narayan Mithila University, Distt.-
Darbhanga

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Amaresh Kumar Sinha, Advocate
Mr. Avinash Kumar, Advocate
For the OP No. 2 : Mr. Rabindra Kumar Tiwary, Advocate
For the Opposite Party/ : APP

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL ORDER

4 02-07-2015 Heard learned counsel for the petitioners and learned counsel
appearing on behalf of OP No.2.

2. The present application has been filed for quashing the
cognizance order dated 19.03.2010 passed by the Sri A.Kunal, learned
Judicial Magistrate Ist Class, Darbhanga in connection with Complaint
Case No. 1841 of 2009 (Trial No. 1957 of 2010) for the offence alleged
under Sections 504 and 420 IPC

3. The prosecution case is that the complainant had obtained
finance from M/s. Saranchi Finance Company (later merged into M/s.
Magma Finance Corporation Ltd. of which the petitioners are officials)
for purchase of a Bolero vehicle. Subsequently it appears that the Bolero



vehicle was stolen for which an amount of Rs. 4,30,000/- was paid by the Insurance Company to M/s. Magma Finance Corporation Ltd., out of which the said company paid Rs.3,79,229/- by its cheque dated 07.08.2009 to the complainant withholding a sum of Rs.50,971/- which was not found payable to the complainant and for this reason the present complaint has been filed.

4. A preliminary objection has been raised on behalf of the petitioners with regard to non-maintainability of the complaint itself inasmuch as admittedly the loan had been obtained by the complainant from the Company and not from the present petitioners, who were merely acting on behalf of the company as its officials. The company itself not having been arrayed, the present complaint cannot be maintained against the petitioners on the basis of vicarious liability.. Learned counsel for the petitioners relies on the decisions reported in **(2008) 5 SCC 662 (A.K.Alagh vs. State of Uttar Pradesh and others)** and **2012 (3) PLJR 817 (Sutapa Chakraborty, wife of Bishwanath Chakraborty and others vs. State of Bihar and another)**. It is further submitted that in any event, even on the face of it, the dispute between the parties is purely of civil nature and merely involves a matter of accounting.

5. Learned counsel for the OP No.2 appears and opposes the petition on the ground that once the Insurance Company has made payment against theft of the vehicle, he was entitled to receive the entire proceeds but he has been cheated of Rs.50,971/- by the company.

6. Having regard to the entirety of the facts and circumstances of the case, this Court finds itself in agreement with the submissions made on behalf of learned counsel for the petitioners. It is well settled that recourse to criminal proceedings cannot be taken merely to coerce a party into making payment in a transaction which is essentially of civil nature. This Court is further of the view that continuance of the criminal prosecution against the petitioners would amount to an abuse of process of the Court.

7. Accordingly, order dated 19.03.2010 passed by the Sri A.Kunal, learned Judicial Magistrate Ist Class, Darbhanga in connection with Complaint Case No. 1841 of 2009 (Trial No. 1957 of 2010) is quashed.

8. The petition stands allowed.

Chandran

(Vikash Jain, J)

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