

CASE NO.:
Appeal (crl.) 371 of 2008

PETITIONER:
ANAND MALLICK

RESPONDENT:
STATE OF BIHAR & ANR

DATE OF JUDGMENT: 22/02/2008

BENCH:
CJI K.G. BALAKRISHNAN & R.V. RAVEENDRAN & MARKANDEY KATJU

JUDGMENT:
JUDGMENT
O R D E R

CRIMINAL APPEAL NO.371 OF 2008
(@SPECIAL LEAVE PETITION (CRL.)NO.228 OF 2007)

Leave granted. Heard both sides.

2. The second respondent herein filed a private complaint against the appellant herein alleging that the appellant represented to him that he would deliver a car on payment of Rs.1,60,000/- and that though the second respondent paid Rs.1,60,000/- to the appellant, he did not deliver the car as promised. The second respondent contended that the appellant had

thus committed the offences punishable under Sections 406, 420 and 504 of IPC. The learned Magistrate took cognizance of the offences under those Sections.

3. The appellant filed a petition under Section 482 Criminal Procedure Code for quashing the said complaint and the order taking cognizance. The said petition was dismissed by the High Court by the impugned order dated 17.11.2006.

4. Learned counsel for the appellant took us through the complaint and contended that no ingredient of any offence under Sections 420, 406 and 504 of IPC was made out.

5. We find that the complaint does not contain any averments to make out an offence under Sections 406 and 504 of IPC. Therefore, we set aside the order taking cognizance in respect of offences committed under Sections 406 and 504 of IPC.

6. The complainant would be at liberty to proceed with the complaint for the offence under Section 420 IPC as necessary averments for an offence under that Section are in the complaint. Appeal is disposed of accordingly.