

(2003) 05 PAT CK 0065

In the Patna High Court

Case No : Criminal Miscellaneous No. 35269 of 2000

Abdul Bari @ Abdul Barik and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 14-05-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468, 471

Citation : (2003) 3 PLJR 605

Hon'ble Judges : I.P. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

I.P. Singh, J.—This application has been filed for quashing the complaint petition bearing C.A. Case No. 454 of 1999 filed for the alleged offences under Sections 120(B), 420, 467, 468 and 471 of the Indian Penal Code as also for quashing the order dated 7.12.1999 passed by the Chief Judicial Magistrate, Katihar by which summons have been issued against the Petitioners.

2. learned Counsel appearing on behalf of the Petitioners has submitted that the matter raised in the complaint petition is purely of civil nature and civil suit is pending in the competent court. It has been further submitted that the result of pending Title Appeal No. 1/95 will bearing on the complaint petition and as such continuance of this complaint will amount to an abuse of the process of the court. It has been further submitted that no prima facie case is made out against the Petitioners and even no money transaction has taken place between the complainant and the accused persons including the Petitioners. It has been further submitted that the Petitioners have been dragged in this case with malafide intention since there is admitted enmity between the parties.

3. In support of his contention learned Counsel has relied on a decision reported in P.C.C.R 2000 (1) 369 : [2000 (3) PLJR (SC) 136] (Hirdaya Ranjan Pd. Verma v. The State of Bihar and Ors.) in which the facts of the case was that a number

of persons sold a piece of land to some one and executed sale deed and also gave possession of the land. They also executed separate indemnity deed in favour of that person since one of the brothers of vendor of the land had filed a civil suit for partition of the land prior to execution of sale deed by them. The cheques issued by the vendee; were dishonoured and vendor lodged F.I.R. against the vendee and also filed suit for realisation of money from vendee. Shortly thereafter the vendee filed complaint against vendor for cheating and dishonestly inducing delivery of property and fraudulent execution of sale deed. It was held by the Apex Court that to fasten a person guilty of cheating it was necessary to show that he had fraudulent and dishonest interest at the time of making promise. In that case the Apex Court found that ingredients of the offence as alleged was not made out and ingredients of intentional deception at the beginning of initiation for transaction has neither been directly started nor indirectly suggested in the complaint petition. Accordingly it was held by Apex Court that continuance of Criminal proceeding against the vendor would amount to an abuse of the process of the court.

4. In the present case the complainant had paid advance to one late Balbhadra Pandit for purchase of land and for which he had executed registered agreement to sell the land on 17.5.1989. The land holder died leaving behind two sons who were legal heirs of late Balbhadra Pandit. But they refused to execute sale deed and the complainant had filed title suit for specific performance of contract in respect of land in question. After contest the suit was decreed in favour of the complainant on 30.11.1994 and remaining consideration money was also deposited in the court. In the meantime son of late Balbhadra Pandit preferred an appeal in the competent court against that order and by order dated 18.3.1999 status quo till disposal of the appeal was ordered. It is alleged that despite the order of status quo a day prior to the order accused persons executed registered sale deed No. 2838 dated 17.3.1999 in respect of half of the suit land in favour of one Abdul Rajak. Both the Petitioners in the present case are not vendee and are witnesses of the sale deed. As such ingredients of cheating i.e. fraudulent and dishonest intention at the time of making promise is not made out against these Petitioners since neither they are vendee nor they are vendor neither it was alleged that they had received money in the transaction.

5. In view of above, the order dated 7.12.1999 is not sustainable in the eye of law and is fit to be quashed. Accordingly, the order dated 7.12.1999 is quashed and this application is allowed.