(2008) 07 PAT CK 0125

In the Patna High Court

Ajit Talukdar APPELLANT

Vs

State of Bihar and Another RESPONDENT

Date of Decision : 01-07-2008

Acts Referred:

Companies Act, 1956 — Section 446
Penal Code, 1860 (IPC) — Section 120B, 406, 420

Citation : (2009) 148 CompCas 482 : (2008) 3 PLJR 538

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Judgement

V.N. Sinha, J.—Heard learned Counsel for the petitioner and counsel for opposite party No. 2.

2. This criminal revision application is directed against the order dated January 20, 2007, passed by Sub-Divisional Judicial Magistrate, Barh at Patna in Complaint Case No. 350(C) of 1996, whereunder the prayer of the petitioner to close the proceedings in the complaint case in view of Section 446 of the Companies Act, 1956 (hereinafter referred to as "the Act"), on account of the winding up of M/s. A. Talukdar and Company (Fertilizer) Private Limited (hereinafter referred to as "the company") was rejected. The petitioner herein is an accused in the said complaint case registered for the offence under Sections 406, 420 and 120B of the Indian Penal Code on the allegation that the complainant had supplied bone meal to the company and the petitioner at the relevant time was the director of the company. The price of the supplied fertilizer was never paid and a complaint was filed alleging cheating and breach of trust against the company and the three directors. After cognizance was taken in the complaint proceedings, matter came to this Court at the instance of the petitioner herein vide Cr. Misc. No. 1576 of 1997 and this Court after hearing counsel for the parties and as per the agreement between the petitioner and opposite party No. 2 under orders dated October 3, 1997, annexure 2 directed that a sum of Rs. 1,00,000 be paid to opposite party No. 2 in three instalments of Rs. 50,000 by November 17, 1997, Rs. 25,000 by December 19, 1997 and the

remaining amount of Rs. 25,000 by January 19, 1998, but it appears that the petitioner did not make payment to the complainant as was agreed before this Court. Opposite party No. 2 thereafter was left with no option but to request the court below to take coercive steps against the petitioner for payment of the amount as was agreed before this Court under orders dated October 3, 1997 and the court below considering the request of opposite party No. 2 cancelled the bail bonds of the petitioner whereafter the present petition was filed praying inter alia to direct the court below not to proceed in the matter in view of Section 446 of the Act as after passing of the order dated October 3, 1997, the company went into liquidation on November 9, 1998 and the order of winding up of the company was passed on April 23, 1999, which is contained in annexure 3 to this application. It is submitted on behalf of the petitioner that as the company went into liquidation on November 9, 1998, the amount agreed before this Court on October 3, 1997, could not be paid as the petitioner herein does not have any fund of his own and the assets of the company are in possession of the official liquidator. During the hearing of this application learned Counsel for the petitioner has again placed reliance over Section 446 of the Companies Act, 1956, which is quoted here in below:

When a winding up order has been made or the official liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the court and subject to such terms as the court may impose.

3. The perusal of the aforesaid provision makes it abundantly clear that once the company has gone into liquidation no suit or any legal proceeding shall be proceeded with or commenced against the company. From perusal of the complaint itself it is evident that pursuant to an agreement between the company and the complainant, the complainant had agreed to supply bone meal (organic manure) to the company and the bone meal worth Rs. 1,41,978 was supplied by opposite party No. 2, as such, there is no difficulty in concluding that the amount said to have been cheated by the petitioner is nothing but the dues against the company for which opposite party No. 2 should raise claim before the company judge in the liquidation proceeding and the complaint case filed alleging cheating and breach of trust against the petitioner should await the result of liquidation proceeding.

4. In view of my observations above, the impugned order dated January 20, 2007, passed by Sub-Divisional Judicial Magistrate, Barh at Patna in Complaint Case No. 350(C) of 1996 is set aside, however, with liberty to the complainant to realise his dues of Rs. 1,41,978 by raising a claim before the company judge in Company Petition No. 12 of 1998 pending before the Calcutta High Court. This criminal revision application is, accordingly, disposed of.

