(2009) 02 PAT CK 0011

In the Patna High Court

Case No : Criminal Miscellaneous No. 37448 of 2007

Amit Raj APPELLANT

Vs

The State of Bihar and Sushil Kumar, Proprietor of Sparsh Technologies RESPONDENT

Date of Decision : 26-02-2009

Acts Referred:
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2009) 57 BLJR 1933

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Prabhakar Jha, for the Appellant; Jharkhandi Upadhyay, Assistant Public Prosecutor and Prabhu Narayan Sharma, for O.P. No. 2, for the Respondent

Final Decision : Allowed

Judgement

Abhijit Sinha, J.—The petitioner who alongwith others has been arrayed as accused in Complaint Case No. 27(C) of 2006 has prayed for the quashing of the order dated 15.4.2006/17.4.2006 passed therein by the learned Sub Divisional Judicial Magistrate, Patna, whereby he has taken cognizance for offences punishable under Sections 420 and 406 I.P.C. as also Section 138 of the Negotiable Instruments Act (hereinafter referred to as "the N.I. Act").

2. The prosecution case is based on the complaint petition filed by one Sushil Kumar, the complainant, impleaded herein as O.P. No. 2 for and on behalf of himself and of the Company Sparsh Technologies of which he is the proprietor. It is stated in the complaint petition that accused No. 1, is a Company running in the name and style of M/s. Anand Data Solutions through its Director (accused No. 2-petitioner) having its office at Mahavir Medical, Opposite -Main Gate and accused Nos. 3 and 4 are the partners of the said Company, all of whom have ultimate control and authority over the said Company. It is alleged that persuaded and induced fraudulently by the aforesaid accused persons on

14.9.2004 at Patna the complainant and accused persons entered into a project agreement upon consented terms and conditions incorporated in the contract whereby the accused allotted to the complainant''s Firm to undertake the works as mentioned in the aforesaid agreement and as directed under terms and conditions of the agreement the complainant deposited a sum of Rs. 2,00,000/- through different demand drafts in the name of the petitioner''s Firm on 14.9.2004. That apart the complainant also deposited Rs. 50,000/- each through two cheques totaling Rs. 1,00,000/- and the duration of the agreement was to last one year and as per the agreement the project contains 50% of work but the complainant got only 16% which was lesser than the agreement. Queries by the complainant evinced no response nor was he allotted any further work. His queries about the remaining work to be allotted remained unanswered. It is further alleged that the petitioner again induced the complainant and they again entered into another agreement dated 29.12.2004 for which a sum of Rs. 1,00,000/- was deposited as client B.P.F. whereafter 6% work was allotted but the payment was not made. The complainant made several requests and eventually he received a cheque to the tune of Rs. 2,00,000/- from the petitioner which he deposited in his bank but the same was returned unpaid due to insufficient funds. The complainant claims to have gone to the office of the Company but found from the local people that the Company had been closed and the petitioner had shifted elsewhere. Then the complainant sent a legal notice for payment of total amount of Rs. 4,00,000/- against the deposit of project works and 2,59,000/- against the work which had been done by the complainant''s firm but he was not favoured with any response. The complainant had sanguine belief that the petitioners had removed the office with dishonest intention to deceive him.

3. It has been submitted on behalf of the petitioner that it would be apparent from perusal of the complaint petition that the petitioner and the complainant, both are business men and they had entered into an agreement to do certain work and since the entire transaction amounted to a "criminal transaction", offences under Sections 406 and 420 I.P.C. would not apply. It was further submitted that the petitioner had no intention to grab the payment of O.P. No. 2 and as soon as he got knowledge to the unpaid cheque, he paid amount to the opposite party No. 2 and the opposite party assured to return him the un-cashed cheuqes. However, due to business disputes he has filed the present case. It is further submitted that from the very nature of the case, it would appear that the same is of civil nature and the remedy therefore lies by way of filing a money suit.

4. The learned Counsel for the petitioner further sought to submit that the alleged dispute was purely of a civil nature as it was a money dispute as to whether the petitioner owed any amount to the Company and whether the Company having received the amount instead of adjusting the same in the account of the petitioner misappropriated the same with oblique purposes.

5. It is also clear that even if all the averments made in the complaint petition, at their face value, are taken to be correct yet the case for prosecution under Sections 406 and 420 I.P.C. is not made out. The complaint does not make any averment so as to infer any fraudulent or dishonest inducement having been made by the petitioner pursuant to which they had parted ways. There is also no criminal breach of trust and fraudulent misappropriation involved in the transaction, so as to make out an offence either under Sections 406 or Section 420 I.P.C. To make out an offence of cheating u/s 420 I.P.C., three ingredients are required to exist, namely, (a) an element of deception by the offender, (b) on account of deception there must be fraudulent or dishonest inducement of person deceived to deliver any property to any person and (c) by reason of doing such thing there must be causing or likelihood of causing of damages or harm to the person so deceived. These ingredients are not made out in the complaint. Apparently, the dispute appears to be purely civil in nature and for civil dispute a criminal proceedings cannot be sustained in law.

6. Having given my anxious thoughts to the matter in issue, I am of the opinion that the continuance of the criminal proceedings against the petitioner would amount to an abuse of the process of the court. Accordingly, the criminal proceeding, so far as the petitioner herein is concerned, is hereby quashed and the application is allowed.