

(2009) 11 PAT CK 0058

In the Patna High Court

Case No : Criminal Miscellaneous No. 32683 of 2008

Anadi Krishna Verma

APPELLANT

Vs

The State of Bihar and Shailendra Kumar Sinha

RESPONDENT

Date of Decision : 17-11-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 406, 415, 420, 468

Citation : (2010) 58 BLJR 379

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sheema Ali Khan, J.—Heard learned Counsel for the petitioner, the Opposite Party No. 2 and the A.P.P. appearing on behalf of the State.

2. The petitioner has filed this application challenging the order dated 17.12.2007 by which the Court below has taken cognizance for the offences under Sections 420, 468, 120B & 406 of the Indian Penal Code.

3. A complaint petition was filed by one Shailendra Kumar Sinha who alleges that the accused Nos. 1 to 5 who are the partners of M/s Newton Construction are in violation of the agreement, not accepting the amount fixed for the payment of flat. The case of the complainant is that according to the agreement he had to pay Rs. 4,31,000/- for a flat in the building which was under construction whereas the builders were claiming Rs. 6,00,000/-. However, the (sic) amount. The role assigned to this petitioner in the complaint petition is that he is said to have taken the agreement to Bhagalpur where the complainant was residing and asked him to sign on the agreement promising him that after registration of the agreement, the agreement could be posted to the complainant.

4. Admittedly, the petitioner is the land holder and as far as the money transaction is concerned, there is no allegation that he received or induced the complainant to make payment of any amount. As far as the allegation contained

in paragraph 8 of the complaint petition is concerned, learned Counsel for the petitioner submits that it is superfluous and unbelievable and by itself does not constitute any offence. It is submitted that if there was some differences with respect to the payment between the construction company i.e. the builder and the complainant, the petitioner had no role in any transaction of money. Besides which, it is submitted that the case is purely of a civil nature and infact the complainant has filed a suit for specific performance of contract which is Title Suit No. 67 of 2008 pending in the Court of the Subordinate Judge I, Patna in which the reliefs sought for are as follows:

I. On adjudication a decree of Specific Performance or oral agreement for sale dated 25.07.2005 followed by the first Money receipt dated 25.07.2005, be passed in favour of the plaintiffs and against the defendants, directing the defendant 1st party to execute a deed of sale after receiving the remaining amount of consideration money of Rs. 2,95,6000/- from the plaintiffs, within the time fixed by the Court and on their failure, the sale deed may be executed through the process of the Court and the plaintiffs may be put in possession of the property in suit detailed and described in Schedule I of the plaint, through the process of the Court.

II. If for any reason the relief No. I is not granted, then without prejudice to the relief No. I, alternatively the money paid by the plaintiff amounting to Rs. 1,31,000/- be directed to be returned by the defendants jointly and severally both to the plaintiffs with interest thereof @ 24% per annum pendente lite and future and accordingly a money decree be passed in favour of the plaintiffs and against the defendants jointly and severally both.

5. Learned Counsel points out to this Court that the reliefs in the suit filed on behalf of the complainant are against the defendants 1st party who are the builders. As far as this petitioner is concerned, he has played no role with respect to the exchange of money or in fixing the terms of the agreement.

6. In the facts aforesaid, no case u/s 420, 468, 120B and 406 of the Indian Penal Code is made out against the petitioner. Section 415 of the Indian Penal Code describes cheating and envisages that "there should be an element of deception and fraud to constitute an offence of cheating". The facts as stated aforesaid do not make out an offence u/s 415 of the Indian Penal Code. Similarly, there is no allegation in the entire complaint petition which would constitute an offence u/s 468 of the Indian Penal Code which is forgery for the purpose of cheating. The petitioner has not prepared any forged document with the intention to cause damage to the complainant. Section 406 of the Indian Penal Code envisages that there should be an entrustment of a property and the property so entrusted should be dishonestly, misappropriated or converted so as to cause the other person to suffer some loss, which again is not the allegation made against the petitioner.

7. In cases of this nature, the Supreme Court has repeatedly held that where the

dispute is of a civil nature and involves a contract or an agreement, a criminal proceedings would not be maintainable. The case of Dalip Kaur and Others Vs. Jagnar Singh and Another, amongst others deals with this aspect of the matter.

8. In view of the facts of the aforesaid case and the judgment in the case of Dalip Kaur, the order taking cognizance dated 17.12.2007 is hereby quashed.

9. This application is accordingly dismissed.