(2008) 08 PAT CK 0148

In the Patna High Court

Case No : Criminal Miscellaneous No. 55742 of 2006

Anil Kumar — APPELLANT

Vs

State of Bihar and Another — RESPONDENT

Date of Decision : 26-08-2008

Acts Referred:
Negotiable Instruments Act, 1881 (NI) — Section 138, 138(b), 142(b)
Penal Code, 1860 (IPC) — Section 420

Citation : (2009) 4 PLJR 765

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Ashwani Kumar Singh and Anil Kumar, for the Appellant; Jharkhandi Upadhyaya for the State, M/s Umesh Prasad Singh and Raghwendra Kumar Singh for O.P. No. 2, for the Respondent

Final Decision : Allowed

Judgement

Abhijit Sinha, J.—The petitioner, the Director of M/s Patliputra Builders Private Limited, who has been arrayed as the sole accused in Complaint Case No. 562(C) of 2004, through this application has prayed for the quashing of the order dated 10.1.2005 passed therein by Sri Saheb Kausar, the learned Judicial Magistrate. First Class, Patna, whereby he has taken cognizance of the offences u/s 420 I.P.C. and Section 138 of the Negotiable Instruments Act (hereinafter referred to as "the N.I. Act") against the petitioner. The complainant, M/s Lawly Enterprises Private Limited (hereinafter referred to as "the Company") through its authorized Manager, Suresh Ram, impleaded herein as O.P. No. 2, filed the aforesaid complaint inter alia stating that the Company relying upon the statement of the accused, Sushil Kumar Saboo, one of the Directors as also the Managing Director of the Company, the authorised person, entered into a deed of development-cum-sale agreement with the accused signing for and on behalf of M/s Patliputra Builders Private Limited on 19.11.2001 to develop a multi-storied building over and above the second floor adjacent to Lawly''s situated on Exhibition Road, Patna. According to the said development-cum-sale agreement, the accused made several promises towards timely payment of the consideration amount and he agreed to pay quarterly after signing of the agreement a sum of Rs. 7 lacs to the complainant. On such payment the complainant agreed to give permission to the accused to register proportionate built up area to the prospective buyers, customers and nominees of the construction Company. However, it appears that the accused made false inducement and issued six post dated cheques to the complainant towards quarterly payment of Rs. 7 lacs each in advance at the time of signing of the agreement. It is said that the building on which proposed development was envisaged was mortgaged as security with the UCO Bank, Exhibition Road, Patna. The complainant, however, obtained written permission from the Bank for the purpose of development of land with the said construction Company. However, the cheques on presentation were dishonored on 25.2.2002, 25.5.2002 and 24.7.2002 for which statutory notice dated 24.5.2002, 27.5.2002 and 1.8.2002 was given. The further case of the complainant is that cheque dated 21.12.2003 for Rs. 7 lacs bearing Cheque No. 114331 of IDBI Bank which was presented but on 22.12.2003 the Bank informed about the dishonor of the cheque. It is said that subsequently the petitioner made a part payment of Rs. 4,00,000/- to the complainant and promised to pay rest amount within a week. It is alleged that notice was sent on 7.2.2004 by registered post and it was received on 9.2.2004 and as payment was not made, the case was filed on 1.10.2003 (sic- 10.3.2004?).

2. The petitioner''s counsel submits that so far as the three cheques, as mentioned in paragraph 3 of the complaint petition, is concerned, no case was instituted by the complainant for more than 18 months from the date when the cause of action had arisen, hence, the same would be time barred. So far as the last cheque, as mentioned in paragraph 6 is concerned, the relevant dates that was for adjudication are that on 21.12.2003 the cheque was presented in the Bank and on 22.12.2003, the IDBI Bank informed the banker of the complainant that the cheque had been dishonored. On that very date a sum of Rs. 4,00,000/- was paid by the petitioner with a promise to pay balance amount of Rs. 3,00,000/- later on. On 7.2.2004, the statutory notice was issued which was received by the accused on 9.2.2004 and it was only on 10.3.2004 that the complaint was filed. From this, it can safely be derived that the cheque was dishonored on 22.1.2004 (sic- 21.12.2003?) and knowledge came to the complainant of the dishonor of the cheque on 22.12.2004 (sic-2003) itself but no notice of demand was given by the complainant within the statutory period of 30 days which expired on 22.1.2004 as prescribed u/s 138(b) of the N.I. Act and as such the order taking cognizance u/s 138 of the N.I. Act by the learned court below was against the mandate of the statutory law. In support of the submissions reliance was placed by the learned counsel for the petitioner on the case of Sadanandan Bhadran Vs. Madhavan Sunil Kumar, , wherein it was held that a complaint u/s 142(b) of the N.I. Act has to be filed within one month immediately following the day on which the period of 15 days from the date of receipt of the first notice by the drawer expires and that the period for filing the

complaint would be counted from the day immediately following the day on which the period of 15 days from the date of receipt of the notice by the drawer expires.

3. It was also submitted that the cheques were issued for and on behalf of the Company but the Company has not been impleaded as a party-accused.

4. Admittedly, in this case, the complaint petition was filed on 10.3.2004 whereas the last cheque was dishonored on 22.12.2003 and on the same day the complainant received a sum of Rs. 4,00,000/- out of Rs. 7,00,000/- through pay order and notice was sent on 7.2.2004. During the inquiry the only allegations regarding the last cheque are confined as for the three earlier cheques no complaint had been filed. It is apparent that on 21.12.2003 the cheque were presented and notice was sent on 7.2.2004 which was received on 9.2.2004 and the complaint was filed on 10.3.2004. Further, in the meantime, O.P. No. 2 on 22.12.2003 had received a payment of Rs. 4,00,000/-. Therefore, it would be apparent that the notice had not been sent within the statutory period of 30 days as contemplated by Section 138(b) of the N.I. Act from the date of knowledge.

5. It is also apparent that the Company was also not impleaded as an accused in the complaint case with whom O.P. No. 2 had entered into an agreement. This apparently would go against the complainant.

6. So far as Section 420 I.P.C, is concerned, as the case was filed for bouncing of cheques, there is no question of cheating and the Court should be loath in contributing to the conversion of a purely civil dispute into a criminal case perpetrated by the prevalent impression that civil law remedies are time consuming and do not adequately protect the interest of the traders/creditors and if the person would somehow be entangled in a criminal prosecution, there is likelihood of imminent settlement.

7. In view of the fact that notice is time barred and the facts show that the entire case was civil in nature, the criminal prosecution against the petitioner would be an abuse of the process of the court and is required to be quashed.

8. In the facts and the circumstances of the case, as there was an agreement between the parties regarding development of a building and from the counter affidavit filed by O.P. No. 2, it appears that the construction was completed and persons are occupying a number of flats, O.P. No. 2, may avail civil remedies for recovery of dues, if any, in violation of the agreement. Accordingly, this application succeeds and the impugned order taking cognizance is hereby quashed.

