
(2010) 08 PAT CK 0122
In the Patna High Court

Awadhesh Kumar Sharma

APPELLANT

Vs

The State of Bihar and Ashok Kumar Shukla

RESPONDENT

Date of Decision : 03-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2010) 08 PAT CK 0122

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—The sole petitioner, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, has prayed for quashing of an order dated 3.4.2000 passed by Shri R.C. Mishra, Judicial Magistrate, Ist Class, Hazipur, Vaishali in Complaint Case No. 5(C) of 1999. By the said order, the learned Magistrate has taken cognizance of offence under Sections 406 and 420 of the Indian Penal Code and directed for summoning the petitioner.

2. Short fact of the case is that the opposite party No. 2 filed a complaint in the court of Chief Judicial Magistrate, Vaishali disclosing therein that for the purpose of purchasing the land of the petitioner appertaining to R.S. Khata No. 52, R.S. Plot No. 77, measuring an area of 10 dhurs an agreement for sale was entered in between the complainant and petitioner for total consideration amount of Rs. 42,500/- and advance of Rs. 10,000/- was paid to the petitioner by the complainant. Out of Rs. 10,000/-, Rs. 4,000/- was paid by cash and a cheque for an amount of Rs. 6,000/- was given to the petitioner by the complainant. It was alleged that after execution of an agreement for sale despite the complainant requested the petitioner to execute absolute sale deed, one way or the other, he deferred the matter and finally, the complainant came to conclusion that the petitioner, by way of cheating the complainant, had usurped Rs. 10,000/-. On aforesaid allegation, complaint petition was filed and after conducting

enquiry, the learned Magistrate, by its order dated 3.4.2000, took cognizance of offence under Sections 406 and 420 of the Indian Penal Code and directed for summoning the petitioner.

3. Aggrieved with the order of cognizance, the petitioner approached this Court by filing the present petition. On 19.12.2000, this petition was admitted for hearing and proceedings in the court below was directed to remain stayed and order of stay is still continuing.

4. Shri Vivekanand Vivek, learned Counsel appearing on behalf of the petitioner, while challenging the order of cognizance, has firstly argued that from perusal of the complaint petition it is evident that an agreement for sale of land of the petitioner was entered in between the petitioner and the complainant. There was condition in the agreement to sell itself that if the petitioner fails to take steps to get the land in question registered within specified period, the advance amount shall be forfeited. Accordingly, it was submitted that since there was condition in the agreement to sale itself regarding forfeiture of the advance amount it was forfeited because of the fact that the complainant failed to get absolute sale deed executed within time. After forfeiture of the advance, the complainant was not authorized to file a complaint case and no offence either u/s 406 or 420 of the I.P.C. was made out. Learned Counsel for the petitioner, in course of hearing, has produced a photo copy of certified copy of judgment and decree passed in Title Suit No. 460 of 2000, which was filed by the complainant almost for similar relief i.e. for directing the petitioner to execute the final sale deed. Keep the photo copy of the judgment dated 25th January, 2007 on record.

5. It was submitted that even before the competent court of jurisdiction i.e. Civil Court, the complainant lost the case and as such on said allegation or dispute, the petitioner cannot be prosecuted. On aforesaid grounds, it has been prayed to quash the order of cognizance and entire proceeding in Complaint Case No. 5(C) of 1999.

6. Shri Prashant Kumar, learned Counsel appearing on behalf of opposite party No. 2 has forcefully opposed the prayer of the petitioner. It was submitted by learned Counsel Shri Prashant Kumar that while hearing a petition u/s 482 of the Code of Criminal Procedure, this Court may refrain from interfering with the order of cognizance. Learned Counsel for opposite party No. 2 has also relied on a judgment of apex court reported in AIR 2000 SC 1869 M/S Medchi Chemicals and Pharma Pvt. Ltd. v. M/S Biological E. Ltd. and Ors. It was submitted that for an occurrence, if there are two remedies i.e. criminal and civil, both course can be adopted and on this ground alone, criminal prosecution cannot be set aside. It has further been submitted that the power u/s 482 of the Code of Criminal Procedure is to be exercised in exceptional cases. It was submitted that in view of averment made in the complaint petition as well as materials brought on record during the enquiry, there were sufficient ground to proceed with the case and, accordingly, the learned Magistrate has rightly passed the order of cognizance.

7. Smt. Indu Bala Pandey, learned Additional Public Prosecutor, appearing on behalf of the State, has also opposed the prayer for the petitioner and virtually, she has taken same stand which has been taken by Shri Prashant Kumar, learned Counsel for the opposite party No. 2.

8. Besides hearing learned Counsel for the parties, I have also perused the materials available on record as well as judgment and decree passed in Title Suit No. 460 of 2000 dated 25th January, 2007 Ashok Kumar Shukla v. Awadhesh Kumar Sharma.

9. In view of the facts and circumstances particularly in view of the averment made in the complaint petition, the court is of the opinion that it was not a fit case for taking cognizance by the learned Magistrate. Moreover, the proceeding in Complaint Case No. 5(C) of 1999 remained pending for a long time without any progress due to the reason that there was order of stay by this Court. At this stage after such a long delay, it would not be appropriate for this Court to direct the petitioner to participate in the proceeding in view of peculiar fact and circumstances of the present case.

10. Accordingly, the court feels that it is a fit case for exercising inherent jurisdiction in favour of the petitioner and as such order of cognizance dated 3.4.2000 passed by Shri R.C. Mishra, Judicial Magistrate, Ist Class, Hazipur, Vaishali in Complaint Case No. 5(C) of 1999 is hereby set aside and petition stands allowed.