
(2011) 12 PAT CK 0009

In the Patna High Court

Case No : Criminal Miscellaneous No. 47291 of 2008

Bhartu Worah @ Bhartendu Worah and Another

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 13-12-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 482
Penal Code, 1860 (IPC) — Section 415, 420

Citation : (2012) 4 PLJR 335

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Rajeev Ranjan Prasad, Amol Kumar, for the Appellant; Gautam Kejriwal, S.D. Sanjay, R.C. Singh for the State, for the Respondent

Final Decision : Allowed

Judgement

Ahsanuddin Amanullah, J.—Heard Mr. Rajeev Ranjan Prasad, learned counsel for the petitioners, learned A.P.P. for the State and Mr. S.D. Sanjay learned counsel appearing for opposite party no. 2. The present application has been filed u/s 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "Code") to quash the order taking cognizance dated 27.1.2006 passed by the Judicial Magistrate, 1st Class, Patna in Complaint Case No. 643(C) of 2005 by which cognizance for offence u/s 420 of the Indian Penal Code has been taken and summons issued to the petitioners. The complaint petition in brief alleges that the petitioners who were the Directors of M/s Eastern Nephtha-Chem. Ltd., Dhanbad and manufacturer of crude sodium sulphate represented to the complainant, that is, opposite party no. 2, who is the Manager of the informant M/s United Paper Boards Ltd., that they had intended to appoint the complainant's firm as their commission agent. It is alleged that on such representation the complainant became interested and setting up a network in the trade world on personal level and after taking order on behalf of the petitioners firm, business was generated but because of their fraudulent intention to not pay the commission due to the complainant which was quantified to be

near about Rs. 7,00,000/- the complaint was filed against the petitioners under various sections including Section 420 of the Indian Penal Code.

2. After conducting enquiry u/s 202 of the Code the Magistrate after recording the evidence of the complainant on solemn affirmation and also recording evidence of two other witnesses took cognizance u/s 420 of the Indian Penal Code by order dated 27.1.2006 against the petitioners which is impugned in the present case. Learned counsel appearing for the petitioners submits that present is the case which is covered under the category of the celebrated case on the issue being State of Haryana and others Vs. Ch. Bhajan Lal and others, which stipulates that if upon the plain reading of the complaint petition itself no offence is made out, such complaint cases should not be allowed to continue and need to be quashed at the very inception. He takes this Court to the allegations made in the complaint petition itself and submits that it is clearly stated that the petitioners had represented to the complainant that they would be paid on the basis of being commission agent for selling and generating business for the product of the company of the petitioners and because in spite of the complainant doing the job of the petitioner's company, the commission so promised and agreed to by the petitioners was never paid to the tune of almost Rs. 7,00,000/-. In the solemn affirmation of the complainant it is pointed out that it is admitted that since the last one year the complainant's firm was not doing the job of commission agent for the petitioners firm. It is also stated that the agreement between the parties was oral and initially commission was paid but later on the petitioners stopped paying the same. He also draws the attention of this Court to the evidence of another witness who also states that in the past the accused company paid the commission but afterwards the same was stopped.

3. In support of his contention learned counsel relied upon the decision rendered in the case of Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others, , especially paragraphs no. 37 to 42. He also relied on the decision rendered in the case of M.A.A. Annamalai Vs. State of Karnataka and Another, , the relevant being at paragraph no. 23.

4. Learned counsel for the opposite party no. 2 on the other hand has relied on the provisions of Section 415 of the Indian Penal Code which deals with the ingredients regarding cheating and for which the punishment is u/s 420 of the Indian Penal Code which is relevant in the present case.

5. From reading of Section 415 of the Indian Penal Code he submits that it applies on persons who have induced anybody to do something or omit to do the same if the same was done intentionally to cause damage or harm to the mind, body, reputation or property. He has specifically relied upon the illustrations given, the relevant being (f), (g) and (h).

6. He has submitted that the complaint petition itself clearly speaks of the petitioners who had visited the office of the complainant and made the said representation and the witnesses have also supported the case of the

complainant.

7. Learned counsel for the petitioners by way of reply has submitted that under the Indian Penal Code no vicarious liability is fastened upon the Director of the Company as is the case under the Negotiable Instruments Act which is a special statute standing on a different footing. He also submits that the Directors of the Company cannot be prosecuted without any direct or overt act being levelled against them in their individual capacity which in the present case is lacking. He once again relies in this connection on the judgment in the case of Inder Mohan Goswami (*supra*).

8. Upon considering the facts and circumstances of the case and taking into account the relevant provisions of Section 415 of the Indian Penal Code, this Court is inclined to accept the submissions made by learned counsel for the petitioners.

9. This Court feels that from a plain reading of the complaint itself it is obvious that the matter is purely a civil dispute inasmuch as it is alleged that the petitioners firm was liable to pay some amount, may be in the form of a commission to the complainant which has not been paid and has also been quantified at almost Rs. 7,00,000/-. Further upon going through the solemn affirmation recorded and the evidence of the witnesses it transpires that they had initially after being made agent, commission was also paid and thus it cannot be held that the intention to cheat was there. From the beginning this Court is of the opinion that the ratio of the judgment in the case of Inder Mohan Goswami shall apply to the present case also. The dispute being with regard to some money being due to the complainant, that too which became due later on and not from the beginning in the course of carrying out of business by the companies concerned, can only be categorized in the category of civil dispute for which the remedy is available by institution of appropriate proceedings for recovery of the money due as also compensation if at all the complainant felt that there had been loss of reputation in the market of the complainant.

10. In view of the discussions made hereinabove, the order dated 27.1.2006 passed by the Judicial Magistrate, 1st Class, Patna in Complaint Case No. 643(C) of 2005 is quashed. The application stands allowed.