
(2004) 01 PAT CK 0040

In the Patna High Court

Case No : Criminal Miscellaneous No. 8626 of 2003

Bihar Co-operative Sugar Factories Federation Limited

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 22-01-2004

Acts Referred:

Citation : (2004) 1 PLJR 664

Hon'ble Judges : M.L. Visa, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.L. Visa, J.—The Petitioner has filed this application for cancellation of bail granted to opposite party No. 2 Ajay Kumar Gupta on 5.3.2003 by Shri A.K. Srivastava, Judicial Magistrate, 1st Class, Patna in Complaint Case No. 1959C of 2002.

2. The case of the Petitioner, in short, is that Petitioner is a registered Co-operative Society and it carries on the business to purchase, manufacture, produce, refine, prepare, import, export and sell sugar of different sugar mills and in fulfilling the same objects, it enters into agreements with such interested parties for the trade of free sale sugar who have wholesale licence for the trading of sugar and in that process, bank drafts/cheques are given by the Petitioner to those parties so that they may lift sugar from concerned sugar mills and, thereafter, to return back the Petitioner the amount with profit within twenty eight days from the date of handing over drafts/cheques by the Petitioner. The further case of Petitioner is that opposite party No. 2, alongwith Panna Lal Prasad Gupta and Manoj Kumar Gupta, approached the Petitioner for purchase and sale of free sale sugar in the name and style of M/s Panna Lal Prasad Gupta in the proprietary firm and Panna Lal Prasad Gupta represented himself as proprietor of the firm and he was supported by opposite party No. 2 and Manoj Kumar Gupta as the guarantors for the firm. An agreement was executed between Petitioner and M/s panna Lai Prasad Gupta on 11.9.2001. The further case of the Petitioner

is that the Petitioner handed over several bank drafts and cheques from time to time to Opposite party No. 2 and other co-accused persons which were received either by Panna Lal Prasad Gupta or opposite party No. 2 and a total sum of Rs. 39,86,125/- was given to accused persons by the Petitioner for sugar but accused persons did not return back the money advanced to them by Petitioner and post dated cheques which were given by the firm of accused persons were bounced back and two cheques given by opposite party No. 2 as safety that in case if amount was not paid or recovered from co-accused Panna Lal Prasad Gupta, Petitioner can encash those cheques but those cheques also could not be encashed. It is further alleged that co-accused Panna Lal Prasad Gupta lastly appeared in the office of Petitioner and accepted that he could not arrange money and he again handed over two cheques but those cheques were also returned back with the note of bank of "insufficient fund". According to Petitioner, opposite party No. 2 and other co-accused persons acted in connivance with each other in a planned manner and practised fraud upon the Petitioner and committed criminal breach of trust of amount entrusted to them.

3. The main ground on which cancellation of bail of opposite party has been sought is that on 25.2.2003, a petition was filed in the Court of Chief Judicial Magistrate for transferring the case of Petitioner and some other cases from the Court of Shri A.K. Srivastava, Judicial Magistrate, 1st Class, Patna and this petition was numbered as Miscellaneous Case No. 89 of 2003 and Chief Judicial Magistrate ordered for a report of Criminal Sheristedar fixing 10.3.2003 as next date (Annexure-3). The counsel of Petitioner felt difficulty in appearing before the aforesaid learned Magistrate and another petition was filed for transfer of Complaint Case No. 1959C of 2003 before the Chief Judicial Magistrate and this was ordered to be placed for hearing on 6.3.2003 (Annexure-4). This petition was numbered as Miscellaneous Case No. 96 of 2003. According to Petitioner, when it came to know about the surrender of opposite party No. 2 in Court at the fag end of Court hours, it immediately filed a petition stating therein that Miscellaneous Case No. 96 of 2003 had already been filed and made prayer for not hearing the bail petition of opposite party No. 2 but learned Chief Judicial Magistrate, Patna permitted the learned Magistrate to hear the bail petition on the ground that Miscellaneous Case No. 89 of 2003 had been filed for transfer of Complaint Case No. 448C of 2002. According to Petitioner, the aforesaid report of Chief Judicial Magistrate was wrong because by Miscellaneous Case No. 89 of 2003 not only the transfer of Complaint Case No. 448C of 2003 was sought but transfer of case under consideration in which opposite party No. 2 has been granted bail and which was numbered as Complaint Case No. 1959C of 2002 was also sought. It is further stated that when Petitioner realised that learned Magistrate was determinant to hear the bail petition of Petitioner on 5.3.2003, he gave information to the learned Magistrate for moving the Sessions Judge, Patna for transfer of the case and prayed time for filing the petition (Annexure-7). The further case of the Petitioner is that learned Counsel for the Petitioner was not heard on the bail application of opposite party No. 2 but inspite of it, the learned

Magistrate has wrongly stated that counsel for Petitioner was also heard. On all these grounds, the Petitioner has prayed for cancellation of bail of opposite party No. 2.

4. Opposite party No. 2 has appeared and opposed the prayer of Petitioner by filing reply of show cause notice which was issued to him. The case of opposite party No. 2 is that no ground for cancellation of bail granted to him has been made out and although the Petitioner has filed complaint against him and other two co-accused persons, namely, Panna Lal Prasad Gupta and Manoj Kumar Gupta but the learned Chief Judicial Magistrate did not take cognizance against co-accused Manoj Kumar Gupta and he was not aware about filing of any transfer petition by Petitioner before the Chief Judicial Magistrate and when he obtained the certified copy of Miscellaneous Case No. 89 of 2003, he found that it was in respect of transfer of case No. 448C of 2002 and although in the petition, there were mention of two other cases also but there was no prayer of transfer of those cases. His surrender-cum-bail petition was filed in the first hour of 5.3.2003 and there was no order by that time for transferring the case in which opposite party No. 2 surrendered and the learned Magistrate had no alternative but to hear the bail petition which was filed on surrender of opposite party No. 2. Opposite party No. 2 has stated that during hearing of bail petition, unnecessary objections were made before the learned Magistrate on behalf of the Petitioner and the learned Magistrate reported the matter to Chief Judicial Magistrate, Patna and sought his direction and after receiving his direction, heard the bail petition of opposite party No. 2 and counsel for both the parties were heard and order granting bail to opposite party No. 2 was passed. The further case of opposite party No. 2 is that the Petitioner has wrongly stated that he (opposite party No. 2) surrendered at the fag end of Court hours because after filing surrender-cum-bail petition on his behalf learned Magistrate sought direction from the Chief Judicial Magistrate and after receiving the same, this petition was heard and this fact itself falsifies the allegation of Petitioner that bail petition on his behalf was filed at the fag end of Court hours Opposite party No. 2 has prayed for accepting his show cause and rejecting trap prayer of Petitioner.

5. From the perusal of impugned order, I find that when surrender-cum-bail petition on behalf of opposite party No. 2 was filed on 5.3.2003, the Petitioner also filed a petition stating therein that it had filed a transfer petition for the transfer of the case before learned Chief Judicial Magistrate, Patna. The learned Magistrate then ordered his office to send a letter to Chief Judicial Magistrate, Patna for direction and on the same day later on, the learned Magistrate received direction vide Memo No. 82 dated 5.3.2003 with a copy of order sheet by which Chief Judicial Magistrate directed the learned Magistrate to hear the bail petition on the date itself and, thereafter, the learned Magistrate heard the bail petition and granted bail to opposite party No. 2. The impugned order further shows that Petitioner was represented by Shri J.S. Arora and Shri Ranjan Kumar. The case of the Petitioner is that it had earlier filed a miscellaneous case No. 89 of 2003 for transfer of the case under consideration which is numbered as 1959C 2002 and

two more cases bearing No. 448C of 2002 and 1959C of 1999 which was ordered to be placed on 10.3.2003 awaiting the report of Criminal Sheristedar. Its further case is that when Petitioner found that opposite party No. 2 had filed a surrender-cum-bail petition before the learned Magistrate, it filed a petition that it had already filed a transfer petition and on his petition, the learned Magistrate sought direction of the Chief Judicial Magistrate. The Petitioner has annexed the copy of this petition (Annexure-5) which according to Petitioner was filed in the Court of learned Magistrate on which he sought direction from the Chief Judicial Magistrate. In this petition, the Petitioner has given the number of his transfer petition as 96 of 2003. The case of Petitioner is that on the very date that is on 5.3.2003, it had filed a petition before the Court of Chief judicial Magistrate for transfer of the case from the Court of Magistrate which was numbered as Miscellaneous Case No. 96 of 2003. The Petitioner has annexed the order sheet of the Chief Judicial Magistrate passed in Miscellaneous Case No. 96 of 2003 (Annexure-4) which shows that it was filed on 5.3.2003 in the late hours at 3.30 P.M. and it was ordered for registering it in the miscellaneous case register and for hearing on 6.3.2003. From Annexure-4, it appears that no case number was allotted by 3.30 P.M. on 5.3.2003 because by that time, it was not entered in the register of miscellaneous cases. It does not appear that when Petitioner had filed miscellaneous case No. 89 of 2003 earlier before the Court of Chief Judicial Magistrate, what was the necessity of filing Miscellaneous Case No. 96 of 2003 on 5.3.2003. All these facts create a serious doubt on the submission of Petitioner that on 5.3.2003 when it filed a petition before learned Magistrate (Annexure-5), Miscellaneous Case No. 96 of 2003 was there at the time of filing this petition. Besides this, the impugned order clearly shows that when the complainant stated that transfer petition was filed for transferring the case under consideration, the learned Magistrate called for a report from the Chief Judicial Magistrate who took into consideration the filing of Miscellaneous Case No. 89 of 2003 and not Miscellaneous Case No. 96 of 2003 and by its order dated 5.3.2003 directed the learned Magistrate to dispose of the petition of bail of opposite party No. 2 observing that Miscellaneous Case No. 89 of 2003 was filed in respect of transfer of Complaint Case No. 448C of 2002. The learned Counsel appearing on behalf of the Petitioner submits that this observation of learned Chief Judicial Magistrate was quite wrong because by Miscellaneous Case No. 89 of 2003, Petitioner had sought transfer of Cases No. 448C of 2002, 1959C of 2002 and 1759C of 1999. Opposite party No. 2 has annexed the copy of petition of Petitioner which was numbered as Miscellaneous Case No. 89 of 2003 which shows that although in the application, number of three cases including the present case are mentioned but then in the prayer portion, prayer has been made for transfer of Complaint Case No. 448C of 2002 only. In this view of the matter, if the learned Chief Judicial Magistrate directed the learned Magistrate for hearing the bail application of opposite party No. 2 finding that Miscellaneous Case No. 89 of 2003 was not for the transfer of present case, I do not find any wrong committed by the Chief Judicial Magistrate. About the petition filed in the Court of learned Magistrate (Annexure-7) that the Petitioner wanted to move

petition before District Judge, Patna for transfer of his case is concerned, the impugned order shows that it was filed after bail order was passed.

6. The Petitioner has sought cancellation of bail of opposite party No. 2 on the grounds which are stated above. It is not the case of Petitioner that after obtaining bail, opposite party No. 2 has misused the privilege of bail in any manner or there is any chance of his absconding or putting any obstacle in the trial of case.

7. I, therefore, find no merit in the application of Petitioner which is, accordingly dismissed.