
(2008) 07 PAT CK 0111
In the Patna High Court

Broadway Foods Ltd. thru. M.D. and Others	APPELLANT
Vs	
State of Bihar and Another	RESPONDENT

Date of Decision : 30-07-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 406

Citation : (2008) 07 PAT CK 0111

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sheema Ali Khan, J.—The petitioners have filed this application for quashing of the order dated 28.06.2006 passed by the Judicial Magistrate, First Class, Patna in Complaint Case No. 1118 (C) of 2006 whereby the court has taken cognizance u/s 406 of the Indian Penal Code.

2. The petitioners are officers of the Broadway Foods Limited company. The Company, appointed the opposite party No. 2 to become a Stockist in Patna and C & F agent at Hazaribagh (Jharkhand) and they entered into an agreement with the opposite party No. 2 for the said purpose. The opposite party claim that they were appointed as C & F agents for both places i.e., Patna and Hazaribagh. It is alleged that the complainant paid Rs. 5 Lacs as security for the purpose of becoming stockists and C & F agent at Patna and thereafter the complainant paid various amounts of money on various dates in lieu of supply of stock by the accused persons.

3. The main allegation on the basis of which the complaint has been filed is at paragraph Nos. 7, 8, 11 and 13. In para 7 of the complaint petition it has been mentioned that: "That after taking the security money the company sent the goods to the complainant at both the places (Patna and Hazaribagh) for storing in their godown on various dates for Rs. 8,49,734.88/- (Eight lac forty nine thousand and seven hundred thirty four only). And according to the instruction of

the company, the complainant transferred the goods of Rs. 1,31,400/- (One lac thirty one thousand and four hundred only) on 26.4.2005 to Sri Ram Trading and Rs. 1,13,242.32 (One lac thirteen thousand and two hundred forty two, and thirty two paise only) on 13.6.2005 to K.N.O.P.S., Enterprises, Patna. So the balance of stock received by the complainant is about Rs. 600000/- (Six lacs only)."

4. It is alleged that after receiving the said goods, the complainant demanded a break-up of the bills and after preparing the bills the complainant went to the company's office at Mohali (Punjab) on several occasions and demanded the security money and break up of the bills and other expenses. It is alleged that the company is not settling the bills and thus has misappropriated the money.

5. The argument on behalf of the petitioners is two folds. Firstly, it has been submitted that in view of the fact that S.S. Enterprises, Hazaribagh was made C & F agent of the petitioners company at Jharkhand, all business transactions has taken place at Mohali (Punjab) or at Hazaribagh, the court at Patna has no jurisdiction to proceed with the matter, and, secondly it is submitted that according to the admitted facts made out in the complaint petition the complainant committed breach of contract which is purely of a civil nature and a case u/s 406 of the Indian Penal Code is not made out against the petitioners.

6. From the complaint petition, and particularly paragraph No. 7 it appears that the complainant had supplied goods to various persons on instructions of the company from Hazaribagh and Patna and stock of about Rs. 6 lacs was lying with the complainant and after returning the goods the petitioners demanded the break up bills which was allegedly not given to the petitioners.

7. During hearing of this case it appears that the opposite party No. 2 stated that he is ready to settle the accounts and he has no objection in withdrawing the case if the accused persons would pay Rs. 8 lacs which is due to them. On the next date the complainant, however, resiled from his statement as the petitioners stated that they were prepared to pay Rs. 2 lacs only, which was not acceptable to the complainant.

8. Regarding the first contention raised on behalf of the petitioners that the Patna court has no jurisdiction to hear the matter, I think that this Court can not go into the question of jurisdictional error as specific cases have not been made out by the parties except to say that the opposite party No. 2 was a C & F agent at Jharkhand and Patna and the agreement was signed at Mohali (Punjab).

9. This Court has no way of knowing at this stage whether the transaction with respect to the payment took place from the office at Hazaribagh or whether the payments was made by the opposite party no 2 as a stockist in Patna, and as such, the facts and pleadings regarding the question raised with respect to jurisdictional error having not been made out, it can not be decided by this Court at this stage.

10. Coming to the main contention of the learned Counsel appearing on behalf of the petitioners that offences u/s 406 of the Indian Penal Code is not made out against the petitioners. One has to look into the allegations made in the complaint petition and the ingredients which constitute an offence u/s 406 of the Indian Penal Code. The ingredients to constitute an offence u/s 406 of the Indian Penal Code are that (a)the accused must have been entrusted with property or with dominion over property, (b) the accused must have misappropriated or converted to his own that property. Such misappropriation or conversion must be dishonest or must be wilful. The word "entrustment" implies that the handing over property by lawful means. The word "entrustment" again implies that person handing over the property has confidence in the person taking the property so as to have a fiduciary relationship between them. To constitute an offence u/s 406 of the Indian Penal Code it is essential that dishonest intention should be dominant at the time of the entrustment. The offence is only completed when there is an intention to dishonestly misappropriate the property so handed over.

11. In the present case the petitioners have received certain amount of money have supplied the stocks against the said amount. During the business transactions as it would be appear from the complaint petition, the accused persons have also asked the complainant-opposite party No. 2 to hand over and supply such goods to some other persons. After the business transactions were completed there arose a dispute with respect to settlement of account which were incurred in such business transactions. This settlement of accounts has led to the present dispute and to filing of the criminal cases. In a business transaction if there is a dispute with respect to settlement of accounts it can not be said that the parties in the business transaction had a criminal intention to misappropriate the money and the facts would constitute certain civil liabilities which can be settled by filing a suit for settlement of accounts or a money suit or a suit for recovery of the amount from the person to whom the money is owed. The facts do not reveal any criminal intention on the part of the accused persons to misappropriate the money of the opposite party No. 2. This is one such case which discloses that the sole purpose of launching a criminal case is to coerce the petitioners to pay the disputed amount. Mere breach of contract can not lead to criminal prosecution unless there was a dishonest intention at the very beginning of the transactions, that is at the time the offence is said to have been committed. Therefore, it is the intention which is the gist of the offence, which is lacking in this case. Every offence of criminal breach of trust involves a civil consequence in respect of which the complainant may seek redress of his grievances in civil court.

12. I find there is no mens rea or criminal intention in the facts of this case and as such the ingredients of Section 406 of the Indian penal Code are not made out in this case.

13. Consequently the order dated 28.6.2006 is quashed and this application is

allowed.