(2023) 12 PAT CK 0058

In the Patna High Court

Case No : Criminal Miscellaneous No. 58386 Of 2023

Budh Deo Mishra — APPELLANT

Vs

State Of Bihar — RESPONDENT

Date of Decision : 14-12-2023

Acts Referred:

Code of Criminal Procedure, 1973 — Section 397, 397(3), 482
Indian Penal Code, 1860 — Section 405, 406, 420

Citation : (2023) 12 PAT CK 0058

Hon'ble Judges : Satyavrat Verma, J

Bench : Single Bench

Advocate : Yogendra Kumar, Dayanand Singh, Sanjeet Kumar, Ankit Vikas

Judgement

1. Heard learned counsel for the petitioner, learned counsel for the opposite party no.2 and learned APP for the State.

2. The learned counsel for the petitioner submits that the present application has been filed seeking quashing of the order dated 26.05.2023 passed by the learned Sessions Judge, Begusarai in Cr. Revision no.131 of 2021 whereby the learned Sessions Judge, Begusarai has dismissed the Criminal Revision and thus, has affirmed the order of cognizance dated 26.02.2020 passed by the learned Judicial Magistrate, First Class, Begusarai in Complaint Case No.2144(C) of 2019.

3. The learned counsel for the petitioner, at the outset, submits that he is aware of his limitation in preferring the present quashing application as it can also be construed that the present application under Section 482 of the Cr.P.C. is nothing but a second revision, which is barred under Section 397(3) of the Cr.P.C. It is further submitted that no doubt, under Section 397 of the Cr.P.C. both the High Court and Sessions Judge have power of entertaining a revision application and if the accused has preferred a revision before the learned Sessions Judge, then definitely whether an application under Section 482 Cr.P.C. would lie before the High Court or not is a question which will depend on the facts and circumstances of the case.

4. It is further submitted that if this Court comes to a conclusion that the dismissal of Cr. Revision has led to failure of justice in that event, an application under Section 482 Cr.P.C. can still be entertained. The argument of the learned counsel for the petitioner strikes the Court.

5. It is next submitted that the opposite party no.2 instituted Complaint Case No.2144(C) of 2019 alleging that she had availed a credit card linked with her saving bank account with HDFC Bank having a credit card limit of Rs.30,000/-. It is next alleged that she only made a transaction of Rs.2000/- by using her credit card. However, when she checked her statement of account on 29.11.2018, it came to her notice that only an amount of Rs.9531.03/-was available in her account. Accordingly, she approached the authorities of the Bank asking for the details of the deduction of such a huge amount from her account, when she was informed that the amount was either being deducted owing to the transaction done by her or in connection with the outstanding dues, which were to be paid by her. It is next alleged that she did not make any transaction neither were there any outstanding dues against her saving bank account or credit card facilities. It is next alleged that she accordingly, approached the accused no.2 (not the petitioner here) in the complaint case several times, however, her grievances were not redressed and thus, alleges that the bank misappropriated an amount of Rs. One Lac from her account since 2015. It is next alleged that no money was lef in her bank account, thereafer she started receiving threatening calls from the bank stating that an outstanding amount of Rs.44,000/- has been marked to her account which she was liable to pay and if she failed to pay the amount, cases of fraud will be registered against her.

6. The learned counsel for the petitioner submits that from bare perusal of the allegation as alleged in the F.I.R., it would manifest that the dispute is purely civil in nature to which a criminal colour has been given. It is next submitted that what is not disputed rather stands admitted is that the O.P. No.2 had availed credit card facility and she had spent, but then, she disputes that though she had made only one transaction of Rs.2,000/-, but for that an amount of Rs. One Lac was deducted from her account and thereafer, she has been threatened by the bank to deposit an outstanding amount of Rs.44,000/-. It is next submitted that petitioner is the Branch Manager of HDFC, Kachari Branch, Begusarai and from perusal of the allegation as alleged him in the complaint, it would manifest that no specific allegation has been alleged against him and the allegation against him are general and omnibus in nature. It is next submitted that Bank is a company registered under the Company's Act and the Bank has not been made an accused in the case. It is thus submitted that in absence of Bank being made an accused in the case, when it has a right to sue and gets sued, the petitioner cannot be held liable vicariously. It is further submitted that the opposite party no.2 was enjoying the said credit card facility which she had taken on her own free-will only afer understanding the terms and conditions and other benefits and risk attached to it. It is next submitted that opposite party no.2 had given a standing instruction that the minimum amount used that is the outstanding would be

deducted from her saving bank account bearing A/c No.50100103059853. It is next submitted that though it is being alleged by the O.P. No.2 that the credit card limit was changed without her consent, but when the terms and conditions of the credit card is perused, it would manifest that the bank had authority to review credit limit on any card account as per bank policies specified from time to time.

7. The learned counsel next submits that the falsity of the allegation would also manifest from the fact that the O.P. No.2 in the complaint has alleged that the bank is threatening her to pay an outstanding of Rs.44,000/- when the amount is not due, but then, it is submitted that from perusal of Annexure-3 to the quashing application, it would manifest that the complainant herself afer filing of the complaint deposited an amount of Rs.45,000/- with regard to the dues against her said credit card through cash and thereafer, the Bank granted ‘No Dues Certificate’ dated 01.06.2023 (Annexure-4).

8. The learned counsel next submits that in the background of the fact as recorded herein above, it would manifest that the dispute was purely civil, but the Court in a mechanical manner took cognizance of the offence under Section 406 and 420 of the I.P.C. against the petitioner. It is further submitted that in the facts of the case as pleaded in the quashing application and recorded herein above, no offence under Sections 406 and 420 of the I.P.C. is made out.

9. It is next submitted that in order to attract punishment under Section 406 of the I.P.C. for criminal breach of trust as defined in Section 405 I.P.C., the prosecution must prove:-

(i) That the accused was entrusted with that property or with dominion over property;

(ii) He has:-(a) dishonestly misappropriated or converted it to own use or dishonestly used or disposed of it.

10. It is thus submitted that in the instant case Section 406 of the I.P.C., on bare reading, does not apply as the petitioner cannot be fastened with an allegation that he was entrusted with any type of property by the complainant or he dishonestly misappropriated the same. It is further submitted that even Section 420 of the I.P.C. in the facts of the case is not applicable. It is submitted that to constitute an offence under Section 420 I.P.C., there must be:-(i) cheating; (ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security and (iii) mens rea of the accused at the time of making the inducement.

11. It is thus submitted that Section 420 of the I.P.C. consists of two distinct parts of cheating. The first part contemplates whereby deception practiced upon a person, the accused dishonestly or fraudulently induced that person to deliver a property to any person or to consent that any person shall retain any property,

while the second part envisages whereby deception practiced upon a person, the accused intentionally induced that person to do or omit to do any act, if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

12. It is thus submitted that it is not the case of the opposite party that she was induced by the Bank for availing the credit card rather she on her own volition had approached the bank and thereafer, got the credit card facility as per limit of her saving bank account with the bank.

13. The learned counsel next submits that even presuming what has been alleged is true without admitting, then at best it can be a case where the agreement stands breached, but then, mere breach of agreement does not give rise to a criminal offence.

14. The learned counsel next submits that the Hon'ble Supreme Court in the case of Zandu Pharmaceuticals Works Limited and others vs. Mohd. Sharaful Haque and another (2005) 1 SCC 122 wherein it has been observed that when a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

15. The learned counsel next relies on the judgment of the Hon'ble Supreme Court in the case of Inder Mohan Goswami and another vs. State of Uttaranchal and others reported in (2007) 12 SCC 1 wherein the Hon'ble Supreme Court held that the Court must ensure that the criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurize the accused.

16. The learned counsel next relies on the judgment of the Hon'ble Supreme Court in the case of Pepsi Foods Case reported in A.I.R. 1998 (SC) 128 wherein the Hon'ble Supreme Court held that summoning of an accused in a criminal case is a serious matter. Criminal Law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the Criminal Law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the Law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence, both oral and documentary in support thereof, and then only, it would be sufficient for the complainant to succeed in bringing charge home to the accused.

17. The learned counsel further relies on the case of G. Sagar Suri vs. State of U. P. reported in A.I.R. 2000 SC 754 wherein the Hon'ble Supreme Court clearly observed that it is to be seen if a matter, which is essentially of civil nature, has been given cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal Court has to exercise a great deal of caution as for the accused, it is a serious matter.

18. Thereafer, learned counsel relies on the case of Indian Oil Corporation vs. NEPC India Limited reported in A.I.R. 2006 (SC) 2780 wherein the Hon'ble Supreme Court observed that it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. Since Civil Law remedies are time consuming and do not adequately protects the interests of lenders/ creditors. There is an impression that if a person could somehow be entangled in a criminal prosecution, there is likelihood of imminent settlement. Any effort to settle civil disputes and claim, which do not involve any criminal offence by applying pressure through Criminal prosecution should be deprecated and discouraged.

19. The learned counsel next relies on the case of Deepak Gaba and others vs. State of U.P. reported in (2023) SCC Online SC 3 wherein the Hon'ble Supreme Court observed that the High Court, while dismissing the petition filed under Section 482 of the Cr.P.C., failed to take due notice that criminal proceedings should not be allowed to be initiated, when it is manifest that these proceedings have been initiated with ulterior motive of wreaking vengeance and with a view to spite the opposite side due to private and personal grudge. Allegations in the complaint and the pre-summoning evidence on record, when taken on the face value and accepted in its entirety, do not constitute the offence alleged. The inherent powers of the Court can and should be exercised in such circumstances.

20. The learned counsel next relies on the celebrated judgment of the Hon'ble Supreme Court in the case of State of Haryana and others vs. Choudhary Bhajan Lal and others reported in AIR 1992 SC 604, wherein the Hon'ble Supreme Court laid seven principles which should be taken into account while exercising power under Section 482 of the Cr.P.C. and had also held that inherent power under Section 482 Cr.P.C. could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice and cases wherein the criminal proceeding is manifestly attended with mala fide or where the proceedings is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

21. The learned counsel for the petitioner next relies on a judgment of the Hon'ble Supreme Court in the case of Vishnu Kumar Shukla and another vs. the State of Uttar Pradesh and another, (2023) SCC Online SC 1582 and draws the attention of the Court to Paragraph-23 of the judgment and submits that the Hon'ble Supreme Court based on the facts of the said case has recorded that "the Appellants are to be protected against vexatious and unwarranted criminal prosecution, and from unnecessarily being put through the rigours of an eventual trial."

22. It is thus submitted that in the present case also, the criminal prosecution initiated against the petitioner by the opposite party no.2 is nothing, but an abuse of the process of the Court and the petitioner has been implicated only with a view to coerce the Bank into submission, when from perusal of the

allegation as alleged in the complaint, it would manifest that no specific allegation has been alleged against the petitioner and the allegation against him are general and omnibus in nature.

23. The learned Additional P. P. along with the learned counsel for the opposite party no.2 are not in a position to rebut the submission of the learned counsel for the petitioner that in the complaint, no specific allegation is alleged against the petitioner, nor the Bank, which is a Company registered under the Company's Act, has been made an accused, as such, in absence of Bank, being an accused, the petitioner cannot be held vicariously liable.

24. Considering the submission made by the learned counsel for the petitioner and taking into account the case laws, as recorded herein above, the Court comes to a considered conclusion that the present application requires interference and as such, the revisional order dated 26.05.2023 passed by the learned Sessions Judge, Begusarai in Criminal Revision No.131 of 2021 along with the order dated 26.02.2020 by which cognizance was taken by the learned Judicial Magistrate, 1st Class, Begusarai under Sections 420 and 406 of the I.P.C. against the petitioner, which was affirmed by the Revisional order are hereby quashed.