(2010) 08 JH CK 0078

In the Jharkhand High Court

Chandra Kant Gopalka APPELLANT

Vs

The State of Jharkhand and Rajendra Singh RESPONDENT

Date of Decision : 12-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2010) 08 JH CK 0078

Hon'ble Judges : D.G.R. Patnaik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—It appears that despite service of notice, the Opposite Party No. 2 has failed to appear either in person or through lawyer and as such, this case has been taken up for disposal of the case at the stage of admission.

2. Heard the learned Counsel for the petitioner and the learned Counsel for the State.

3. The instant application has been filed by the petitioner for quashing the impugned order of cognizance, dated-15.02.2007, passed by Sri R. N. Rai, Judicial Magistrate, Ranchi vide Complaint Case No. 1433 of 2006, whereby cognizance for the offence u/s 420 of the Indian Penal Code, has been taken against the petitioner.

4. It may be mentioned that by the interim order dated-27.09.2007, further proceedings pending against the petitioner before the court below has been stayed.

5. Facts in brief, relevant for the purpose of disposal of this application are as follows:

The Opposite Party No. 2 had filed a complaint before the court below on the allegations that the petitioner happens to be the Director of the Finance Company, namely, Dhanbad Finance Private Limited and Gopalka Investment Corporation. The complainant borrowed loan from the petitioner for purchase of six dumpers. With the loan amount, the complainant had purchased the dumpers and against the loan granted, he had executed six different Hire Purchase Agreements giving undertaking in each of the Agreements to repay the loan amount together with interest in equal monthly installments within a period of two years from the date of receiving of the loan amounts.

It is alleged that at the time of execution of the Hire Purchase Agreements, the petitioner had obtained 48 Blank cheques for the period of two years as additional security for due repayment of the total loan amount. The contention of the complainant is that in spite of the fact that he had repaid the entire loan amount during the period of loan transactions, the petitioner had illegally misused the Blank cheques by presenting the same at the Bank. The petitioner, earlier sensing some mischief, had instructed his Bank to stop payments on the cheques. The petitioner dishonestly presented the cheques and when the cheque was dishonoured, he filed five separate complaint cases commencing from the year 2002 to 2004 against the complainant, for the offence u/s 138 of the Negotiable Instruments Act. This, according to the complainant, constitutes an act of cheating in as much as, the petitioner had obtained the blank cheques with dishonest intentions and for deceitful purpose.

6. Learned Counsel for the petitioner argues that the impugned order of cognizance has been passed by the learned Magistrate without application of judicial mind and without appreciating the admitted facts of the case in proper perspective. Reading out the allegations in the complaint petition and the statements of the complainant, recorded on solemn affirmation in course of enquiry u/s 202 of the Cr.P.C., learned Counsel submits that the entire transactions, even as admitted by the complainant, relate exclusively to commercial transactions and under the various contracts which the complainant had entered into with the petitioner/Financer, the complainant was obliged to repay the loan amount in accordance with the terms of the contract, regularly. The complainant has suppressed the fact that he had failed to deposit the monthly installment and accumulation of interest on the unpaid amount had resulted as outstanding dues against the complainant. Learned Counsel adds further, that as it appears, the complainant has wanted to set up defence in respect of the earlier cases filed against him by the petitioner for dishonour of the cheques.

To buttress his arguments, learned Counsel would refer to and rely upon the judgment of the Supreme Court in the case of Sunil Kumar Vs. M/s. Escorts Yamaha Motors Ltd. and Ors, .

7. Learned Counsel for the State on the other hand would submit that as per the allegations, it appears that the complainant is aggrieved by the fact that though he claims to have refunded the entire loan amount, but the petitioner has made

a further claim of money from them, which the complainant does not acknowledge.

8. From the averments in the complaint petition, the list of the allegations is that the petitioner had presented the cheques purportedly signed by the complainant, for encashment before the Bank. Even as admitted by the complainant, he had handed over the cheques to the petitioner/financer for the purpose of additional security. As per the terms of the agreements, the cheques were meant to be presented for encashment only, if the loan amount repayable on installments, was defaulted. There does not appear from the admitted facts any allegation, which may constitute the ingredients of the offence u/s 420 of the I.P.C. The impugned order appears to have been passed without application of mind to the fact that even on the face of the entire allegations, no criminal offence is made out.

9. In the case of Sunil Kumar (Supra), while considering the issues involving similar facts, relating to an F.I.R. filed under Sections 420, 406 and 468 of the I.P.C. alleging therein, that the accused persons by an act of conspiracy committed criminal breach of trust by presenting for encashment blank cheques, signed by the informant, for a purpose other than that for which the cheque had been given to them, the apex Court had held as follows:

Apart from the fact that the said allegations did not make out any offence of cheating or criminal breach of trust, attendant circumstances indicating that FIR was lodged to pre-empt the filing of complaint u/s 138 of the Negotiable Instruments Act against the appellant.

10. In the facts and circumstances of the case and for the reasons assigned above, I find merit in this application. Accordingly, this application is allowed. The impugned order of cognizance, dated-15.02.2007 as also the entire criminal proceedings, pending in the Court of Shri R.N. Rai, Judicial Magistrate, Ranchi or his successor vide Complaint Case No. 14 of 2006 is hereby quashed.