(2009) 07 PAT CK 0110

In the Patna High Court

Case No : Criminal Miscellaneous No. 45730 of 2007

Damanjit Singh APPELLANT

Vs

The State of Bihar and Uma Shankar Bhagat RESPONDENT

Date of Decision : 30-07-2009

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2009) 57 BLJR 3016 : (2009) 3 PLJR 965

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Shivendra Kumar Sinha, for the Appellant; Jharkhandi Upadhaya, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Abhijit Sinha, J.—The sole accused of Complaint Case No. 304(C) of 2006 has prayed for the quashing of the order dated 10.5.2006 passed therein by the learned Chief Judicial Magistrate, Jamui, whereby he has taken cognizance of offences under Sections 406 and 420 I.P.C. as also Section 138 of the Negotiable Instrument Act (hereinafter referred to as "the N.I. Act").

2. One Uma Shankar Bhagat, the complainant, impleaded herein as Opp. Party No. 2, filed the aforesaid complaint inter alia stating that he is the proprietor of Shaandar Paint Industries and the Managing Director of Shalimar Colours(India) Pvt. Ltd. at Maharajganj in the district of Jamui and in order to expand his business, he was in need of a house at Delhi. On receiving information that the house of the accused in Rajauri Gardens, New Delhi, was vacant, he took the same on rent @ Rs. 11,500/- per month and, accordingly, an agreement dated 17.12.2003 was signed and executed by both the parties. It is alleged that as per the terms and conditions of the agreement, the complainant deposited a sum of Rs. 40,000/- as advance which was refundable at the time of handing over vacant possession of the rented premises. It is further alleged that when the

complainant vacated the rented premises and demanded return of the sum of Rs. 40,000/- given as advance, the accused handed over a cheque bearing No. 697452 dated 31.10.2005 to the complainant, which the complainant deposited in the Khaira Branch of Canara Bank on 15.11.2005 and the same was returned dishonoured on 12.12.2005 as the accused reportedly did not have sufficient fund in his account. The complainant claims to have given information of the dishonoured cheque to the accused, whereupon the accused requested the complainant to re-deposit the cheque and take encashment as he had deposited the required amount in his account. Accordingly, the complainant on the assurance of the accused re-deposited the cheque in the Khaira Branch of Canara Bank on 5.1.2006 which was again dishonoured and returned to the complainant on 30.1.2006 due to insufficiency of fund. It is further alleged that the complainant in person and through staff went to the house of the accused for refund of the aforesaid amount and on failing to recover the amount, a legal notice was sent which evinced no response. Hence the complaint on the presumption that the accused had misappropriated the sum of Rs. 40,000/-

3. It has been submitted on behalf of the petitioner that it would appear from perusal of the cheque in question, which was issued in favour of the complainant that it had not been issued under the signature of the petitioner but was signed by one Ranjit Singh as a partner of "Woolen Emporium", and as such, the entire case is false so far as the petitioner is concerned in respect of the cheque. It was further submitted that this fact is further corroborated by the fact that certificate issued by the Fatehpuri, Delhi Branch of Punjab and Sind Bank would show that the petitioner was not a partner of the "Firm Woolen Emporium".

4. Referring to the deed of agreement dated 17.12.2003 which has been appended as Annexure-3 to the petition it has been submitted that the petitioner had entered into an agreement with the complainant on 17.12.2003 leasing out the premises for 11 months and the same had expired on 17.11.2004 by afflux of the period of lease and the rented premises had been vacated by the complainant and the petitioner had refunded Rs. 40,000/- in terms of the agreement and no relationship of the landlord tenant or any other relationship existed between the complainant and the accused.

5. The learned Counsel further sought to submit that the cheque in question had allegedly bounced on 30.1.2006 and the present complaint having been filed on 18.4.2006, which was beyond the period of limitation prescribed under the N.I. Act, the entire complaint case could not be entertained being barred by limitation and yet the learned Magistrate without applying his mind or considering the matter judicially has taken cognizance mechanically.

6. It was finally submitted that it would be apparent from the facts stated above that none of the ingradients of the offences whereunder cognizance has been taken are made out and the petitioner has been made to face a false and vexatious litigation.

7. I have perused the documents on record which goes to show that the submissions advanced by the learned Counsel for the petitioner are well founded. In view of the cheque, allegedly bouncing, was not issued by the petitioner but by Ranjit Singh figuring as partner of "Woolen Emporium" of which the petitioner was not a partner, the fixed term tenancy having expired and the complaint case having been filed beyond the period of limitation, the prosecution of the petitioner would be an abuse of the process of the court and cannot be sustained in law. If the grievance of the complainant of non-refunding of the advance of Rs. 40,000/- persists he may pursue his remedy in a competent court of civil jurisdiction since the nature of dispute is primarily civil in nature.

8. In the facts and circumstances of the case, the impugned order taking cognizance against the sole petitioner is hereby quashed and the application is allowed.