

(2009) 06 PAT CK 0018

In the Patna High Court

Case No : Criminal Miscellaneous No. 16108 of 2007

Ganesh Prasad Ray and Rajdeo Ray

APPELLANT

Vs

The State of Bihar and Sushil Kumar Sinha

RESPONDENT

Date of Decision : 24-06-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 202, 203
Penal Code, 1860 (IPC) — Section 120B, 182, 211, 406, 420

Citation : (2009) 06 PAT CK 0018

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Bhola Prasad and Tarun Prasad Mandal, for the Appellant; Mayanand Jha, Assistant Public Prosecutor and Suresh Pd. Barnwal, for Opp. Party No. 2, for the Respondent

Final Decision : Allowed

Judgement

Abhijit Sinha, J.—The two petitioners, who are F.I.R. named accused in Dandkhora P.S. Case No. 59 of 2003 as also in the Protest-cum-Complaint Petition No. 449 of 2005 filed by the informant/complainant against the final form submitted by the police in the aforesaid police case, have prayed for the quashing of the order dated 15.12.2005 passed in the said Complaint Case No. 449 of 2005 dismissing the complaint and the consequential order dated 27.2.2007 passed in Cr. Revision No. 185 of 2005 of Sri Mazahar Imam, the learned Sessions Judge, Katihar, whereby he allowed the revision and remitted the case back to the court below to pass appropriate orders in accordance with law on the basis of the materials available on the record in the light of the observations made.

2. One Sushil Kumar Sinha, the complainant/informant, impleaded herein as Opp. Party No. 2, initially filed a Complaint Case No. 8182 of 2003 on 18.11.2003 against the petitioners for commission of offences under Sections 406, 420 and 120B I.P.C. Inter alia alleging that he was a dealer under the Public Distribution

System in Village-Bijaili since long and accused No. 1 being his class friend in the school, he had implicit faith on him. It is alleged that accused No. 1 was elected as member of Zila Parishad of Dandkhora Block and in the said election, Opp. Party No. 2 herein had rendered financial aid of Rs. 15, 000/- in presence of petitioner No. 2 and the said amount was not being returned" by accused No. 1 on one pretext or the other, notwithstanding several requests by the complainant. It is said that when money was required urgently for treatment of his wife accused No. 1 promised to return the same within a month, but when the same was not complied with the complainant allegedly went to the house of accused Nos. 1 and 2 demanding return of the money but accused No. 1 showed his inability to return the amount immediately. It is said that a panchaya t was held whereat Dashanand Rai, younger brother of accused No. 1 was one of the Panches and all of them requested accused No. 1 to return the amount to the complainant. The said accused No. 1 is said to have demanded one week's time to return the amount but the compliance was never affected. Lastly on 13.11.2003 when the complainant along with Sukhdeo Rai went to the house of accused and demanded the amount, both the accused flatly refused to return the money and they also threatened the complainant to leave the premises forthwith or else he would be implicated in cases under the Harijan Atrocities Act. Exchange of wordy duels followed which attracted several persons including the witnesses and when the witnesses attempted to intervene, they too were threatened with serious consequences.

3. The said complaint was sent to the concerned Police Station u/s 156(3) Cr.P.C. and the police after due investigation submitted a final form on 30.12.2004 as the case was found untrue and recommendations were made for proceeding against the complainant/informant under Sections 182/211 I.P.C. It appears that having accepted the final form, the learned Chief Judicial Magistrate, proceeded with the protest petition as a complaint case and having considered the materials available on record surfacing from the enquiry u/s 202 Cr.P.C. dismissed the complaint as no prima facie case had been made out and the dispute was civil in nature based on oral contract between the parties. The informant/complainant preferred Cr. Revision No. 185 of 2005 for setting aside the order dated 15.12.2005 passed by the learned Chief Judicial Magistrate and the said Revision was allowed by the impugned order on a finding that on perusal of the protest petition and evidence available on record a prima facie case was indeed made out.

4. Assailing the impugned order of the Revisional Court, it was submitted on behalf of the petitioners that the informant/complainant in order to harass the petitioners was ruthlessly pursuing the matter and the learned Revisional Court had erred in law in accepting the submissions advanced by the learned Counsel for the complainant/informant without giving a proper consideration to the reasons assigned by the learned Magistrate in dismissing the complaint. It was further submitted that from the allegations made in the Protest-cum- Complaint petition, no criminal liability appears to have been made out against the

petitioners and the learned Magistrate had rightly dismissed the complaint which had been preferred to overcome the recommendations of the police to proceed against the informant/complainant under Sections 182/211 I.P.C. It was also submitted that the allegations as embodied in the complaint petition did not make out any offence either under Sections 406, 420 or 120B I.P.C. and the prosecution of the petitioners would be an abuse of the process of the court.

5. I have had the occasion to peruse the orders of both the courts below and I am of the opinion that the learned Magistrate had rightly and for cogent reasons dismissed the Protest-cum- Complaint petition u/s 203 Cr.P.C. The learned Revisional Court in passing the impugned order appears to have been impressed by the statements on S.A. of the complainant as also the five witnesses examined on his behalf who appeared to support the complainant's case at the enquiry u/s 202 Cr.P.C.

6. It is true that the complainant and his witnesses have attempted to support the complainant's case. However, the learned Revisional Court failed to appreciate the fact that the allegations against the petitioners was of not refunding the money which allegedly had been given by the complainant/informant by way of rendering financial help to petitioner No. 1 to fight the election.

7. Therefore, the entire cause of action relates to a money transaction and non-return of the loaned amount and would at best result in a civil cause of action and no criminal liability could be fastened on the petitioners. The allegation of abuse and threatening of the witnesses appears to be ornamental to give criminal trappings to the episode of lending money so as to make the petitioners liable under the criminal law. To invite criminal liability the complainant was required to show that there was an intention on the part of the accused to cheat him right from the initial stage but no material has come on record to indicate this fact. That being the position, the criminal prosecution of the petitioners herein would amount to an abuse of the process of the court.

8. Having given my anxious thought to the matters in issue I am of the opinion that the impugned order of the Revisional Court suffers from inherent defect and is required to be set aside. Accordingly the order of the Revisional Court is set aside and the order of the learned Magistrate dismissing the Protest cum- Complaint petition is restored.

9. In the result the impugned order of the Revisional Court is set aside and the application is allowed.