(2017) 05 PAT CK 0059

In the Patna High Court

Case No : 37320 of 2013

Ind-Swift Ltd & Ors APPELLANT

Vs

The State of Bihar & Anr RESPONDENT

Date of Decision : 18-05-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 482, Section 155(2), Section 156(1) - Saving of inherent powers of High Court - Information as to non-cognizable cases and Invest

Citation : (2017) 05 PAT CK 0059

Hon'ble Judges : Sanjay Priya

Bench : SINGLE BENCH

Advocate : Saket Tiwary, Ram Chandra Singh, Ajay Kumar Sinha

Judgement

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 22.09.2012 passed by the Judicial Magistrate, 1st class, Patna, in Complaint Case No.2008-C of 2012, by which the learned Magistrate has found prima facie case against the petitioners under Section(s) 420 Indian Penal Code.

2. The prosecution story, in short, as per Complaint Petition is that Opposite Party No.2 was Distributor of the petitioner no.1- company. The petitioners earlier approached the Opposite Party No.2 at his establishment in Govind Mitra Road, Patna. The Opposite Party No.2 gave two blank cheques in course of business to the petitioners by way of surety on 29.11.2007. The petitioners had sent some expired/defective goods (medicines) due to which the Opposite Party No.2 made request to the petitioners to take back those goods and requested his bankers to stop payment of six cheques including the above stated two cheques. The Opposite Party No.2 received legal notice dated 28.05.2012 from petitioner No.5 regarding dishonour of cheque and then he came to know that one of the blank cheque bearing no.629820 was presented for payment by the petitioners and the same was dishonoured as there was instructions to stop payment. The

Opposite Party No.2 sent reply to the legal notice dated, 28.05.2012, on 02.07.2012. The Opposite Party No.2 further alleged in this manner that the petitioner has cheated him.

3. Heard learned counsel for the petitioners and the State as well as counsel for the Opposite Party No.2.

4. Counsel for the petitioners has submitted that the instant proceeding is totally malicious prosecution. It has been submitted on behalf of the petitioners that Opposite Party No.2, owner of M/s Omkar Distributors, contacted the petitioner No.1-Company for supply of medicines and appointed himself as Distributor for product of the said petitioner No.1-company. As per demands of the Opposite Party No.2, the petitioner No.1, against different invoices, supplied them medicines and in initial time of business Opposite Party No.2 made payments belatedly against the total material supplied and outstanding since 30th January, 2010, is Rs.9,41,384/-, which is duly certified by the ledger accounts of the petitioner No.1 as maintained in ordinary course of business. The Opposite Party No.2 did not pay any heed to repeated requests and reminders of the petitioner No.1-compnay to clear the outstanding dues as per time schedule of 30 to 45 days.

5. The Opposite Party No.2 after lot of persuasion and follow up by petitioner No.1-Company in order to discharge his outstanding liability issued cheque no.629820 for Rs.9,41,384/- drawn on Canara Bank, Govind Mitra Road, Patna, from account no. CA 1500101001160 maintained under the name and style of Omkar Distributor. The said cheque was duly signed by the Opposite Party No.2 and was issued towards discharge of the legally payable debt of the petitioner No.1. The said cheque was dishonoured on presentation vide memo dated 15.05.2012 with remarks ''Payment stopped by drawer''. The intimation of the said cheque bouncing was given to the Opposite Party No.2 by way of issuing notice dated, 28.05.2012, under Section 138 of the Negotiable Instruments Act whereby the Opposite Party No.2 was called upon to pay the amount towards the bounced cheque failing which the petitioner No.1-Company shall be left with no option but to prosecute the Opposite Party No.2 under Section 138 of the Negotiable Instruments Act. The Company issued mandatory notice dated, 28.05.2012, under Section 138 of the Negotiable Instruments Act to Opposite Party No.2, which was duly served on Opposite Party No.2, but the Opposite Party No.2 refused to pay the outstanding dues of the petitioner No.1 and called to serve the notice dated 30.06.2012 to the petitioner No.1. Thereafter, petitioner No.1 through petitioner No.5 filed criminal complaint bearing No.10973 of 2012 under Section 138 of the Negotiable Instruments Act against the Opposite Party No.2 in respect of which summoning order dated 13.07.2012 was passed by the learned Chief Judicial Magistrate, Chandigarh, summoning the Opposite Party No.2 to stand for trial for the offence under Section 138 of the Negotiable Instruments Act.

6. The Opposite Party No.2 as a counter blast with the sole intent to falsely

implicate and to exert pressure upon the petitioners after coming to know that summons have been issued against him by the learned Chief Judicial Magistrate, Chandigarh, by order dated 13.07.2012 passed in Complaint Case No.10973 of 2012, has got this case filed on the same day i.e. 13.07.2012 in Patna against the petitioners with malicious intention. The present complaint filed by the Opposite Party No.2 is in retaliation to avoid the proceeding under Section 138 of the Negotiable Instruments Act against him and the entire dispute is created by the Opposite Party No.2 to avoid legal payment to the petitioner No.1-Company and also to harass the petitioners so that they should succumb to the unjustified demand of the complainant.

7. Counsel for the Opposite Party No.2 has filed Counter Affidavit stating therein that the complainant in his Solemn Affirmation and other witnesses during their statement examined by the complainant have supported the case of the complainant. Learned Magistrate after due enquiry took cognizance of the offence under Section(s) 420 Indian Penal Code. The fact is otherwise. The petitioners coming to know about the fact from the reply to the legal notice, hurriedly, filed a complaint under Section 138 of the Negotiable Instruments Act against the Opposite Party No.2 at Chandigarh on 13.07.2012 to create futile defence in the present complaint co-incidentally filed on the same date i.e. 13.07.2012. It is admitted position that the Opposite Party No.2 has filed the instant complaint before the Chief Judicial Magistrate, Patna, against the petitioners on 13.07.2012.

8. The Hon''ble Supreme Court in the case of Eicher Tractor Limited Vs. Harihar Singh reported in (2008) 16 Supreme Court Cases 763 has observed that the proceeding initiated as counter blast to the proceeding initiated by the appellants under Sections 138, 142, 141 of the Negotiable Instruments Act, would be abuse of the process of law.

9. Similarly, the Hon''ble Supreme Court in the case of Mahindra & Mahindra Financial Services Ltd. Vs. Rajiv Dubey reported in (2009) 1 Supreme Court Cases 706 observed that complaint filed by respondent is nothing but abuse of process of law, being a counter blast to the proceedings initiated by appellants under Section(s) 138 of the Negotiable Instruments Act against the respondent, proceedings initiated by the respondent clearly amounting to abuse of process of law.

10. The Hon''ble Supreme Court in the case of State of Haryana & others Vs. Bhajan Lal and others reported in 1992 Supp (1) SCC 335, has discussed, in detail, in para 102, where power under Section 482 Cr. P. C. could be exercised to prevent abuse of process of any Court or otherwise to secure the ends of justice in following categories of cases; "1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding 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."

11. The instant case falls under category no.7 where a criminal proceeding is manifestly attended with mala fide and the proceeding 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. From the allegation in the Complaint Petition itself, it appears that criminal complaint was filed by the Opposite Party No.2 as a counter blast to the notice of dishonour of cheque sent by the petitioners upon which summoning order has been passed and a proceeding under Section 138 of the Negotiable Instruments Act was initiated in the Criminal Court at Chandigarh against the Opposite Party No.2 vide Complaint Case No.10973 of 2012.

12. Therefore, continuance of the criminal proceeding against the petitioners is abuse of process of law and mere harassment to the petitioners.

13. In view of such, the order dated 22.09.2012 passed by the Judicial Magistrate, 1st class, Patna, in Complaint Case No.2008- C of 2012, by which he has found prima facie case against the petitioners under Section(s) 420 Indian Penal Code, along with entire criminal proceeding is hereby quashed.

14. The application is, accordingly, allowed.

