(1997) 01 PAT CK 0048

In the Patna High Court

Case No : Criminal Miscellaneous No. 13204 of 1996

Indian Drugs and Pharmaceuticals Ltd. and Others APPELLANT

Vs

State of Bihar and Another RESPONDENT

Date of Decision : 05-01-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 200, 482
Penal Code, 1860 (IPC) — Section 120B, 406, 420

Citation : (1997) 2 BLJR 1167

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—In this application filed u/s 482 of the Code of Criminal Procedure,the petitioners have prayed for quashing of the order dated 29th February, 1996 passed by the Judicial Magistrate, 1st Class, Patna whereby and whereunder cognizance of the offence has been taken against all the petitioners under Sections 406, 420 and 120B, I.P.C. in Complaint Case No. 939 (C) of 1995.

2. The brief facts of the case are that on 31st October 1995, the complainant O.P. No. 2 filed a complaint petition in the court of learned Chief Judicial Magistrate, Patna alleging inter alia that the complainant who is the Managing Director of M/s. Sona Pharma Labs. Pvt. Ltd. had approached the Company M/s. Indian Drugs and Pharmaceuticals Ltd. (hereinafter to be referred to as the ''IDPL'') for appointing him as Clearing and Forwarding agent for its production. According to the complainant, he was assured to be appointed as such according to the terms and conditions, as laid down in the agreement. It was further alleged that an agreement was entered into by and between the complainant and IDPL incorporating various terms and conditions and under the said agreement, the complainant O.P. No. 2 deposited Rs. 5,00000/-. As per the terms and conditions of the agreement, he accepted that .the agency will start soon. The complainant is said to have approached the Sales Tax authorities and also the

drug licensing authority but because of delayed and non-supply of document the licence could not be obtained and instead the petitioners demanded the articles of memorandum of Association which the complainant is said to have supplied but even then, there was no response. The complainant is said to have approached the petitioners on telephone with no result rather the Company went on doing its business through its Super Stockist at Patna and Muzaffarpur even after receiving Rupees five lacs as guarantee money from the complainant. The allegation further is that the complainant had to invest money for infrastructure for running this business and subsequently the agreement stood terminated by the Company. The complainant is said to have sufferred loss. The petitioners herein stated in the instant application that the complainant was examined u/s 200, Cr. P.C. and in his statement recorded under S.A. he stated that he received back Rupees five lacs with interest from the Company but the same was received by him under protest. It was further stated that when the complaint petition was filed, the same was sent by the learned Chief Judicial Magistrate to the Police for lodging F.I.R. u/s 156(3), Cr. P.C. and thereafter a date was fixed for awaiting the report. However, when the report was not sent by the police, an application was moved by the complainant on 12.2.1996 stating that since the Police is not taking action and appears to be in collusion with the accused-persons and so the order be recalled. The learned Chief Judicial Magistrate without waiting for the report of the Police, recalled the order and transferred the case to the Judicial Magistrate, Patna in a most mechanical manner on 12.2.1996 itself. On 28.2.1996, the learned Judicial Magistrate recorded the statement of the complainant and the witnesses on S.A. and thereafter took cognizance by the impugned order.

3. learned Counsel for the petitioners submitted that the impugned order passed by the learned Magistrate taking cognizance is absolutely illegal and erroneous in law. The learned Counsel submitted that from the allegations made in the complaint petition, no case is made out under any of the provisions of the Indian Penal Code muchless under Sections 406, 420 and 120B. The learned Counsel submitted that the complainant has also filed money suit claiming damages for the alleged breach of contract and the complaint case has been filed only to humiliate the petitioners who are the top Officials of a Government of India Undertaking. On the other hand, Mr. Ram Balak Mahto, learned senior counsel appearing for the complainant O.P. No. 2 submitted that there is no illegality in the impugned order passed by the learned court below taking cognizance of an offence, inasmuch as from the allegations made in the complaint petition it will appear that the petitioners cheated the complainant.

4. Before appreciating the rival contention of the learned Counsels for the parties, it would be proper to look into the complaint petition whether the allegations made therein constitute an offence. Paragraphs 7 to 10 of the complaint petition are reproduced hereinafter below:

Para:7 That accused No. 1, through accused No. 3, instead of sending required document, sent a letter requesting the complainant to send the name of Directors alongwith the Articles and Memorandum of Association which was also complied with by the complainant by sending letter dated 27.6.95, but even thereafter there had been no response from the end of the accused persons.

Para:8 That thereafter the complainant made several contacts with the accused persons on telephone as well as by personal visits and requested the accused persons to make available the documents as required by the authorities for grant of drug licence and other registrations which is essential before handling the medicines of the accused company by the C & F Agent but to no avail. The complainant''s personal visit at Delhi and meeting with Marketing Director of the accused company on 29.7.95 also did not yield any result.

Para-9: That the complainant has now come to know that the accused persons with connivance of each other, are functioning through their old Super Stockists at Patna and Muzaffarpur in the area specified for the complainant even after entering into agreement with the complainant and receiving Rs. 5 lacs as guarantee money from the complainant with ulterior motive.

Para-10: That it is submitted that on the misrepresentation of accused No. 2 to the complainant paid Rs. 5 lacs to accused No. 1 Company and further spent huge money for making agreement to run the C& F Agency. The complainant had to suffer further loss on account of winding up some other medicine business to concentrate on the business with accused company but now it transpires that the accused persons did not have any intention to allow the complainant to function as the C. & F Agent of the accused company. The agreement to grant the agency was entered into and Rs. 5 lac was received on the false pretext of granting Agency though the accused persons are working with their previous super stockists and utilising the money for their business.

5. From the perusal of the allegations made in the complaint petition and the statement of the complainant and the witnesses recorded on S.A. it appears to me that from the facts stated therein, a prima facie case is made out. The learned Magistrate, after considering the complaint petition and the statements recorded on oath, has taken cognizance of an offence u/s 406, 420 and 120B, I.P.C.

6. It is well settled that Section 482 of the Code of Criminal Procedure empowers this Court to exercise its inherent power to prevent abuse of the process of the Court but there are limitations in exercise of that power. The exercise of that power to quash the proceeding instituted on complaint is called for only in cases where the complaint does not disclose any offence or is frivolous or fictitious. It is not necessary for this Court to analyse the case meticulously. The complaint has to be read as a whole. If it appears on a consideration of allegations, in the light of the statement on oath of the complainant that the ingrediants of the offence are disclosed and there is no material to show that the complaint is mala fide or firvolous, then there will be no justification for interference by this Court.

It is equally well settled that quashing of criminal proceeding at the initial stage by the High Court is not called for merely on the ground of mala fide or Animus of complainant. If on the basis of allegations in the complaint, a prima facie case is made out, then the High Court has no jurisdiction to quash the proceeding. Not only that, this Court is not justified in judging the probability, reliability or genuineness of the allegations made.

7. Having regard to the facts and the circumstances of the case, I am of the opinion that at this stage it cannot be said that the action of the complainant is mala fide. In the result, I don not find any infirmity in the impugned order passed by the learned court below.

8. This application is accordingly dismissed.

