(2019) 12 PAT CK 0049

In the Patna High Court

Case No : Criminal Miscellaneous No. 9622 Of 2015

Jaideo Prasad Minda And Anr — APPELLANT

Vs

State Of Bihar And Anr — RESPONDENT

Date of Decision : 09-12-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 405, 406, 415, 417

Citation : (2019) 12 PAT CK 0049

Hon'ble Judges : Birendra Kumar, J

Bench : Single Bench

Advocate : Karunesh Tandon, Gyanand Roy, Shantanu Kumar, Jharkhandi Upadhyay, Ashok Kumar Choudhary, Chandra Bhushan Prasad

Final Decision : Allowed

Judgement

1. Heard the parties.

2. The petitioners, in this application under Section 482 Cr.P.C., have sought for quashment of the order of cognizance dated 12.05.2014 whereby the learned Judicial Magistrate, 1st Class, Patna found sufficient material against the petitioners and others to proceed with the trial under Sections 406 and 417 I.P.C. in Complaint Case No.2442(C) of 2013 brought by opposite party No.2.

3. The challenge is on the ground that (a)no part of cause of action took place within territorial jurisdiction of the Patna Court. Hence, the impugned order has been passed by a court having no jurisdiction over the subject matter.(b)The dispute between the parties arises out of an agreement and for violation of the terms and conditions of agreement, there is arbitration clause in the agreement itself and the whole allegation revolves around compliance and non-compliance of the agreement. Therefore, the dispute is purely of civil nature and the criminal prosecution has maliciously instituted to wreak vengeance. (c) The ingredients of the offences under Sections 406 and 417 of the I.P.C. namely, entrustment of property to the petitioners to constitute offence under Section 406 I.P.C. or

dishonest and fraudulent intention on the part of the petitioners at the inception of the agreement to constitute offences of cheating under Section 415 I.P.C. are completely lacking on bare perusal of the complaint petition. Hence, the criminal prosecution is an abuse of the process of the court.

4. According to complaint petition, the complainant-M/s J.B. Warehousing and Trading Ltd. under an agreement with the accused Company-M/s Jay Ace Technologies Ltd. was appointed C and F agent for sale of the product of the accused- company for the area of Jharkhand. The accused-company was in the business of manufacturing of lead-acid-storage batteries. The formal agreement was signed by the complainant and M/s Kaashvi Industries on 01.12.2009. at Patna. Petitioner No.2 M/s Jay Ace Technologies Ltd. was known earlier as M/s Kaashvi Industries especially at the time of agreement with the complainant. Allegation is that the accused person stopped paying remuneration and expenses bill of the complainant-company since October 2011 against the terms and conditions of the agreement. The accused started assurance for settlement of account very soon but the same proved evasive, as a result whereof, the complainant lost Rs.Thirty Eight Lacs due to misappropriation by the accused-company arising out of their fraudulent and dishonest design.

5. Learned counsel for the petitioners submits that in the complaint petition filed in the year 2013 for the first time, complainant mentioned his address at Patna though the complainant had no Office at Patna. In the complaint petition also, at several places, it is mentioned that the agreement was signed at Patna whereas the agreement was signed at Delhi where all the accused person have their office and business and the agreement was enforceable at Delhi as per agreement or in the State of Jharkhand at Ranchi where complainant's office was there and the parties had agreed for business performance. Learned counsel for the petitioners has drawn the attention of the Court towards Annexure-4 the agreement paper which shows that the address of Company-M/s Kaashvi Industries is mentioned at Delhi and to that of the complainant at Ranchi in the State of Jharkhand. The agreement signed on 01.12.2009 was a period up to 30.11.2011.

6. After 30.11.2011, the agreement lapsed and the accused-Company handed over C and F agency to some other concern. The agreement clearly stipulated that the rights and liabilities of the parties shall unless otherwise here in especially provided be referred to an arbitration to a single arbitrator to be agreed between the parties in accordance with the subject to the provisions of the Arbitration and Conciliation Act, 1996 and the venue of arbitration shall be Delhi.

7. Learned counsel for the petitioners submits that there is no contrary provision for settlement of dispute. Hence, only way out was, if there was any dispute arising out of agreement, to go for arbitration. Learned counsel for the petitioners submits that the accused-company had written letter to the complainant-company on 10.06.2013 showing good gesture. The letter is part of the counter affidavit. The letter clearly stipulates that the parties agreed that the

accused-company shall discharge the payment liability of Rs.36,50,000/-(Rupees thirty six lacs, fifty thousand) through R.T.G.S. in the account of complainant-company at Ranchi by 15.06.2013 and the complainant shall return 2102 batteries to Mr. Rakesh Shrivastava-the authorized person of the accused at Ranchi. Contention is that neither the battery was returned nor the money was transferred. Thereafter, the accused was compelled to file Plaint No.2818 of 2015 before the Hon'ble High Court of Delhi against the complainant claiming a decree of Rs. 54,98,640/-(Rupees fifty four lacs ninety eight thousand six hundred forty) against the defendants. A copy of the plaint is at Annexure-7 to the reply to the counter affidavit. Submission is that the complainant has already filed written statement in the suit wherein the nature of transaction between the parties has clearly been admitted. Learned counsel for the petitioners has referred to different documents prior to the complaint petition to suggest that no part of cause of action took place within the territorial jurisdiction of the learned court below from very inception. Hence, the learned court below had no jurisdiction to pass the impugned order. As such, the impugned order is without jurisdiction. Learned counsel for the petitioners has placed reliance on the judgment of the Hon'ble Supreme Court in Vesa Holdings P.Ltd. & Anr Vs. State of Kerala & Ors. passing Cr. Appeal Nos. 2341 with 2342-2344 of 2011 on 17.03.2015 and the case of Satishchandra Ratanlal Shah Vs. State of Gujarat & Anr vide Cr.Appeal No.09 of 2019 disposed of on 03.01.2019.

8. On the other land, learned counsel for opposite party No.2 contends that at the stage of cognizance, prima facie material is to be looked into and the complaint petition clearly discloses that the cause of action for criminal prosecution arose within the territorial jurisdiction of the Patna court. The contrary, if any, is to be established during trial by evidence and its rebuttal. Therefore, on that ground only, the Court cannot interfere with the impugned order. Moreover, entire facts brought on the record are hazy and incomplete which requires appreciation of evidence which is not permissible especially when the said material was not before the learned court below.

9. On careful appreciation of the material on the record, it is evident that the dispute arises out of an agreement between the parties and the claim of the complainant of Rs.Thirty Eight Lacs was not in respect of any property entrusted to the accused person rather it was a claim of services rendered by the complainant. Therefore, this issue could have only been agitated before a competent civil court especially in view of the agreement between the parties to go for arbitration. Since there is no case of entrustment of property, the important ingredients to constitute offence of criminal breach of trust is lacking. Hence, the cognizance order under Section 406 I.P.C. is bad in law. Likewise the conduct of the parties and the terms and conditions of the agreement reveals that at no point of time the accused person were carrying dishonest or fraudulent intention especially at the inception of the agreement. The agreement was only for a period of two years. Hence, only after expiry of the period of agreement, the accused person entered into an agreement with some other person. So far

settlement of accounts is concerned, it is admitted case of the complainant also that the batteries of the accused are lying with him. The complainant has admitted in his statement on solemn affirmation that agreement had expired and it was not renewed and the complainant had not brought a civil suit for redressal of his grievance. The complainant is specific that money due with the accused was of security, commission and stock. The accused responded for a settlement, however, did not make payment according to response. Thus, till one month, prior to filing of complaint petition, the parties were in agreement that the complainant would return the batteries and the accused would pay back the entire accounted money. On failure of the parties to perform their part, the accused person resorted to civil remedy whereas complainant filed the present criminal case. Thus the conduct of the accused person does not establish that they were dishonest and fraudulent at any point of time. The law is well settled that every breach of contract would not give rise to an offence of cheating. Unless there is clear material disclosing deception played by the accused at the very inception. Reference may be made to Vesa Holdings P.Ltd. case (Supra). Likewise in Satishchandra Ratanlal Shah case (Supra), the Hon'ble Supreme Court held that the law clearly recognizes a difference between simple payment/ investment of money and entrustment of money or property. A mere breach of a promise does not ipso facto constitute the offence of criminal breach of trust without there being a clear case of entrustment.

10. Considering the materials on the record and aforesaid proposition, this Court is of irresistible conclusion that offences under Sections 405 and 415 I.P.C. are not made out in this case on bare perusal of the complaint petition and the material on the record. Hence, the cognizance order is bad in law and criminal prosecution is an abuse of the process of the Court.

11. This Court is not looking into any extraneous material or the defence of the accused, the Court is simply relying on the statement made in the complaint petition and the document on which the complaint petition is based. The dispute arises of an agreement between the parties which makes out a case of civil dispute only.

12. The agreement does not show that the same was signed at Patna. No subsequent dealing between the parties reveals that any part of the agreement was performed at Patna including payment of any money in the account at Patna. Therefore, the complainant had deliberately, just to create jurisdiction with Patna court, has made wrong statement that the agreement was signed at Patna and the complainant had its Office at Patna on the date of agreement. Therefore, the impugned order is without jurisdiction as well.

13. There is no documentary support that the petitioner No.1 was at any point of time from the date of agreement till its performance and breach was any way involved with the complainant. Petitioner No.1-Jaideo Prasad Minda is not signatory of the agreement nor he was responsible for performance of the agreement on behalf of the accused-company. Therefore, criminal prosecution of

accused No.1 is bad in law otherwise also.

14. Learned counsel for the complainant has relied on the judgment of the Hon'ble Supreme Court in Trisuns Chemical Industry Vs. Rajesh Agarwal & Ors, reported in (1999) 8 SCC 686 and on the case of State of M.P. Vs.Awadh Kishore Gupta & Ors, reported in (2004) 1 SCC 691 for contention that civil dispute is no bar for criminal prosecution and arbitration clause in the agreement also does not come in the way of criminal prosecution if the ingredients of criminal offences are made out.

15. As has been held above, the ingredients of offences for which cognizance has been taken are apparently not made out. Hence, it is a case of pure and only civil dispute. The case of State of M.P. Vs.Awadh Kishore Gupta & Ors (Suprs) was a case relating to an offence committed under the Prevention of Corruption Act, wherein High Court had quashed the investigation and proceeding initiated thereunder. That case was decided on its own individual facts.

16. In view of the discussion made above, the impugned order is hereby quashed in entirety and this application is allowed.

