(2007) 03 PAT CK 0050

In the Patna High Court

Case No : Criminal Miscellaneous No. 45946 of 2006

K. Balakrishnan @ K.S. Balakrishnan APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 02-03-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120(B), 409, 420

Citation : (2007) 03 PAT CK 0050

Hon'ble Judges : Ghanshyam Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ghanshyam Prasad, J.—Both the petitions have been filed by the petitioners u/s 482 of the Code of Criminal Procedure for quashing the entire criminal proceeding against them arising out of the same Complaint Case No. 1878(C) of 2005 pending in the court of Sri Deep Narayan, Judicial Magistrate, 1st Class, Patna through which the petitioners have been prosecuted under Sections 420, 409 and 120(B) of the Indian Penal Code. The relevant facts necessary for decision of the case are as follows:

2. The complainant-Opposite Party No. 2 (in Cr. Misc. No. 45946/2006) M/s Sidhartha Intel Exports having its registered office at Kankerbagh is an exporter and deals in business in different articles and supply of goods as Merchant exporter to several countries. The firm registered under the Indian Partnership Act is also registered with the Ministry of Commerce for imports and exports. On 24.2.1999 the accused no. 8, proprietor of M/s Shamim Enterprises, Bangladesh approached the Opposite Party No. 2 and introduced himself as a sound and honest importer. He entered into an agreement with Opposite Party No. 2 for supply of Par Boil Rice to his firm to be delivered by road to Bangladesh and assured payment through Letter of Credit drawn by reputed Bank. Accordingly, proforma invoice was prepared by the Opposite Party No. 2 and the copy of it

was also given to accused no. 8. Accused No. 8 also confirmed the terms and conditions. The Complainant-Opposite Party No. 2 also handed over the copy of import export code (IES Code) to the accused no. 8 for opening of letter of Credit. Accused No. 9, the Banker, Uttra Bank. Dhaka on instruction of accused no. 8 took guarantee of payment by opening letter of credit in favour of Opposite Party No. 2.

3. Further case of prosecution is that petitioner no. 1, American Express Bank Ltd. and its employees/officers, who are petitioners, on the instruction of accused nos. 7 to 9 elected to advice the Letter of Credit for an amount of $ 1,27,500/- and accordingly demanded Rs. 750.00 by way of fee through the letter dated 4.3.1999. The complainant on the basis of Letter of Credit issued by Uttra Bank, in good faith and trust made payment of fee to the Bank and received the Letter of Credit from the petitioner''s-Bank.

4. Further case of the complainant/ Opposite Party No. 2 is that the Letter of Credit is irrevocable and can be cancelled only by mutual consent. The complainant also approached the petitioners''-Bank to inquire about the credentials about issuing Bank of Letter of Credit. On inquiry the petitioner''s-Bank assured about the credentials of issuing Bank and also about the full payment against the supply of rice. Accordingly, the complainant started procuring rice for exports to Bangladesh and spent over Rs. fifteen lacs. The complainant also despatched two trucks load rice to Benapole Boarder. The agents of the complainant also informed about this to the agent of accused nos. 7 and 8 and asked them to take delivery of goods. Thereafter, they informed that the Letter of Credit has been cancelled and hence they could not take delivery.

5. It has been further alleged that due to refusal to take delivery of goods the complainant suffered heavy loss and damages. He even approached the department of Exports for redressal of his grievance. Thereafter, he came to know that Bangladesh Bankers are habitual offenders and violators of UCP 500. The petitioner-Bank in connivance with other accused persons tampered the documents, deceived and misappropriated the money of the complainant.

6. Submission of learned counsel for the petitioners is that the prosecution of the petitioners is out and out misuse of process of the court. The prosecution has been launched with malicious intention and with ulterior and oblique motive. The petitioners are not party to the agreement for exports of rice. The agreement was entered between the complainant and Accused Nos. 7 and 8. There was also no entrustment of any property and cash to the petitioners or Bank. The averments contained in the complaint petition do not disclose any ingredient of cheating or criminal breach of trust against the petitioners.

7. Further submission is that the petitioner''s- Bank never guaranteed the payment of any amount from Uttra Bank nor cancelled the Letter of Credit which was issued by Uttra Bank. Role of the petitioners-Bank was limited to certify or authenticate the Letter of Credit in due course of Banking business. It has

nothing to do with the agreement for supply of goods. It is further submitted that it is simply a case of civil liability for which these petitioners cannot be fastened with any criminal offence. Opposite Party No. 2 can approach the Civil Court for damages etc. The criminal prosecution for such an offence is apparently misuse of process of the court. Learned counsel for the petitioners also relied upon the decision of Apex Court reported in Indian Oil Corporation Vs. NEPC India Ltd. and Others, .

8. On the other hand, learned counsel for Opposite Party supports the impugned order of cognizance and submits that the role played by the petitioners-Bank has caused loss and damages to Opposite Party No. 2.

9. The admitted fact is that the petitioners-Bank is nowhere involved in the agreement arrived at between the Opposite Party No. 2 and accused nos. 7 and 8. ft is further admitted that the rice was never supplied to accused nos. 7 and 8 nor any cash was exchanged between the parties. Therefore, there is no question of entrustment of any property or money to any person. It is simply a case of breach of contract between the Opposite Party No. 2 and accused nos. 7 and 8. The allegations levelled in the complaint petition do not disclose any element of cheating or breach of trust against these petitioners.

10. The role played by the petitioner''s-Bank also does not fastened with any liability either criminal or civil. The Bank played role only of advising or notifying Bank. The liability of Advising Bank is amply described in Art. 7 of the UCP 500 which is as follows:-

Article 7-(a) A Credit may be advised to a beneficiary through another bank (the "Advising Bank") without engagement on the part of the Advising Bank, but that bank, if it elects to advise the Credit, shall take reasonable care to check the apparent authenticity of the Credit which it advises. If the bank elects not to advise the Credit, it must so inform the Issuing Bank without delay.

(b) If the Advising Bank cannot establish such apparent authenticity it must inform, without delay, the bank from which the instructions appear to have been received that it has been unable to establish the authenticity of the Credit and it elects nonetheless to advise the Credit it must inform the beneficiary that it has not been able to establish the authenticity of the Credit."

11. In another Book authored by Sri R.K. Gupta, Deputy Legal Advisor, Reserve Bank of India 1 2004 783, (Banking Law and Practice), the liability of Advising or notifying Bank has been described as follows:

"(iv) Advising or notifying bank.- The notifying bank is the bank situated in the same place as that of the seller which advises the letter of credit to the beneficiary. The notifying bank is engaged when the credit is advised to the seller through the cable message in code language and in such case the notifying bank authenticate the message by decoding the message. The advising bank only forwards the letter of credit to the beneficiary and does not commit itself to any liability under the letter of credit."

12. Thus, from the above discussions it is quite clear that the prosecution of the petitioners including Bank in question is manifestly illegal, malicious and groundless. There is no chance of conviction on the basis of such allegations. The prosecution is apparently misuse of process of the court. This application is, accordingly, allowed. The criminal prosecution in question launched against these petitioners stands quashed.

