
(2008) 08 PAT CK 0155

In the Patna High Court

Case No : Criminal Miscellaneous No. 47016 of 2005

Kapildeo Rai

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 08-08-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 34, 406, 420, 504

Citation : (2009) 3 PLJR 600

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Naresh Dixit, for the Appellant; Jharkhandi Upadhaya for the State and Dr. Amrendra Kumar for O.P. No. 2, for the Respondent

Final Decision : Allowed

Judgement

Abhijit Sinha, J.—One of the named accused of Complaint Case No. 911C of 2005 has preferred this application for quashing of order dated 5.10.2005 passed therein by the learned Chief Judicial Magistrate, West Champaran at Bettiah, whereby he has taken cognizance against the petitioner for offences under Sections 323 and 504 I.P.C, and has directed for issuance of summons against them. One Upendra Rai, the complainant, impleaded herein as O.P. No. 2, filed the aforesaid complaint inter alia alleging that the complainant and the petitioner belong to the same village and both had cordial relationship between them from before and taking advantage of the same the petitioner asked the complainant to enter into a partnership business with him for sale and purchase of sugarcane purja and the complainant in good faith and believing the petitioner started his business for sale and purchase of sugarcane purjas in partnership. It is said that the petitioners used to give cheques to the complainant and the complainant after getting them encashed used to purchase the purjas at a low price and hand them over to the petitioner and who encashed them at a higher price. It is further said that after deduction of cost and expenses a sum of Rs. 2,85,000/- was found to be the profit amount out of which the share of the complainant

would be Rs. 1,42,500/-and although the petitioner assured to pay this amount to the complainant by way of his share of profit of business the same was never paid.

2. It has been submitted on behalf of the petitioner that he had never entered into any agreement for carrying on a partnership business of sale and purchase of sugarcane purjas and the allegations made in the complaint petition were baseless and false. It was also submitted that as the petitioner, a retired government officer, intended to purchase 4 bighas 15 kathas of land for Rs. 9,40,000/- which O.P. No. 2 had proposed, an amount of Rs. 8,40,000/- through 13 cheques were paid to O.P. No. 2 being the consideration money but later on O.P. No. 2 refused to sell the land on one pretext or the other with the prime intention of grabbing the consideration money. Accordingly the petitioner filed Complaint Case No. 485 of 2005 before the learned Chief Judicial Magistrate, West Champaran at Bettiah, wherein cognizance was taken on 5.7.2005 against O.P. No. 2 and another for offences u/s 406, 420/34 I.P.C, and the present complaint case is a counter blast to the said complaint case filed by the petitioner which would be apparent from the fact that the instant complaint case has been filed after two months from the date of filing of the complaint petition by the petitioner in an effort to put pressure on the petitioner to withdraw the same. It was also sought to be submitted that from perusal of the complaint petition it would be apparent that no criminal case is made out against the petitioner since the alleged dispute was of civil nature and the learned Chief Judicial Magistrate had erred in taking cognizance.

3. Although no show cause or counter affidavit has been filed on behalf of O.P. No. 2 in course of advancing his submission the learned counsel sought to point out that the conduct of the petitioner in withholding the money falling in the share of the complainant amounted to a criminal liability and the learned Chief Judicial Magistrate had rightly taken cognizance.

4. Admittedly the case of the complainant is that the petitioner had not handed over his share of profit in the partnership business which clearly amounts to a business transaction and is in the nature of a civil litigation for which no criminal liability would lie on the petitioner. Prosecution of the petitioner in the circumstances stated above would amount to an abuse of the process of the Court and has to be quashed. Accordingly the application is allowed and the impugned order, so far as the petitioner Kapildeo Rai is concerned, is hereby quashed.