

**(2011) 01 PAT CK 0018**

**In the Patna High Court**

**Case No : Criminal Miscellaneous No. 6111 of 2003**

K.V. Krishnamurthy @ K.B. Krishnamurthy

APPELLANT

Vs

The State of Bihar and Shri Subhash Chandra Gupta

RESPONDENT

**Date of Decision : 24-01-2011**

**Acts Referred:**

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

**Citation : (2011) 59 BLJR 2272**

**Hon'ble Judges : Rakesh Kumar, J**

**Bench : Single Bench**

**Advocate : Ajay Kumar Sinha, for the Appellant; A.M.P. Mehta, Assistant Public Prosecutor, for the Respondent**

**Final Decision : Allowed**

## **Judgement**

Rakesh Kumar, J.—The sole Petitioner, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, has prayed for quashing of an order dated 6.1.2003 passed by Shri B.D. Rai, Judicial Magistrate, Ist Class, Patna in Complaint Case No. 2335(C) of 2002. By the said order, learned Magistrate has taken cognizance of offence under Sections 409, 420 and 120B of the Indian Penal Code and directed for summoning the accused persons including the Petitioner.

2. Short fact of the case is that opposite party No. 2 filed a complaint in the court of Chief Judicial Magistrate, Patna vide Complaint Case No. 2335(C) of 2002 arraying the Petitioner and other five persons as accused for commission of offences under Sections 409, 420 and 120B of the Indian Penal Code. It was alleged by the complainant that Accused No. 1 i.e. M/S Mafatlal Finance Company Ltd., Mumbai published an application form for attracting the public under its fully secured Bonds scheme as well as Fixed Deposit Scheme at Higher rate of interest. The complainant and his family members deposited their money in fully secured Bonds and detail of same was mentioned in the complaint

petition. As per complaint petition, the Company had given three dates for payment of one bond for Rs. 1,000/- i.e. on 4.10.1999, amount payable was Rs. 1700/-, 4.10.2000, it was Rs. 2,000/- and on 4.10.2001, it was Rs. 2400/-. It was alleged that complainant, vide his letter dated 4.10.1999, surrendered original debenture certificate for redemption payment. However, Company did not make payment in the year 1999. Subsequently, he got a notice issued to the Company for payment. As per complaint, the Company, vide letter dated 6.9.2000, intimated the complainant that the Company had announced early redemption on 1.10.1999 and then on 1.10.2000 and Company had received the complainant's request for redemption on 1.10.1999 i.e. after the first redemption closure date. Hence, the original debenture certificates of the complainant were retained and it was clarified that same will be considered under the redemption option to on 1.10.2000. The complainant further asserted that even after lapse of the year 2001, the complainant was neither paid principal amount nor interest despite several request. After filing the complaint petition, the complainant was examined on S.A. and he also produced certain documents. Thereafter, by order dated 6.1.2003, the learned Magistrate took cognizance of the offence under Sections 409, 420 and 120B of the Indian Penal Code and directed for summoning all the accused persons including the Petitioner.

3. Shri Ajay Kumar Sinha, learned Counsel appearing on behalf of the Petitioner, while challenging the initiation of the criminal proceeding as well as the impugned order, has argued that from bare perusal of the complaint petition, no criminal offence is made out. It was submitted that from the facts narrated in the complaint petition as well as statement of the complainant on S.A., it is evident that it was purely a civil dispute and on such allegation, the processes of criminal court may not be allowed to be abused. Shri Sinha, learned Counsel for the Petitioner, while referring averments made in the present petition, submits that the Petitioner was a Chairman-cum-Managing Director of the Bank of India, Head Office, Mumbai and was not responsible for payment of debenture on redemption/maturity. It was submitted that the Bank of India as trustee of debenture floated by the Company M/S Mafatlal Finance Ltd. (Accused No. 1) had acted in accordance with law. It was further submitted that the Petitioner was appointed as Chairman and Managing Director of the Bank of India by the Central Government, Ministry of Finance only in the year 2000. In the present case, without availability of prosecution sanction issued by the competent authority, the learned Magistrate had taken cognizance of the offence and summoned the Petitioner without any competence or authority. As per Shri Sinha, the order or cognizance is also liable to be set aside in absence of prosecution sanction. Moreover, in the case, application forms were published in the year 1996 and the Petitioner had joined the offence as Chairman and Managing Director of the Bank of India in the year 2000 that too by the order of Central Government, Ministry of Finance. In case of floating debentures by Accused No. 1 i.e. M/S Mafatlal Finance Company Ltd., the Bank of India had agreed to become a trustee for the benefit of the holders of the debenture and deeds were entered in between the

Mafatlal Finance Company and the Bank of India. As per terms and condition, the Company i.e. M/S Mafatlal Finance Company Ltd. was liable for payment of the secured redeemable debentures from time to time and as security for repayment of debentures and interest thereon, the Company had placed certain securities with the Bank of India so that Bank can enforce in case the Company fails to make payment of debentures on maturity. The Company had executed the trust deed and created security in favour of the Bank in the year 1996 and as per Clause Nos. 31 and 41 g of the Trust deed dated 25.5.1996, no offence can be attracted against the Petitioner Bank in case of failure to make payment by Company. Learned Counsel for the Petitioner has referred certain provisions of the Trust deed. It would be appropriate to refer the same, which are as follows:

Clause: - 31. The trustees may with the consent in writing of the holder or holders of at least three fourths in value of the debentures or by a special resolution passed at a meeting of the debenture holders held in accordance with the provisions of the seventh schedule hereunder written, raise or borrow moneys on the security of the mortgaged premises or any part thereof ranking either in priority or pari-passu or subsequent to these present as the Trustees with such concern are sanction shall decide for the purpose of making any payment under or by virtue of these presents or in relation to the exercise of any powers duties or obligations of the trustees or the Receiver hereunder or otherwise in relation to the mortgaged premises of these presents or for the purpose of paying off or discharging any mortgage or charge for the time being charged on the mortgaged premises or any part thereof or any costs, charges, losses and expenses which shall be incurred by the expenses which shall be incurred by the Trustees or any of them under or by virtue of these presents and the Trustees may raise and borrow such moneys as aforesaid at such rate or rates of interest and generally on such terms and conditions as the trustee shall think fit and for the purpose aforesaid may execute and do all such assurances and things as they shall think fit".

Clause: - 44. The trustees shall not be liable for any default, omission or delay in performing or exercising any of the powers or trusts herein expressed or contained or any of them or in enforcing the covenants herein contained or any of them or in giving notice to any person or persons of the execution hereof or in taking any other steps which may be necessary expedient or desirable for the purpose of perfecting or enforcing the security hereby intended to be created or of completing perfecting or protecting the title or rights of the trustees to or over any of the mortgaged premises or for any loss or injury which may be occasioned by reason thereof unless the Trustees shall have been previously requested by notice in writing to perform exercise or do any of such powers, trusts, acts or things or to take any such steps as aforesaid by the holder or holders of atleast two third of the debentures for the time being outstanding or by a special resolution of a meeting of debentures holders passed in accordance with the provisions of the seventh schedule hereunder written. As the Trustees shall not be bound to perform exercise or to do any such powers, acts or things or to take

any such steps unless and until sufficient money shall have been provided or provision to the satisfaction of the trustees made for providing the same by or on behalf of the debenture-holders or some of them in order to provide for costs, charges and expenses which the Trustee may incur or may have to pay in connection therewith.

4. It was further submitted that after coming to know about default by the Company in relation to re-payment of debentures, immediately a suit vide Suit No. 572 of 2002 in the High Court of Judicature at Bombay for the purposes of enforcement was filed and on 5.3.2002, the Bombay High Court had granted injunction in favour of the Bank restraining the Company from disposing of or alienating or parting with possession or creating any third party rights in respect of suit securities. Thereafter, even Accused No. 1 i.e. Mafatlal Finance Company Ltd. had also convened a meeting of debenture holder on 14.3.2003 as per order of Bombay High Court passed in Suit No. 572 of 2002 to consider the scheme of re-payment proposed by the Company. It was submitted that the Bank of India and its officials had properly acted in the interest of debenture holders under the Trust deeds and terms of the S.E.B.I. rights/regulations and directions. Shri Sinha, on the aforesaid facts and circumstances, submits that no criminal offence is made out. It was submitted that on the aforesaid facts, it can hardly be termed as a civil dispute for which criminal court may not be allowed to proceed further. It has been categorically submitted that on the basis of averments made in the complaint petition or statement of the complainant recorded on S.A., no offence under Sections 420, 409 and 120B of the Indian Penal Code is made out. In support of his argument, learned Counsel for the Petitioner has relied on a judgment of apex court reported in 2009 (4) SCC 696 (Dalip Kaur and Ors. v. Jagnar Singh and Anr. 2009 (4) SCC 696). It was submitted that neither it was a case of cheating, criminal breach of trust or a case of conspiracy. Accordingly, it has been submitted that it is a fit case in which this Court may exercise inherent jurisdiction in favour of the Petitioner.

5. Despite valid service of notice, the opposite party No. 2 has preferred not to appear. However, Shri A.M.P. Mehta, learned Additional Public Prosecutor appearing on behalf of the State, has opposed the prayer of the Petitioner, but he was not in a position to support the accusation made in the complaint petition regarding commission of any offence.

6. Besides hearing learned Counsel for the Petitioner and State, I have also perused the materials available on record particularly the complaint petition. After going through the complaint petition, the court is of the opinion that no specific allegation of commission of any offence has been leveled so far as Petitioner is concerned, only the Petitioner has been arrayed as one of the accused in the complaint petition. Even the disclosure made in the complaint petition makes it clear that it was a dispute of purely civil nature and the learned Magistrate was not required to take notice of such allegation and as such the court is of the opinion that the learned Magistrate has grossly erred in passing

the impugned order i.e. dated 6.1.2003, which is required to be interfered with. The court is of the opinion that it is a fit case for exercising inherent jurisdiction in favour of the Petitioner and as such the impugned order of cognizance dated 6.1.2003 and entire criminal proceeding arising out of Complaint Case No. 2335(C) of 2002 pending in the court of Judicial Magistrate, Ist Class, Patna, so far as Petitioner is concerned, is hereby set aside and petition stands allowed.