

(1998) 08 PAT CK 0047

In the Patna High Court

Case No : Criminal Miscellaneous Nos. 6115 and 8793 of 1993

Mahabir Prasad Bagrodia and Naresh Chandra Prasad Sinha
alias S.P. Sinha

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 06-08-1998

Acts Referred:

Citation : (1999) 1 CivCC 270 : (1999) 1 RCR(Criminal) 136

Final Decision : Allowed

Judgement

Narayan Roy, J.—Both these applications arise out of a common complaint and that is why, both the applications have been heard together and are being disposed of by this common judgment.

2. By these applications, the petitioners have prayed for quashing the entire criminal prosecution including the order dated September 8, 1992, taking cognizance of the offence under Sections 120B, 406, 420, 467 and 468 of the Indian Penal Code, read with Section 138 of the Negotiable Instruments Act, 1881 (in short, "the Act"), in Complaint Case No. 643 of 1992.

3. It appears that the petitioner, Naresh Chandra Prasad Sinha, the General Manager of Rameshwar Jute Mill, issued a cheque for Rs. 2,50,000 on March 31, 1992, in favour of the complainant--market secretary towards market fee payable by the mill aforesaid. On April 4, 1992, the general manager wrote a letter to the bank concerned for stopping the payment having come to know the fact that the agricultural produce in question has been deleted from the Schedule and notification dated May 2, 1977, was cancelled. However, the cheque was deposited in the bank and the same bounced on May 3, 1992, as there was no sufficient amount in the account of the mill. The complainant, thereafter, informed the concerned authority of the mill for making the required payment. However, again the cheque was deposited on May 12, 1992, and the same again bounced on June 5, 1992. Thereafter, a notice u/s 138(b) of the Act was issued to the petitioners for launching criminal prosecution and ultimately, the complaint

petition was filed by the secretary, market committee upon which cognizance of the offence has been taken.

4. Learned counsel appearing on behalf of the petitioners submitted that since the agricultural produce, namely, gunny bags and twine, were deleted from the Schedule to the Bihar Agricultural Produce Market Act, 1960, no market fee was payable and, therefore, even if a cheque was issued by the petitioners and, subsequently, intimation was also sent to the bank concerned for stopping payment, no offence whatsoever was committed by the petitioners. Learned counsel further submitted that as per Section 138(b) of the Act, no notice was served upon the petitioners within fifteen days from the date on which the cheque had bounced, therefore, the complaint itself was barred by limitation as the notice was issued after 25 days. Learned counsel further submitted that the secretary, agricultural produce market committee, the complainant, has lodged the complaint in his personal capacity, and there was no authorisation by resolution of the committee to launch the prosecution as per Clause (vi) of Sub-section (2) of Section 18 of the Bihar Agricultural Produce Markets Act, 1960, and, therefore, the complaint petition was not maintainable at the behest of the complainant.

5. In support of this submission, learned counsel has placed, reliance upon a decision of the Supreme Court in Secretary, Agricultural Produce Marketing Committee, D.K. District Vs. Varadaraya Shenoy and Another, . The apex court, while dealing with a case of Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, held that in view of Sections 56(xi) and 62(2)(b)(ii), the power to launch a prosecution vests with the market committee and the functions in respect thereof are required to be carried out by the secretary on behalf of the market committee. The powers of the committee and the functions of the secretary in the matter of prosecuting the offenders are independent and cannot be confused nor can the distinction between the powers of the committee and the functions and duties of the secretary be overlooked. It was further held by the apex court in such circumstances that it is for the marketing committee to decide whether or not prosecution is required to be launched against an alleged violator and it is only after such a decision is taken that the secretary of the market committee can be authorised by a resolution or otherwise to file the complaint and conduct the proceedings against the offenders for and on behalf of the market committee in the appropriate forum. In the absence of any resolution or authorisation from the market committee, the secretary does not have any power to independently prefer or file any complaint or launch a prosecution for the alleged violation of the Act, Rules or the bye-laws against the alleged violator.

6. Section 56(xi) of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, is verbatim the same as Clause (vi) of Sub-section (2) of Section 18 of the Bihar Agricultural Produce Market Act, 1960. The ratio laid down by the apex court, therefore, appropriately applies in the facts and circumstances of the case and, therefore, I will have no hesitation in holding that the present

complaint lodged by the complainant was not maintainable.

7. Besides this, it is also an admitted position that the agricultural produce in question long back was deleted from the Schedule to the Act on May 2, 1977, and the same was again included in the Schedule by the subsequent Validating Act and, therefore, no prosecution could have been launched against the petitioners prior to the coming into force of the Validation Act by virtue of which the agricultural produce was added in the Schedule as no fee was leviable on the relevant date.

8. Now, coming to the other limb of the argument of Mr. Ram Balak Mahto, learned senior counsel that since no notice in terms of Clause (b) of the proviso to Section 138 of the Act was served upon the petitioners, the prosecution launched against them was barred by limitation, it appears to me that the notice was sent to the general manager of the mill on January 7, 1992, whereas the complainant received information from the bank regarding return of cheque as unpaid on June 5, 1992.

9. Clause (b) of the proviso to Section 138 of the Negotiable Instruments Act, 1881, contemplates :

"(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid ..."

10. Clause (b) of the proviso to Section 138 of the Act clearly speaks of fifteen days" notice whereas notice was issued to the petitioners after 25 days of the receipt of information from the bank regarding the return of the cheque as unpaid, as referred to above. In this view of the matter, it must be held that no notice in terms of Clause (b) of the proviso to Section 138 of the Act was served upon the petitioners within fifteen days of the receipt of information from the bank regarding return of the cheque as unpaid. In that view of the matter, it is held that the prosecution was also barred in terms of Clause (b) of the proviso to Section 138 of the Act.

11. Considering the facts and circumstances of the case and also in view of the legal proposition noticed above, it is held that the criminal prosecution launched against the petitioners is not maintainable. Consequently thereto, I allow these applications and quash the entire criminal prosecution launched against the petitioners including the order taking cognizance dated September 8, 1992.

12. However, it is clarified that so far as liability of the petitioners is concerned, I have not expressed any opinion in view of the subsequent Validation Act by virtue of which the agricultural produce in question has been added in the Schedule.