(2016) 04 PAT CK 0114

In the Patna High Court

Case No : Criminal Miscellaneous No. 43763 of 2013 with Criminal Miscellaneous No. 34013 of 2014; (Arising Out of PS.Case No. 93 of 2013 Thana - Barh District - Patna)

Manish Kumar — APPELLANT

Vs

State of Bihar — RESPONDENT

Date of Decision : 21-04-2016

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 406, 409, 420

Citation : (2016) 3 ECrC 107

Hon'ble Judges : Mr. Chakradhari Sharan Singh, J.

Bench : Single Bench

Advocate : Mr. Surendra Kumar Singh with Ms. Tulika Singh, Advocates, for the Appellant; Mr. Sandeep Kumar, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Chakradhari Sharan Singh, J. (Oral) - All these applications filed under Section 482 of the Code of Criminal Procedure, 1973 arise out of the same Barh Police Station Case No. 93 of 2013. These applications have, therefore, been heard together and are being disposed of by the present common judgment and order.

2. Cr. Misc. No. 43763 of 2013 and Cr. Misc. No. 44726 of 2013 have filed by the respective petitioners, who have been made accused in the said Barh P.S. Case No. 93 of 2013, seeking quashing of the First Information Report registered on the basis of the written report of the Opposite party No.2, levelling offences punishable under Sections 406, 420, 409, 506 120B of the Indian Penal Code.

3. During the pendency of the application, the police completed investigation and submitted police report whereupon learned Court of Additional Chief Judicial Magistrate, Barh, took cognizance of the offences punishable under Sections 406,420,409,506 and 120B of the Indian Penal Code. This necessitated the

petitioner of Cr. Misc. No. 43763 of 2013 to challenge the order taking cognizance dated 14.05.2014, by filing Cr. Misc. No. 34013 of 2014. The petitioner of Criminal Misc. No. 44726 of 2013 not formally challenged the said order taking cognizance, passed by the learned Additional Chief Judicial Magistrate, Barh.

4. The sole plea which has been taken for quashing of the First Information Report and the entire proceedings including order taking cognizance is that allegations made in the first F.I.R essentially constitute a civil dispute arising out of an agreement between the petitioners and the Opposite party No.2 and institution of criminal case, in the facts and circumstances, is an abuse of the process of the court.

5. In support of his contentions, learned counsel appearing on behalf of the petitioners has relied upon following decisions of the Supreme Court:-

(i) 2015 (1) PLJR (SC) 120 (Binod Kumar & ors. v. State of Bihar & ors.)

(ii) 2014 (3) PLJR (SC) 22 (Vesa Holdings P. Ltd & Anr. v. State of Kerala & ors)

(iii)2015 (4) PLJR (SC) 378 (International Advanced Research Centre v. Nimra Cerglass Technics (P) Ltd.).

6. In addition, reliance has also been placed on following decisions of this Court:-

(i) 2014(4) PLJR 424 (Rabindra Nath Tiwari v. State of Bihar & ors.)

(ii) 2006 (4) PLJR 106 (M/s Steel Authority of India Limited & ors. v. The State of Bihar & Anr.)

7. I have heard at length Mr. Surendra Kumar Singh, learned counsel appearing on behalf of the petitioners and Mr. Sandeep Kumar, learned counsel representing the Opposite party No.2 in all the cases.

8. In view of the plea taken in the present applications, seeking quashing of the First Information Report, it would be apt to take note of the allegations made in the First Information Report for arriving at a conclusion as to whether the said allegations constitute a cognisable offence or not. It is asserted in the First Information Report that the informant runs a business in the name and style of Vinod Kumar and Brothers, managed by his father. Allegedly, these petitioners and others who are residents of Barh in the district of Patna approached him with a broker for supply of 600 quintals of Masoor (red lentils). They assured that after the delivery of Masoor is made, they would be making of entire payment by the end of December, 2012. It was agreed upon between the parties that 600 quintals of Masoor will be supplied by the Informant?s firm at the rate 3,.325/- Rupees per quintals by 15th of December, 2012 against which the accused persons shall make payment by the end of December.

9. It is alleged in the First Information Report that the informant made supplies to the petitioners? firm at Barh of 12.12.2012 through a transporter, suggested

by him weighing 200.40 quintals and 199.90 quintals. Again on 14.12.2012, remaining 199.90 quintals of Masoor was supplied, which was received by the petitioners and the persons, accused in the First Information Report. When the informant asked for making payment against supplies, the accused persons initially made certain excuses and subsequent they got credited amount of Rs. 2,20,000/- in the one of the accounts from the account of M.J. Enterprises, without informing the informant.

10. It is further alleged that when they made further attempts to ensure payment of the rest of the amount, i.e. Rs. 17,75,665/-, they flatly refused to make payment and threatened him of dire consequence.

11. It is, therefore, alleged in the First Information Report that from the very inception of the agreement, the accused persons had a dishonest intention of cheating and defrauding the informant. It has also been alleged in the First Information Report that the informant learnt that the accused persons had earlier also cheated another concern, namely, Ankit Industries of a sum of Rs. 6,95,922/- and others 3-4 business men.

12. This is not in dispute that petitioner of Cr. Misc. No. 44726 of 2013, who is father of petitioner Manish Kumar, the petitioner in other two cases in the proprietor of the said M.J. Enterprises.

13. In the background of the nature of allegation made in the First Information Report, it is his submission on behalf of the petitioners that no cognisable offence is made out on the basis of the allegations made in the First Information Report and at the maximum it cannot be said to be breach of agreement between the informant and the accused persons.

14. The definition of cheating finds place in Section 415 of the Indian Penal Code which reads thus:-

415. Cheating. - Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation. - A dishonest concealment of facts is a deception within the meaning of this section".

15. Illustrations f, g, and h of Section 415 of the IPC are relevant for the present purpose which is being extracted hereinebelow:-

"Illustrations

(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money. A not intending to repay it. A cheats.

(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(h) A intentionally deceives Z into a belief that A has performed A?s part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats".

16. It cannot be said that there is no allegation in the First Information Report of dishonest intention on the part of the petitioners from the very beginning at the very inception of the agreement. In the First Information Report, modus operandi of the accused persons has also been mentioned for dealing with other business concerns. The fact as to whether the accused persons had dishonest intention at the very inception of the agreement can be proved disapproved or it may remain unproved at the trial after adduction of evidence.

17. Reliance placed by the learned counsel appearing on behalf of the petitioner in case of Binod Kumar v. State of Bihar (supra), is of no avail for the reason that in that case the Supreme Court arrived at a conclusion that all the allegations in the complaint, if were taken at the face value to be true, basic essential ingredients of dishonest misappropriation and cheating were missing. That is not the case here. Existence of dishonest intention from the very beginning has been alleged in the First Information Report itself.

18. Mr. Surendra Kumar Singh, learned counsel appearing on behalf of the petitioners has submitted that as a matter of fact, the Opposite party (Informant) did not supply even a gram of Masoor to the petitioners? firm though a substantial amount (2,20,000/-) was paid to the informant. He has submitted that as a matter of fact, complaint cases have been lodged against the informant of the present First Information Report for, misappropriating money given to him for supply of Masoor. According to him, there are six complaint cases of the said nature filed in which orders taking cognizance had been passed. This is to be noted that on the one hand, the petitioners have themselves filed criminal cases against the informant alleging non-supply of Masoor, in breach of agreement, whereas, on the other they seek quashing of the present FIR raising a plea that breach of an agreement does not constitute a criminal liability.

19. This is a question of fact, to be investigated into by the police or established at the trial after adducing evidence. On the basis of an assertion on affidavit that the informant did not supply any quantity of Masoor to the accused persons, First Information Report cannot be quashed, exercising jurisdiction under Section 482 of the Code of Criminal Procedure, 1973. Much reliance has been placed on Supreme Court?s decision in case of Vesa Holdings P. Ltd. v. State of Kerala

(supra). The Supreme Court in the said decision held in paragraph 9 as follows:-

"9. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC. In our view the complaint does not disclose any criminal offence at all. Criminal proceedings should not be encouraged when it is found to be mala fide or otherwise an abuse of the process of the court. Superior courts while exercising this power should also strive to serve the ends of justice. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and the High Court committed an error in refusing to exercise the power under Section 482 Criminal Procedure Code to quash the proceedings."

20. The Supreme Court in the said case held that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy is available to the complainant/informant, that itself cannot be a ground to quash a criminal proceeding.

21. The Supreme Court laid down that the real test is as to whether the allegations in the complaint disclose the criminal offence of cheating or not. I have quoted Section 415 of the Indian Penal Code with the relevant illustrations under the same. The allegations made in the First Information Report read with illustrations under Section 415 of the IPC, in my opinion, constitute offence of cheating. It cannot be said that no cognisable offence at all is made out, on the basis of allegations contained in the First Information Report.

22. In paragraph 13 of the decision of the Supreme Court, it has been laid down that in order to fit a case for offence of cheating, it is not merely sufficient to prove that a false representation is made but it is further necessary to prove that representation was also in the knowledge of the accused and was made in order to deceive the complainant.

23. Going by the allegations in the First Information Report, I find that it has been alleged that the accused persons had proceeded to enter into such agreement with an intention and knowledge to deceive the informant.

24. I may refer to a Supreme Court?s decision in case of Gangadhar Kalite v. State of Assam reported in (2015) 9 SCC 647, where the Supreme court held that power under Section 482 of the Code of Criminal Procedure to quash criminal proceedings should be exercised sparingly. In my considered view, disputed and controversial facts cannot be made the basis for exercise of jurisdiction under Section 482 of the Code of Criminal Procedure. A reference can be made in this regard to a Supreme court?s decision in case of Kamal Deo Agarwal v. State of West Bengal reported in (2002) 1 SCC 555.

25. Considering the Supreme Court?s decisions as noted above and the facts alleged in the First Information Report, I do not find it safe to invoke the extraordinary inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure to quash the First Information Report or the proceedings arising out of same on a plea that the allegations taken on their face value do no constitute any cognizance offence.

26. These applications are, accordingly, dismissed.

27. It goes without saying that the petitioners shall be at liberty to take such plea as has been taken in the present applications in their defence either at the stage of framing of charge or at the subsequent stage of trial.

