

(2012) 01 PAT CK 0078

In the Patna High Court

Case No : Criminal Miscellaneous No. 26807 of 2009

Manohar Kumar Singh

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 13-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 192, 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2012) 4 PLJR 300

Hon'ble Judges : Kumar Srivastava, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Honourable Mr. Justice Hemant Kumar Srivastava

1. This petition has been filed u/s 482 of the Cr.P.C for quashing the Complaint Case no. 500/2009 pending in the court of learned Sub divisional Judicial Magistrate, Jehanabad.

2. The brief fact, which lies to file this quashing petition is that opposite party no.2, namely, Kumar Niraj Singh filed complaint case bearing Complaint Case no. 500/2009 in the court of learned Chief Judicial Magistrate, Jehanabad against the petitioner alleging therein that he as well as petitioner were friends since long and petitioner assured opposite party no.2 that being owner of Tirupati Enterprises company he would provide job to him in the aforesaid company and on the basis of the aforesaid assurance he took Rs 25,000/- from him as security money and appointed him in the aforesaid company on a monthly payment of Rs 8,000/- and furthermore, petitioner also took cash in loan on time to time from opposite party no.2 with assurance that he would return the aforesaid loan within a short span of time. Furthermore, he used to return the loan amount on time to time but there was dues of Rs 49,633/- and when opposite party no.2 mounted pressure upon the petitioner to return the dues amount, petitioner issued a

cheque of Rs 20,000/- on 26.12.2008 which was deposited by opposite party no.2 in the concerned bank on 10.1.2009 and, thereafter petitioner again issued a cheque of Rs 20,000/- on 27.12.2008 which was, too, deposited by opposite party no.2 on 12.1.2009 in the concerned bank but both the aforesaid cheques became bounced as there was insufficient money in the account of the petitioner. The opposite party no.2 made complain to the petitioner upon which he accepted his guilt and assured opposite party no.2 that he would issue another cheque but he did not issue any cheque in favour of opposite party no.2 and thereafter, he gave legal notice and lastly, filed above stated complaint case against the petitioner.

3. The aforesaid complaint was made over to learned Sub divisional Judicial Magistrate, Jehanabad u/s 192 of the Cr.P.C for enquiry and disposal and subsequently, learned Sub divisional Judicial Magistrate, Jehanabad having found prima facie case under sections 406, 420 of the IPC and 138 of the N.I. Act ordered to issue summons against the petitioner for procuring his attendance to face trial.

4. This court issued notice to opposite party no.2 vide order dated 16.12.2009 and after appearance of opposite party no.2, this petition was admitted for hearing. The matter was put up before this court for hearing on 3.11.2011 as well as 16.11.2011 but opposite party no.2 did not make his appearance before this court at the time of hearing.

5. Learned counsel appearing for the petitioner submits that petitioner had already returned entire amount to opposite party no.2 and, as a matter of fact, opposite party no.2 had never given any loan to the petitioner rather he had invested money in business and when the aforesaid business came to an end, parties settled their dispute amicably which is evident from perusal of annexure 3 series as well as annexure 4 of the petition. Therefore, the matter has already been settled between the parties but in spite of that the aforesaid Complaint case no. 500/2009 is pending in the learned court below and the pendency of the aforesaid complaint case is nothing but only an abuse of process of law.

6. As I have already stated above that none appeared on behalf of opposite party no.2 at the time of hearing though he had already made his appearance before this court through his learned counsel, namely, Sri Birendra Kumar, Advocate.

7. Having heard the contentions of learned counsel for the petitioner I have gone through the record.

8. Admittedly, the learned court below has taken cognizance under sections 406, 420 of the IPC and section 138 of the NI Act.

9. It is the case of opposite party no.2 that he had given cash to the petitioner in loan as the petitioner was in need of money in connection with his business and furthermore, opposite party no.2 gave Rs 25,000/- as security money to the petitioner but it is the specific case of opposite party no.2 that Rs 49633/-

remained due with the petitioner as loan amount and for returning the aforesaid amount, petitioner had issued two cheques which became bounced when presented before the concerned bank. Therefore, in my view, there is doubt of application of sections 406 as well as section 420 of the IPC in the present case because it is not the case of opposite party no.2 that he entrusted any amount to the petitioner nor he was cheated by the petitioner.

10. So far as section 138 of the N.I. Act is concerned, the specific stand of the petitioner is that he has already returned the amount in question to opposite party no.2 and to prove his contention, he filed some documents as annexures 3 series and annexure 4 before this court but I am of the opinion that the genuineness of the aforesaid documents would be considered in course of trial and it is not proper stage to make any comment upon the aforesaid documents.

11. Although, learned counsel for the petitioner having relied upon some decisions submitted that continuance of criminal case is nothing but only abuse of the process of the court, if the parties arrived at amicable settlement but, in my view, the decisions cited on behalf of the petitioner are not applicable in the present case. 12. In view of the aforesaid discussions, this petition stands dismissed with observations that the learned trial court shall pass an appropriate order at the time of explanation of accusation/ framing of the charge in the light of findings given in this order.