
(2010) 11 PAT CK 0098

In the Patna High Court

Case No : Criminal Miscellaneous No. 29494 of 2007

Md. Naushad Ahmad

APPELLANT

Vs

The State of Bihar and Md. Afsar Imam

RESPONDENT

Date of Decision : 02-11-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 120(B), 406, 420, 467, 468

Citation : (2010) 58 BLJR 1468

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Judgement

Rakesh Kumar, J.—The sole petitioner, who was at the relevant time President of Janta Housing Cooperative Society Ltd., Makhdumpur, Jehanabad, has approached this Court for quashing of criminal proceeding, which was initiated vide order dated 4.6.2003 passed by learned Sub Divisional Judicial Magistrate in Complaint Case No. 663 of 2001/Tr. No. 628 of 2007. By the order dated 4.6.2003, the learned Magistrate has taken cognizance of offence under Sections 420, 467, 468, 471 and 120B of the Indian Penal Code. Of course, in the petition, it has also been asserted that at subsequent stage i.e. at the stage of charge, petition for discharge was filed, which has been rejected on 16.3.2007 by the learned Magistrate, but in the prayer portion of the petition, there is no such prayer for quashing of the order of rejection of discharge petition.

2. Short fact of the case is that opposite party No. 2 initially filed a complaint in the court of Chief Judicial Magistrate, Jehanabad, which was numbered as Complaint Case No. 663 of 2001 against the petitioner and others on an allegation of commission of offence under Sections 420, 467, 468, 471, 406 and 120B of the Indian Penal Code. It was alleged in the complaint petition that the petitioner, who was President of the Cooperative Society and other two accused persons had allotted a plot in favour of the complainant. At subsequent stage, it transpired that the land, which was allotted to the petitioner was not belonging to the Cooperative Society, but it was the land of Zila Parishad, Jehanabad. It

was further alleged in the complaint petition that subsequently, the complainant approached the accused persons for refund of the amount, but it was not refunded. Subsequently, an F.I.R. vide Jehanabad P.S. Case No. 470 of 2001 was registered for the offence under Sections 420, 467, 468, 471 and 120B of the Indian Penal Code. However, after investigation, the police found the case as a mistake of fact and, accordingly, final form was submitted. After receipt of the final report, the learned Magistrate examined the record and differing with the recommendation of the police took cognizance of the offences as mentioned above. At the stage of charge, petition for discharge was filed, which has been rejected on 16.3.2007. In the case, learned Magistrate, differing with the police report, had taken cognizance of offence on 4.6.2003.

3. Aggrieved with the initiation of the proceeding, the petitioner approached this Court by filing the present petition.

4. Shri Ajay Kumar Sinha, learned Counsel appearing on behalf of the petitioner, has argued that the petitioner-Society is still ready to refund the entire amount to the complainant even along with the interest, but the opposite party No. 2 is avoiding to take back the money and un-necessarily, he is prosecuting the petitioner. It has further been submitted that it was a bonafide mistake on the part of the petitioner. It has been submitted that the complainant was also one of the Members of the Housing Society and as such the prosecution of the petitioner amounts to abuse of the process of the court. Accordingly, it has been prayed to quash the entire criminal proceeding.

5. Shri Dinu Kumar, learned Counsel appearing on behalf of opposite party No. 2, has vehemently opposed the prayer of the petitioner. It has been submitted that on the basis of materials in the case diary, the learned Magistrate has taken cognizance of offence in the year 2003 itself. It has been submitted that the petitioner, one way or the other, is trying to delay the commencement of trial and as such in the year 2007, when the case reached to the stage of charge, petition for discharge was filed and after rejection of the same, he approached this Court by filing the present petition. It has been submitted that at the stage of charge, even if there is strong suspicion indicating commission of offence, the court can well proceed with the case. It has been submitted that the learned Magistrate, while rejecting the discharge petition, had even referred to certain paragraphs of the case diary to indicate that petitioner was involved in the crime and there is sufficient material for framing of the charge against the accused persons. Accordingly, it has been prayed to reject the present petition.

6. Shri A.M.P. Mehta, learned Additional Public Prosecution appearing on behalf of the State, has opposed the prayer of the petitioner. While supporting the stand of Shri Dinu Kumar, learned Counsel appearing on behalf of opposite party No. 2, Shri Mehta has asserted that there is no defect in the order passed by the learned Magistrate whereby discharge petition of the petitioner was rejected.

7. Besides hearing learned Counsel for the parties, I have also perused the

materials available on record particularly the impugned order. After going through the order dated 16.3.2007 passed by learned Sub Divisional Judicial Magistrate, Jehanabad, the court is of the opinion that learned Magistrate has committed no error.

8. Accordingly, I do not find any merit in the present petition. The petition stands rejected.

9. In view of rejection of this petition, interim order of stay stands automatically vacated.

10. Let a copy of this judgment be sent to the court below forthwith.

11. It is expected that the learned Magistrate, keeping in view the fact that matter is old one, will take steps so that the case may come to its logical end without any further delay.

12. Let a copy of this judgment be sent through fax on cost being deposited by the opposite party No. 2.