
(2012) 11 PAT CK 0042

In the Patna High Court

Case No : Criminal Miscellaneous No. 43895 of 2010

Md. Naushad Ahmad @ Naushad Ahmad

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 05-11-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 239, 482
Penal Code, 1860 (IPC) — Section 120B, 406, 420, 467, 468

Citation : (2013) 1 PLJR 394

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Advocate : Rama Kant Sharma and Md. Nadim Seraj, for the Appellant; Dinu Kumar for the Opp. Party No. 2 and Mr. Shyam Bihari Singh for the State, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—It is a glaring example of attempt to commit fraud with the judicial proceeding by the sole petitioner in view of the facts and circumstances mentioned hereinafter:--

Initially, a complaint was filed by opposite party no. 2 long back in the year 2001 in the Court of Chief Judicial Magistrate, Jehanabad, which was numbered as Complaint Case No. 663 of 2001, against the petitioner and other two accused persons for commission of offence under Sections 420, 467, 468, 471, 406 & 120B of the Indian Penal Code. It was alleged in the complaint petition that the petitioner, who was, at the relevant time President of a Co-operative Society, had allotted a plot in favour of the complainant. At subsequent stage, it transpired that the land which was allotted to the complainant was not belonging to the Co-operative Society but it was the land of Zila Parishad, Jehanabad. Subsequently, the complainant approached the accused persons for refund of the amount, but it was not done, and as such, complaint petition was filed, which was referred to Police u/s 156(3) of the Cr.P.C. for its registration and investigation, and as such,

an F.I.R. vide Jehanabad P.S. Case No. 470 of 2001 was registered for the offence under Sections 420, 467, 468, 471 & 120B of the Indian Penal Code against the petitioner and other two accused persons. However, Police after investigation found the case as a mistake of fact and submitted final form. On receipt of the final report the learned Chief Judicial Magistrate, Jehanabad, by assigning detailed reason, differing with the final report took cognizance of offence by order dated 4.6.2003 under Sections 420, 467, 468, 471 & 120B of the Indian Penal Code and transferred the case to the Court of Sub-Divisional Judicial Magistrate, Jehanabad, for its disposal after completion of appearance of the accused persons including the petitioner. The learned Sub-Divisional Judicial Magistrate, Jehanabad by assigning detailed reason rejected the petition for discharge, which was filed u/s 239 of the Cr.P.C. by its order dated 16.3.2007 and directed the accused persons to remain present for framing of the charge. Despite the fact that petition for discharge filed u/s 239 of Cr.P.C. was rejected on 16.3.2007 by the learned Sub-Divisional Judicial Magistrate, Jehanabad, the petitioner, on 6.7.2007 filed a quashing application u/s 482 of the Code of Criminal Procedure vide Cr. Misc. No. 29494 of 2007 with a prayer to quash criminal prosecution initiated vide order dated 4.6.2003 passed by the Chief Judicial Magistrate, Jehanabad, in Complaint Case No. 663 of 2001/Tr. No. 628 of 2007, whereby, learned Magistrate had taken cognizance of offence against the petitioner under Sections 420, 467, 468, 471 & 120B of the Indian Penal Code. In the said petition the petitioner had also asserted regarding rejection of his discharge petition by order dated 16.3.2007 and he had also brought on record copy of order of rejection of discharge petition. In the said quashing application, subsequently, in the year 2008, an interlocutory application vide I.A. No. 48 of 2008 was filed, with a prayer to stay further proceeding in Complaint Case No. 663 of 2001/Tr. No. 628 of 2007 pending in the Court of Sub-Divisional Judicial Magistrate, Jehanabad, and by order dated 22nd February, 2008. a Bench of this court allowed the interlocutory application and directed for staying further proceeding. The said quashing application was also admitted. The quashing application i.e. Cr. Misc. No. 29494 of 2007 was dismissed by judgment of this court on 2.11.2010. This court in paragraph no. 7 of the judgment dated 2.11.2010 had certified and approved the order of rejection of discharge petition. For better appreciation, it would be appropriate to quote the judgment dated 2.11.2010, which is as follows:--

The sole petitioner, who was at the relevant time President of Janta Housing Co-operative 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 Co-operative 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 Co-operative 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. Sri 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 alongwith the interest, but the opposite party no. 2 is avoiding to take back the money and unnecessarily, he is prosecuting the petitioner. It has further been submitted that it was a bona fide 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 Prosecutor 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.

2. While dismissing the quashing application this court had also observed that interim order of stay stands automatically vacated. It was further observed that "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".

3. The petitioner, with a view to hoodwink the court filed the present quashing application i.e. Cr. Misc. No. 43895 of 2010 only on 10.12.2010. It is necessary to reiterate the date of rejection of earlier quashing application i.e. 2.11.2010. In the present petition surprisingly the petitioner has made a prayer for quashing of order dated 16.3.2007 passed by Sub-Divisional Judicial Magistrate, Jehanabad, in Complaint Case No. 663 of 2001/Tr. No. 628 of 2007, whereby, petition filed on behalf of the petitioner u/s 239 Cr.P.C. was rejected. It is further pertinent to mention here that once the complaint petition was referred to police u/s 156(3) of the Cr.P.C. for registration and investigation, and thereafter, F.I.R. was registered, the learned counsel for petitioner was required to mention the no. of the F.I.R. of the case also in the first paragraph of the petition as well as in

prayer portion of the petition, but with a view to persuade the court that the order of cognizance has been passed only on the basis of complaint petition, with oblique motive, the petitioner has not mentioned the no. of F.I.R. It is true that in this case police after investigation had submitted final report, but fact remains that the learned Magistrate on the basis of materials available in the case diary, differing with the police report, has taken cognizance of the offence in Jehanabad P.S. Case No. 470 of 2001. Once, the order of rejection of discharge petition i.e. order dated 16.3.2007 passed by Sub-Divisional Judicial Magistrate, Jehanabad, in this case was approved by this court in Cr. Misc. No. 29494 of 2007 by its judgment dated 2.11.2010, the petitioner was not at all authorized to assail same order before this court by filing subsequent petition u/s 482 of the Code of Criminal Procedure. Meaning thereby, that by filing the present petition, the petitioner has tried to assail the judgment dated 2.11.2010 before this court itself, which is not permissible in the eye of law nor the petitioner has made any prayer for review of judgment of this court dated 2.11.2010. Of course, in the present petition, with a view to not get him involved for his criminal prosecution, in paragraph no. 15 & 16 of the petition, the petitioner, while referring to and annexing judgment of this court dated 2.11.2010 passed in Cr. Misc. No. 29494 of 2007 has tried to justify filing of the present petition.

4. Sri Rama Kant Sharma, learned Senior Counsel, who was assisted by Mr. Nadim Seraj, learned counsel for the petitioner, has tried to justify the filing of the present petition, but he was not in a position to satisfy the court as to once this court had approved the order of rejection of discharge petition, was there any occasion for filing the present petition assailing the same order, which was already approved by this court in Cr. Misc. No. 29494 of 2007.

5. Sri Dinu Kumar, learned counsel, who has appeared on behalf of informant/opposite party no. 2, besides making prayer for rejection of this petition has made a prayer for initiating criminal prosecution against the petitioner for suppression of facts and misleading the Court.

6. Sri Shyam Bihari Singh, learned Additional Public Prosecutor also submits that the petition is required to be rejected outrightly.

7. Besides hearing the parties, I have also perused the materials available on record in this case as well as the record of Cr. Misc. No. 29494 of 2007. Earlier, quashing application i.e. Cr. Misc. No. 29494 of 2007 was dismissed by this court on 2.11.2010 by assigning detailed reason. This court in its earlier judgment had also approved the order of rejection of discharge petition, which was passed by learned Sub-Divisional Judicial Magistrate, Jehanabad on 16.3.2007. The petitioner, immediately after dismissal of the said quashing application, on 10.12.2010 again filed the present petition with a prayer to quash order dated 16.3.2007 of rejection of discharge petition filed by the petitioner. On 21.12.2010, the petitioner, succeeded in getting the order of stay of the proceeding before the court below by this court. It appears that the fact regarding approval of order of rejection of discharge petition was not orally

brought to the notice of this court while making prayer for staying the proceeding before the court below. The stay order is continuing till date.

8. At the time of hearing no justification was shown on behalf of the petitioner regarding filing of the present petition for quashing of the order dated 16.3.2007 passed by Sub-Divisional Judicial Magistrate, Jehanabad.

9. After hearing the parties and considering the facts and materials on record, the court is of the opinion that once the order which has been impugned in the present petition was approved by this court in Cr. Misc. No. 29494 of 2007, the petitioner was not entitled to assail the same order before the same court, and as such, the petition is liable to be rejected outrightly.

10. It was a fit case for directing the Registrar General of the High Court to institute a complaint against the petitioner but since the petitioner has disclosed the fact regarding rejection of earlier petition in paragraph nos. 15 & 16 of the present petition, the court is taking lenient view in the matter. However, the petition is required to be dismissed with imposing exemplary cost. Accordingly, while dismissing, a cost of Rs. 25,000/- is imposed on the petitioner for filing present petition against order dated 16.3.2007 passed by Sub-Divisional Judicial Magistrate, Patna Jehanabad, in Complaint Case No. 663 of 2001/Tr. No. 628 of 2007 (arising out of Jehanabad P.S. Case No. 470 of 2001) which order was already approved by this court in Cr. Misc. No. 29494 of 2007. Accordingly, the petition stands dismissed with imposing cost of Rs. 25,000/- on the petitioner. The cost amount is to be paid to the informant/opposite party no. 2 within a period of two months from the date of order, failing which, the opposite party no. 2 shall be entitled to get the amount recovered from the petitioner in accordance with law.

11. Before parting with the order it is required to direct the court below to proceed with the case expeditiously. The charge matter is required to be completed within a period of one month from the date of receipt/production of a copy of this order, and thereafter, the learned Trial Court is required to take steps so that trial may be concluded within a period of eight months. While proceeding with the case, the learned Trial Court is required to take up the matter at least twice in a week. The petitioner, is directed to render full co-operation to the Trial Court, failing which, the Trial Court would be at liberty to take coercive steps against the petitioner. Even in case of non-appearance of all the accused on the date of framing of charge, the Trial Court would be at liberty to frame charge in piecemeal. This order has been passed keeping in view the fact that F.I.R. was lodged in the year 2001 itself, and thereafter, one way or the other, the petitioner has succeeded in lingering the matter and restraining the court from framing of charge till date. Let a copy of this order be sent to the court below forthwith.