
(2002) 02 PAT CK 0114
In the Patna High Court
Case No : Cr. Revn. No. 223 of 1999

M.K. Agrawal and Another	Vs	APPELLANT
The State of Bihar and Another		RESPONDENT

Date of Decision : 04-02-2002

Acts Referred:

Citation : (2002) 02 PAT CK 0114

Final Decision : Dismissed

Judgement

S.N. Pathak, J.—The two Miscellaneous cases and the revision were heard analogous and by this common judgment, all the aforesaid three cases are being disposed of.

2. By the aforesaid two Misc. Cases, the order of cognizance dated 26th September 1998 passed by Sri V.K. Sinha, Judicial Magistrate, 1st Class, Patna in Complaint Case No. 865 (C) of 1998 and the proceedings consequent thereof have been sought to be quashed. In the revision, as referred to above, order dated 24th March 1999 passed by the same Magistrate, rejecting the prayer of revisionist (accused), namely, M.K. Agarwal and V.K. Mandekar for their permanent representation throughout the trial of the aforesaid complaint case, has been challenged.

3. So far the two Misc. Cases are concerned, they have been filed by M.K. Agarwal and V.K. Mandekar who are Officers of M/s Gati Cargo Management Services, a registered Company handling the transport of goods. Misc. Case (Cr. Misc. No. 27305/98) has been filed by Nimagodda, the manufacturer of raw materials to be used in pharmaceutical products. The Opposite party in the aforesaid three Misc. Cases and the revision is the State of Bihar and A.K. Ghosh, Branch Manager of M/s Aglowmed Ltd. Company, a manufacturer of Medicine. The aforesaid Company (M/s Aglowmed Ltd) had admittedly entered into an agreement with the Company engaged in manufacture of raw materials whose Managing Director Sri N. Prasad was made an accused in the complaint case, referred to above, for supply of raw materials on the basis of letter of credit. In

consequence of the above agreement, the accused Company despatched raw materials to the complainant company to be delivered at its Branch Office at Ankaleshwar in the district of Bharuch (State of Gujrat) through M/s Gati Cargo Management Services. The consignment reached its destination on 11th May, 1998. An officer of the complainant Company approached the Transport Company for delivery of the consignment, firstly on 12th May 1998 and on each and every date, thereafter but the delivery was refused. Then on 16th May 1998, a written request was made to the Transport Company and then the Transport Company and its Officers who were accused before the trial court stated that they had received a communication dated 15th May 1998 not to deliver the goods. Thereafter the complainant's company exchanged various communications with the supplier company and did not receive satisfactory explanation for non-delivery of the consignment. So it was alleged that since the prices of raw materials had increased, the supplier company developed greed and consequently the complainant Company had to purchase raw material at higher price and was put to loss.

4. The above were the allegations on the basis of which the complaint case was filed and cognizance under Sections 420, 424, 407/34 and 406 of the I.P.C. was taken. The aforesaid cognizance order was challenged by the supplier company on the ground that unless a criminal intent of deceit is disclosed from the initial stage of the agreement, no offence u/s 420 I.P.C. can be attracted. Besides the same, no offence u/s 406 I.P.C. was committed because the goods belonged to the supplier company and it was not under any kind of entrustment for and on behalf of complainant company. On behalf of transport company, it was submitted that the Officers of this company were the carriers of the concerned goods and they owed their liability to the consigner and the owner of goods and since they refused delivery, on intimation from the owner, they were not liable for any offence, if at all it was committed by their act of non-delivery. Both the accused companies also raised a plea of want of territorial jurisdiction exercised by Patna courts, in view of the fact that the agreement was entered into either at Ankaleshwar or at Sikandarabad, the two places which were the place of despatch and the place of receipt of the concerned consignment. So in their view, cause of action accrued at Sikandarabad or at Ankaleshwar.

5. So far the first ground on the basis of which the impugned order of cognizance has been assailed that is the want of mens rea from the very inception of the agreement arrived at between the parties. In this connection, a decision rendered by the Supreme Court as reported in S.W. Palanitkar and others Vs. State of Bihar and another, has been referred to. In this case, I find that there was an agreement between the Appellant No. 1 before the Supreme Court and the Respondent No. 2. This agreement was dated 21st February 1995 and by this agreement, Appellant No. 1 was appointed consignment stockist of the Respondent company on certain terms and conditions. This agreement was valid upto 20th February 1996. The Respondent No. 2 filed a criminal case against the Appellant company for violation of certain terms and conditions of the agreement

putting it to a monetary loss. The cognizance was taken under Sections 420, 406 etc. I.P.C. and the High Court also refused to interfere in quashing the application u/s 482 Code of Criminal Procedure. The Supreme Court held that there was an arbitration clause in the agreement and so, if at all, there was any violation of terms and mentions of the agreement that gave rise to civil action because the Appellant company had supplied materials to the stockist company. However, by the same judgment, the Supreme Court held that offence under Section. 420 I.P.C. was, of course, committed by Appellant No. 7 although not u/s 406 I.P.C.

6. The facts of the aforesaid reported case are quite distinct from the facts of this case. In the reported case, the agreement was valid upto 31st March 1997 on extension and it is not clear from the facts of the aforesaid case whether no stock was supplied to the Respondent company till 31st March 1997. So if the terms and conditions of the agreement were violated and there was arbitration clause, that gave an occasion to the Respondent company to file a civil suit for recovery of damage. There was no question of having mens rea present in the alleged overt act committed by the Company. However, in the instant case, the agreement of supply of materials was violated because no supply at all was made to the complainant company and the consignment was withdrawn from the delivery on account of alleged rise in the prices. So if any criminal intent was reflected from the act of non delivery of the consignment, the offence u/s 420 I.P.C. was committed at this stage and it was very much implicit in the act of nondelivery itself. The submission that the intent of deceit was not present at the time of initial agreement, otherwise there was no question of despatch of consignment from Sikandarabad, is not tenable in the facts and circumstances of the case; because if any party to the contractual agreement fails to perform its part of contract motivated by any criminal intent, the offence u/s 420 I.P.C. shall be attracted, whatever may be the stage at which this offence was committed. As alleged, the accused company refused to deliver the consignment which was duly despatched after receipt of the letter of credit and, perhaps, because of rise in price of raw materials contained in the consignment, as it has further been alleged by the complaint company. In this connection, the complainant company has stated in the complaint petition that the letter of credit which was issued to the accused company on 16th April 1998 was valid upto 15th June 1998 and certain amendments were incorporated in this letter of credit, as per the letter of the accused Company dated 24th April 1998. So there was no valid reason to refuse the delivery of consignment, except to earn greater profit from the raw materials on account of its rise in price. Before me, also no satisfactory explanation for non-delivery was offered except that certain irregularities were there in the L.C., but those irregularities have not been pointed out and in view of its prior amendment, there does not appear to be any. In this view of the matter, it is apparent that the allegation of the complainant company that the price-rise of the concerned goods was the only motive behind non-delivery of the consignment sticks. So at least the offence u/s 420 I.P.C. was very much implicit in the alleged act of non-delivery by the accused company which was the supplier.

7. Now the next question is as to what was the liability of the transport company. The Transport company had taken the plea that it was answerable to the owner of the consignment and not to the consignee and, therefore, its act of nondelivery was dependent on the communication from the owner company received on 15th May 1998. In this connection, the allegation of the complainant is that the consignment had reached Ankaleshwar on 11th May 1998 itself and upto date 16th May 1998, when the written request was made, the Transport Company refused delivery on one pretext or the other and so it was in collusion and conspiracy with the supplier company and, thus, both were liable for criminal offences in consequence of which the complainant suffered losses. In this connection, I find that in course of enquiry, some witnesses were examined on behalf of complainant who said that the Officers of the complainant had approached the Transport Company from 12th May 1998 each and every day upto 16.5.1998. Admittedly, the Transport Company received communication from the supplier company on 15th May 1998 for non-delivery but before that the Transport Company had no valid excuse for refusal to deliver the consignment. So apparently, the act of nondelivery by the Transport Company upto and before 15th May 1998 was a deliberate and intentional overt act which would connect this company with the criminal intent of the supplier company and both will be liable for offence u/s 420 I.P.C.

8. Now so far the question as to what offences were committed whether there was a case under Sections 406, 407 or 424 I.P.C. or not, I leave it to the trial court to consider as to what offences are made out and under what heads of criminal offences charge should be framed on the prima facie materials available on the record. Cognizance is taken of a case and not under particular sections of penal law. It is upto the trial court to consider this question and try the accused under appropriate penal section of the appropriate law. Since before me there are quashing application, I am to consider only the legality or propriety of the order of cognizance as also to see whether any offence was committed by the alleged overt act committed by the accused persons of the case. The discussion above has shown that, of course, some offences were committed by the accused Company over and above the civil liability for which they can be legitimately sued.

9. Now I shall advert to the order of cognizance regarding territorial jurisdiction of the Magistrate who took cognizance in this case. It was submitted before me by the accused Company that since the cause of action did not accrue within the territorial jurisdiction of Patna Court, the latter had no competence to take cognizance. However, admittedly, the complainant company had its registered office at Patna. So it was submitted that consequence of the loss suffered by the complainant company shall follow at Patna where it has its registered office, although it has its Branch Offices at several places and Head Office at Bombay. Normally, therefore, complainant Company would be liable to render its accounts and submit its income tax return etc. at its registered office. So the consequence of loss may follow at Patna and the complainant company may notionally be referred to as having suffered loss at Patna. So I am of the opinion that there

was no want of territorial jurisdiction in Patna courts.

10. In the result, order of cognizance did not suffer from any irregularity or illegality nor it is a case of no offence at all. So I think, the two main quashing applications do not deserve to be allowed. They are accordingly dismissed.

11. So far the revision is concerned, it is directed against the refusal to allow permanent representation u/s 205 Code of Criminal Procedure to the concerned accused persons who were officers of M/s Gati Cargo Management Services. I think it is not mandatory for the court to allow the representation u/s 205 in a routine fashion. The court is free to allow or reject such prayers and unless the concerned accused who sought permanent representation throughout trial, gave any unavoidable circumstance under which they would be unable to attend the court, such prayers for permanent representation through Lawyer may not be allowed. Moreover, there is still provision for day-to-day representation u/s 317 Code of Criminal Procedure. for accused who are unable to attend the court on valid and reasonable cause. So if the petition u/s 205 was rejected by the lower court, I do not think there was any illegality inherent in the impugned order. So I am further of the opinion that this Court is not under any legal obligation to interfere with the impugned order in this revision also.

12. This revision petition is also accordingly dismissed.