(2006) 06 PAT CK 0021

In the Patna High Court

Case No : Criminal Miscellaneous No. 8244 of 2003

M.L. Dalmiia and Company Ltd. and Others — APPELLANT

Vs

The State of Bihar and Another — RESPONDENT

Date of Decision : 26-06-2006

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 420, 504

Citation : (2006) 3 PLJR 331

Hon'ble Judges : Ghanshyam Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ghanshyam Prasad, J.—Through this application u/s 482 Cr.P.C. the petitioners have called in question the order dated 22.1.2003 passed in Cr. Revision No. 502 of 2001 by Additional Sessions Judge XII, Patna as well as their prosecution under Complaint Case No. 1775C of 1999 pending before the court of Shri P.m. Sharma, Judicial Magistrate Patna and have prayed to quash the same.

2. Petitioner No. 1 is a registered firm engaged in construction business. Petitioner No. 2 is its Chairman and petitioner No. 3 is Executive Officer whereas the complainant opposite party No. 2 is a supplier of building materials like stone chips, stone bricks, bolder etc. In the year 1994, the petitioner No. 1 was awarded contract for making construction work at Airport, Patna.

3. The prosecution story as contained in complaint petition, lodged by opposite party No. 2 is that on request of the petitioners, the opposite party No. 2 agreed to supply building materials on the basis of accepted price for making construction in the Airport, Patna. During 1994-97, the opposite party No. 2 supplied various building materials on different dates. Part payment was also made by the petitioners. However, Rs. 42,612/-remained due which was not paid inspite of repeated demands and on contrary they used filthy language against the complainant and his family members. It is further alleged that the accused-

petitioners are in habit to grab the money of suppliers, labourers and others. Names of some of the suppliers and amounts due have also been mentioned in the complaint petition. The materials supplied by the opposite party No. 2 and others have already been used by the petitoners on the construction of Airport and payment against that has also been received by them but inspite of that due has not been paid to the opposite party. Hence, this criminal case.

4. The learned Counsel for the petitioners submits that it is at best a case of under payment of the claims of the complainant and therefore, criminal prosecution can hardly be said to be the appropriate remedy. More than Rs. 7.5 lacs has already been paid to the complainant-opposite party, which was found genuine and the remaining claim to the tune of Rs. 42,000/- and odd was found inflated, false and fabricated as a result the same was not paid. It is further submitted that after examination and settlement of accounts the petitioners'' company raised demand of Rs. 49,915,32 from the complainant-opposite party as the amount due and payable for purchase tax and the substandard materials supplied to it but inspite of repeated demand land reminders the complainant-opposite party No. 2 refused to acknowledge the same for which Title Suit No. 1553 of 1999 was filed on 31.8.1999 before the City Court. Kolkota. The complainant-opposite party being purturped by the filing of the suit by petitioners company, in retaliation, filed the present complaint case with false and frivolous accusation which is gross abuse of process of court.

5. It is further submitted that against the cognizance order dated 29.5.2000, the petitioners preferred Cr. Revision No. 419 of 2000 before the court of Sessions Judge, Patna which was disposed of on 31.5.2001 with direction to re-hear and decide the matter afresh. However, the learned Magistrate again vide its order dated 25.6.2001 dismissed the plea of the petitioners for which the petitioners preferred Cr. Revision No. 502 of 2001. The same has also been rejected through impugned order.

6. It is further submitted that the matter out and out falls within the purview of civil dispute and there is no elements of criminality or cheating for taking action under criminal law. The continuance of criminal proceeding under such circumstances is abuse of process of court. In support of the contention, the learned Counsel for the petitioner has also relied upon some decisions which would be dealt at later stage.

7. The complainant-opposite party No. 2 has filed counter affidavit as well as supplementary counter affidavit to counter the points raised by the petitioners. The main contention of the learned Counsel for the opposite party is that merely because the facts also disclosed dispute of civil nature the criminal prosecution cannot be quashed. The are sufficient material to show that the complainant-opposite party was cheated and abused. It is further submitted that it would not be justified to cut the throat of the proceeding at threshold without trial. The power u/s 482 Cr.P.C. should be sparingly used to quash the criminal proceeding at this stage. He has relied upon two decisions of the Supreme Court reported in

2001 (1) PLJR 79 (SC) Rajesh Bajaj v. State NCT and AIR 2000 SC 1869 Medhi Chemical and Pharma Private Ltd. v. Biological E Ltd....

8. What baffles me most is that now a days the people even in matter which out and out falls within purview of civil disputes choose the forum of criminal courts for settlements. The lower court also without applying judicial mind and examining the facts disclosed in complaint petition take cognizance and proceed to prosecute the accused. This is one of such cases. The facts disclosed in complaint petition, as detailed above, clearly go to show that the sole purpose of launching the criminal case is to coerce the petitioners to pay the disputed dues and not for conviction of the petitioners. The court below has taken cognizance under Sections 420 and 504 I.P.C. but there is also complete absence of elements which constitute the offence of cheating. Mere breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the begining of the transaction. The facts disclosed in complaint petition do not show that there was any dishonest or fraudulent intention at the time when the complainant was called upon to supply building materials to the petitioners'' company. The substantial amount of money for supply of materials has also admittedly been paid to the complainant-opposite party by the petitioners'' company, which is Rs. 7.5 lacs and only small amount which is slightly more than Rs. 42,000/-is alleged to be still due. The said amount according to the petitioners is inflated claim and counter claim of Rs. 49,000/- and odd has also been made by the petitioners. Documents filed by the petitioners would go to show that the complainant made claim only after filing of the suit by the petitioners'' company for claim of Rs. 50,000/- (approximately).

9. Here I would like to refer a decision of the apex court reported in 2000 (3) PLJR 137 (SC) Hridav Ranjan Prasad verma v. State of Bihar in order to make it clear with regard to applicability of the offence of cheating. In paragaph-15 of the decision, it has been held as follows:

15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the Intention or the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unleess fraudulent or dishonest intenton is shown right at the beginninq of the transaction that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.

10. judging from the angle of the above decision of the apex court, it is quite clear that the allegations made in complaint petition do not constitute offence of cheating. So far applicability of Section 504 I.P.C. is concerned, the allegation is

quite vague and un-certain. No specific date or manner of insult or intimidation has been alleged in the complaint petition.

11. The ratio decided in the above two decisions cited by the learned Counsel for the opposite party do not apply in the instant case. In the present case, as discussed above, the allegations do not constitute any criminal offence of cheating. Apart, from it, the prime purpose for filing of the case is for realization of dues and not to obtain conviction of the petitioners.

12. Thus, in view of the facts and circumstances, the continuance of the criminal proceeding is apparently total abuse of process of court and, therefore, it must be quashed. Accordingly, this application is allowed and the order in question as well as the entire criminal prosecution is hereby quashed.