(1982) 07 PAT CK 0002

In the Patna High Court

Case No : Criminal Miscellaneous No. 7063 of 1981

Mrs. Veena Ram and Miss Anita Ram APPELLANT

Vs

Punam Chand Bothra RESPONDENT

Date of Decision : 10-07-1982

Acts Referred:
Penal Code, 1860 (IPC) — Section 415, 420

Citation : (1984) PLJR 424

Hon'ble Judges : M.P. Varma, J

Bench : Single Bench

Advocate : Braj Kishore Prasad, Gopal Shankar and R.K. Shrivastava, for the Appellant; L.K. Bajla, for the Respondent

Judgement

M.P. Varma, J.—The two petitioners Mrs. Veena Ram and Miss Anita Ram, Managing Director and Director, respectively, of the firm and company known as Sanjay Packaging Industries Private Limited, Dighaghat, Patna, has presented the present petition for quashing the entire proceeding including the order, dated 8.7.81 passed by Shri C.M. Prasad, Sub-divisional Judicial Magistrate, Kishanganj, issuing processes against them u/s 420 of the Indian Penal Code. The case in the court below was initiated upon a complaint presented by one Punam Chand Bothra, Manager of Saraogi Paper Mills, Kishanganj, Purnea, in which the facts, in brief, as stated are that the present petitioners in course of their business, sent one of their employees to place orders with the complainant for supply of certain quantity of papers and promised to pay the price thereof through the bank draft to be issued form Patna. In response to the said orders, the complainant dispatched the goods and sent all connected papers concerning delivery through the said employee of the accused petitioners, who had come to place orders. All these happened on 22.1.81. It is, however, stated that the accused persons instead of sending the draft as allegedly promised, sent an account payee-cheque dated 7.2.1981 drawn on the State Bank of India, Pataliputra Branch at Patna knowing full well that there were no sufficient funds to their credit for collection of the cheque money, and, in fact, the said cheque returned uncleared on 27.2.81. Later on, after some correspondence, the same said cheque was presented on the Bank of Madurai, Patna, but on 22.4.81, the cheque again returned unclear-red on the ground that no such amount was standing to the credit of the drawers.

2. On the facts stated aforesaid, the complainant got the cognizance-order pawed by the court below against which the petitioners have come up to this court for quashing of the entire prosecution. Both the parties have been heard at length and I have been taken through the petition of complaint and also the statements of the complainant made on solemn affirmation. Apparently, the facts of the case do not present a happy picture as regards the bona fides of the action of the employee of the accused persons in dealing with the complainant''s firm, but the counsel for the petitioners has tried to persuade me to examine whether on true construction of the provisions contained in section 415 of the Indian Penal Code relating to commission of an offence u/s 420 of the same Code, the conviction could follow against the accused persons on the present allegations, even if they are assumed to be correct and/or deemed to have been proved. To elaborate his submissions, the learned counsel further stated for consideration by this Court as to whether the offence charged could be disclosed, prima facei, by the allegations made in the petition of complaint. The counsel has submitted that taking the entire allegations against the accused as correct, what emanates there from is the existence of a transaction and the same is an indent for supply of goods with a promise to pay in future be it a bank draft or any other mode of payment. To my mind, it becomes a simple case of sale of goods on credit with the conditions as stipulated and alleged in the petition of complaint. Dishonour of a cheque issued subsequently which was accepted by the complainant for presentation in the Bank, to my mind, will mean nothing except failure on the part of the petitioners to pay the price for the supply of goods by the latter for which the parties entered into a contract.

3. There is, therefore, force in the submissions made on behalf of the petitioners. The cheque which was issued subsequent to the transaction has nothing to do with the mind of the complainant or at any rate the cheque did not at all act as an inducement to the complainant for parting with the goods nor did the same cause any deception at the relevant time. Shri L.K. Pajla appearing for the opposite party has very fairly conceded that mere dishonour of cheque cannot in all cases amount to the commission of the offence of cheating, as it does not per-se constitute such offence. For the dishonour of a cheque becoming an act of cheating, it is necessary that the deception was caused on account of the cheque. The learned Advocate drew my attention to paragraph 4 of the complaint petition with regard to the specific statement made concerning mode of payment by a bank draft. I have already said that all that emanates from the circumstances is the existence of a transaction of contract for supply of goods with a promise to pay in future. The case in that situation becomes a case of purely civil nature and resort to criminal action would amount to an abuse of the process of the court. In the result, the application succeeds, the prosecution

pending in the court below including the impugned order dated 8.7.1981 passed by the Sub-divisional judicial Magistrate, Kishanganj, is hereby quashed.

