
(2006) 11 PAT CK 0158
In the Patna High Court
Case No : Cr.WJ.C. No. 47 of 2006

M/s Duncans Tea Limited and Others	APPELLANT
Vs	
State of Bihar and Another	RESPONDENT

Date of Decision : 07-11-2006

Acts Referred:

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

Citation : (2007) 1 PLJR 346

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—Heard learned counsel for the petitioner. Notices were issued to respondent-opposite party No. 2 who is the complainant. The notices have been reportedly validly served on opposite party No. 2. Opposite Party No. 2 has not chosen to appear. State is present. The present writ application has been filed by the petitioners who have been made accused in the complaint case instituted by respondent-opposite party No. 2. A bare perusal of the complaint would show that respondent-opposite party No. 2 admits that he was a dealer of the petitioner-Company that is Duncans Tea Limited and in course of business, he had issued certain cheques which bounced. He had then given certain blank cheques to the petitioner-Company which the Company is said to have wrongly utilised instead of settling his account on termination of his dealership. It is, thus, alleged that the petitioners committed criminal offence for which they should be prosecuted. The learned Chief Judicial Magistrate before whom the complaint was filed took cognizance of offences punishable under Sections 406, 420, 120B of IPC and issued summons. Even before summons could be served, the learned Chief Judicial Magistrate issued warrant of arrest without awaiting service report. It is under these circumstances that the present writ application has been filed by the petitioners for quashing the criminal prosecution of the petitioners on the sole ground that if the allegations, as made in the complaint,

are accepted in their entirety, no criminal offence is disclosed.

2. In view of the facts stated above, it is clear that what the respondent-opposite party No. 2 wants to achieve is not to punish the petitioners for having committed any criminal offence but to create a dispute for settlement of his accounts. The allegation that the respondent-opposite party No. 2 had given certain blank cheques which are being wrongly used is concerned, suffice to say that respondent No. 2 is an educated businessman and should know the consequences of issuing blank cheques. Having issued blank cheques, he cannot then plead that it was given for one purpose or the other because if the purpose was certain then the cheques ought not to be blank cheques.

3. It may also be mentioned here that the petitioners were issued a cheque by respondent No. 2. That cheque bounced. They instituted proceeding in Kolkata. When notices were issued and served on opposite party No. 2, the present complaint case has been lodged. On perusal of the aforesaid complaint, it is manifestly clear that all it discloses is a pretence of civil dispute. Merely by crafty drafting a dispute essentially civil in nature cannot be turned into a dispute of a criminal nature. Such a step would clearly be an abuse of process of Court as has been held by the Apex Court in the case of G. Sagar Suri and Another Vs. State of U.P. and Others, : In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter.

In that view of the matter, I have no hesitation but to quash the entire criminal proceedings as against the petitioner. The complaint case and the order passed thereon is hereby quashed. This writ application is, accordingly, allowed.