(2007) 01 PAT CK 0159

In the Patna High Court

Case No : Criminal Miscellaneous No''s. 13278 and 13356 of 2005

M/s. K.B. Pictures and Another APPELLANT

Vs

The State of Bihar and Another RESPONDENT

Date of Decision : 22-01-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 405, 406, 420

Citation : (2007) 3 PLJR 71

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Advocate : Amit Shrivastava and Girish Pandey, for the Appellant; A.H.M. Rahman for the State M/s. Anil Kumar Singh and Surender Kumar for the O.P. No. 2, for the Respondent

Judgement

Sheema Ali Khan, J.—Heard Learned Counsel for the petitioners, Learned Counsel appearing on behalf of the opposite parties and also Learned Counsel for the State. Both the cases are being heard together and are being disposed of by a common order with the consent of the parties as they relate to the same transaction.

2. The petitioners have challenged the orders taking cognizance passed on 24.12.2002 and 28.10.2003 for offences under sections 138 of the Negotiable Instruments Act and also under sections 406 and 420 of the Indian Penal Code passed by the Chief Judicial Magistrate. Munger, in Case No. 864(C) of 2002 and Case No. 188(C) of 2003.

3. The complainant Shyam Bahadur Singh is dealing in film distribution and financing business at Munger and he had connections with film business at Mumbai The petitioners, who are accused in this case, are engaged in production of Hind; films. It has been specifically stated that the petitioners have produced a Hindi film titled "Pardeshi Babu" starring Govinda, Ravina Tandon and others. It

is alleged that the petitioners were in need of finance and had approached the complainant who is in the, financing business, to lend an advance of a sum of Rs. 40 lacs for the production of the said picture. It is said that the complainant paid Rs. 40 lacs to petitioners No. 2 who is the proprietor of M/s K.B. Picture as per agreement dated 18.11.1996. Later on, a dispute arose between the complainant and the accused persons and the matter went up to the Bombay High Court in ordinary civil jurisdiction and Rs. 16,50,000/- was paid by petitioner No. 2 to the opposite party No. 2 at the time of release of the film "Pardeshi Babu".

4. It has been stated in the complaint petition that the dispute had been settled outside the court and a consent term was filed in the Bombay High Court being suit No. 5112 of 1998 on 29.8.2001. The complainant further alleges that petitioner No. 2 had agreed to pay a sum of Rs. 23,50,000/- with discounting commission of 8% p.a. or the said sum till 29.7.2002 one month before the delivery release of the picture "Vidroh". The complainant at paragraph-5 has stated that he had approached the accused No. 2 to make payment after expiry of the due date under the agreement. However, no payment was made and hence the complaint was filed.

5. It would be relevant to quote paragraphs of the complaint petition :-

"That in discharge of the aforesaid liability the accused No. 2 had issued one post dated cheque bearing No. 068261 dated 7.8.2002 of account No. 1094 drawn on Indian Overseas Bank, Juhu, Bombay-400049 for a sum of Rs. 7,00,000/- only."

6. When this cheque was presented to Manager of the aforesaid bank, it was dishonoured and a notice was sent to the petitioner No. 2 as required under the Negotiable Instruments Act and despite notice, the petitioner No. 2 did not make the payment within 15 days of receiving the said notice.

7. The allegation at paragraph-10 is that the dishonoured cheque was intentional and malafide. The accused No. 2 is fully aware of the fact that they did not have sufficient amount in his account, and thus he has committed offences u/s 138 of the Negotiable Instruments Act as well as offences under Sections 406 and 420 of the Indian Penal Code.

8. At the outset, it may be stated that Mr. Amit Shrivastava, Learned Counsel for the petitioners, has submitted that he is not challenging that part of the order by which cognizance of offence has been taken u/s 138 of the Negotiable Instruments Act rather his submissions are restricted to the cognizance taken under Sections 406 and 420 of the Indian Penal Code.

9. Long and elaborate arguments have been made by the Learned Counsel for the petitioners and Learned Counsel appearing on behalf of the opposite parties and my attention has been drawn to various documents which include the agreement dated 29.8.2001, the consent term at Annexure-5 to the counter-affidavit, the order passed by the Bombay High Court and annexure-F, the agreement which is said to have been executed on the same day when the

consent order was passed to impress upon the Court that, in fact, petitioner No. 2 does not have to pay any money to the complainant and no case could be made out under Sections 406 and 420 of the Indian Penal Code. The documents referred to by the petitioners could have been looked into by this Court at the stage of cognizance because they all part of a proceeding with respect to the said matter of the complaint petition pending in the court of Bombay High Court. However, I do not intend to refer all these documents and interpret them in favour of one or either of the parties in view of the order that I propose to pass in this case.

10. The allegation in the complaint petition as quoted above and from the statement made by the complainant it cannot be said that there was any intention of misrepresentation to dupe the Finance Company and, as such, the allegations do not constitute facts which could lead the Court to conclude that offence are made under Sections 405 of the Indian Penal Code. No element of the sections are involved in the entire transaction and from the facts mentioned in the complaint petition it is clear that the parties had a business relationship and it was because of some breach in the agreement between the parties, that there was a misunderstanding and a dispute arose with respect to repayment of the loan amount. It is also undisputedly true that for the said loan amount of 40 lacs a civil case was filed in the Bombay High Court in which several orders were passed including a consent term order. Therefore, to hold that petitioner No. 2 and petitioner No. 1 M/s K.B. Pictures through petitioner No. 2 had committed offence under Sections 406/ 420 of the Indian Penal Code would be incorrect specially as the petitioners do not challenge the order taking cognizance for offences u/s 138 of the Negotiable Instruments Act.

11. Learned Counsel for the petitioners has referred to several decisions, one of them is reported in G. Sagar Suri and Another Vs. State of U.P. and Others, . The facts of the case are that a finance company lodged an F.I.R, against the Directors of Automobile Company which had taken a loan of Rs. 50 lacs from the finance company. But the cheques, drawn by them by way of payment of loan with interest, on presentation were dishonoured by the bank for want of sufficient fund. The finance company in the F.I.R. had alleged that the Automobile Company with a dishonest intention and misrepresentation of facts, had got a loan from the finance company and therefore, a chargesheet was submitted u/s 138 of the Negotiable Instruments Act and sections 406/420 of the Indian Penal Code. The Apex Court has held, that there is no justification for continuing with the proceeding under Sections 406/420 of the Indian Penal Code when a case u/s 138 of the Negotiable Instruments Act is already pending against the parties. As such, the Hon''ble Court held that continuation of the proceeding under Sections 406/420 of the Indian Penal Code amounts to an abuse of the process of law.

12. In another case having similar facts reported in Sunil Kumar Mehrotra Vs. State of Bihar and Another , the petitioner had challenged the order of

cognizance u/s 138 of the Negotiable Instruments Act and also u/s 420 of the Indian Penal Code. The petitioner had taken a loan from State Finance Corporation and had issued post dated cheque. On presentation of the same in the bank was declared dishonoured due to non-availability of fund. The court quashed the order of cognizance u/s 420 of the Indian Penal Code only on the ground that no offence of cheating in issuance of the cheque by the petitioner was made out as there was neither inducement or fraudulent representation by the petitioner while issuing the said cheque However, the order taking cognizance u/s 138 of the Negotiable Instruments Act was not quashed by the learned Single Judge.

13. Learned Counsel for the opposite party relying on paragraph-4 of the complaint petition has submitted that after the consent term order, the petitioners had entered into an agreement with the complainant that they would pay the amount due after the release of picture "Bidroh" or on 29.7.2002 whichever being earlier date and according to the Learned Counsel for the opposite party the cheques, that were issued, were in lieu of that agreement. However, on examination of the complaint petition it would appear that even if it is presumed that the entire facts mentioned in the complaint petition are true, the recital contained in the complaint do not show that there was any misrepresentation made by the petitioners at the time of issuing the post dated cheque or that he had any intention to honestly deprive the complainant of the amount which was purportedly to be paid by petitioner No. 2. Nor can it be said that the accused persons had any dishonest intention at the time of borrowing the 40 lakhs from the finance company. It is also an admitted fact that part of the loan was paid by the petitioners, as such the conduct of the petitioners in paying off part of the loan, shows that their intention was not to deprive the complainant or misappropriate the amount which had been borrowed by them. If it is to be believed that the petitioners had a dishonest intention then he would not have issued a post dated cheque and the opposite party would not have entered into any further agreement with petitioner No. 2, who is the proprietor of K.B. Pictures.

14. The petitioners, however, do not accept the fact that the agreement (Annexure-F) was executed by petitioner No. 2 for a number of reasons which are not necessary to state in view of the order that has been passed.

15. Learned Counsel for the opposite party further submitted that this Court u/s 482 of the Code of Criminal Procedure should use its power for quashing cognizance only in the rarest of cases.

16. I agree with the submissions made by opposite party, but it is also well settled law that allegations made in the complaint even if they are taken at the face value and the complaint is accepted in its entirety, do not prima facie constitute any offence or make out any case against the accused persons, the Court may exercise its power u/s 482 in quashing the criminal proceeding. I think that this case is a fit case where the court should exercise its discretion and

quash the proceeding holding that the allegations in the complaint do not make out an offence under Sections 406 and 420 of the Indian Penal Code. In the result, I quash the order dated 24.12.2002 and 28.10.2003 passed in complaint case No. 684(C) of 2002 and complaint case No. 188(C) of 2003 respectively only in relation to the cognizance taken under Sections 406 and 420 of the Indian Penal Code. Needless to say that prosecution and trial will continue for offence u/s 138 of the Negotiable Instruments Act.