

(2007) 07 PAT CK 0039

In the Patna High Court

Case No : Criminal Miscellaneous No. 15969 of 1998

M/s Prasad Brothers thro. Chandeshwar Prasad

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 06-07-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 420

Citation : (2007) 4 PLJR 524

Hon'ble Judges : Madhavendra Saran, J

Bench : Single Bench

Advocate : Raj Nandan Prasad Singh and Lala Kailash Bihari Prasad, for the Appellant; Rama Kant Sharma, Ritesh Kumar and Mayanand Jha, for the Respondent

Final Decision : Allowed

Judgement

M. Saran, J.—This application u/s 482 of the Code of Criminal Procedure (in short as Code) has been filed for quashing the order dated 18.6.98 passed by the learned SDJM, Barh in complaint case no. 108(C) of 1998 whereby and whereunder he has taken cognizance u/s 420 of the IPC. The case of O.P. No. 2/ complain-ant, in short, as put in the complaint petition is that O.P. No. 2 the petitioner and others had entered into a partnership contract for constructing three buildings for A.N.M. Training Hospital, Barh. The agreement was made between M/s Prasad Brothers through the petitioner and the Executive Engineer I.P.P.-7 (W.B.), Department of H.M.E and F.W.I.G.M.S. Campus, Patna-14 at the cost of Rs. 20 lacs. It is alleged that security money of Rs. 50,000/- was deposited by the petitioner/accused by opening three pass books accounts in G.P.O., Patna vide account no. A/C no. 141631 amounting to Rs. 20,000/- A/C No. 1416432 amounting to Rs. 16,000/- and A/C No. 1416433 amounting to Rs. 14,000/-. After completing the formalities the construction work started. The complainant received Rs. 15,000/- from his partners. It was assured and promised by the petitioner that he would pay the rest amount to the complainant

and after making withdrawal or encashment of the security money existing in the accounts of the pass books. After building construction work was finished by March, 1996 the complainant repeated his demand and requested the petitioner to make encashment of the security amount amounting to Rs. 50,000/-. It is alleged that in May, 1996 the complainant had shown release order of the three pass books to the complainant and had further informed that in respect of the remaining one pass book the release order was likely to be obtained from the department concerned and soon after getting the same the security amount of Rs. 50,000/- will be encashed and paid to him. In March, 1997 the complainant enquired from the petitioner about the encashment of security amount. The petitioner again assured him to pay the amount after 2-4 months. It is further stated that on account of non-encashment of the security deposit the petitioner handed over the said three pass books to the complainant for encashment and the complainant in the month of February, 1998 approached G.P.O., Patna when he came to know that three pass books were not genuine. The complainant then approached the petitioner for payment "and when no payment was made he filed the present case.

2. It appears that complainant was examined on S.A. and during enquiry u/s 202 of the Code three witnesses were examined and the learned Magistrate after finding prima facie case issued summons against the petitioner for the offence u/s 420 of the Penal Code. Against the said order the petitioner has preferred the present application for quashing before this court.

3. It was contended on behalf of the petitioner that allegation made in the complaint petition does not disclose any offence against him. It was further contended that from the allegations no case of fraud or cheating is made out. It was pointed out that mere breach of contract cannot give rise to a criminal prosecution.

4. It appears from the statement of complainant made on S.A. before learned Magistrate that in the alleged construction work he was paid Rs. 15,000/- in the shape of profit but thereafter no such payment was made. The complainant says that a sum of Rs. 50,000/- is now due against the petitioner in the shape of his share of profit. It appears from the statement of the complainant that this case has been filed for recovery of dues of Rs. 50,000/- in connection with contractorship business.

5. It is admitted principle of law that in case of cheating dishonest intention starts with the very inception of the transaction. Therefore, a guilty intention is an essential ingredient of the offence of cheating. As mentioned above it is the statement of the complainant that a sum of Rs. 15,000/- was paid to him in the shape of profit and thereafter no payment was made. Therefore, at the initial stage payment was made to the complainant by the petitioner. The mere fact that the petitioner did not pay later on would not convert the present case into one of cheating.

6. It was contended that the mere fact that subsequently the petitioner did not abide by his commitment that later on he would render amount to him create civil liability against him and this fact would not be sufficient to fasten criminal liability on the petitioner for the offence of cheating. It was also contended that complainant has alternate remedy in the civil court and he could not be allowed to fight the matter in criminal court. Learned counsel in support of his contention placed reliance on a decision reported in Hari Prasad Chamaria Vs. Bishun Kumar Surekha and Others, . I have already mentioned above that there is nothing in the complaint petition to show that the petitioner had dishonest or fraudulent intention at the initial stage of the matter. The complainant was paid Rs. 15,000/- in the shape of his share in the profit but later on further payment was not made. Thus, even assuming prima facie all the allegations in the complaint to be true they merely amount to breach of contract and this could not give rise to criminal prosecution.

7. On the other hand learned counsel for O.P. No. 2 supported the impugned order and submitted that petitioner induced the complainant to participate in the contractorship business. In the aforesaid facts and circumstances, continuance of the present criminal case would amount to an abuse of the process of the court and so in the ends of justice this application is allowed and impugned order is hereby quashed.