
(2010) 08 PAT CK 0101
In the Patna High Court

Mukesh Kumar Shrivastav and Beni Prasad Khemka APPELLANT
Vs
The State of Bihar and Vijay Kumar RESPONDENT

Date of Decision : 12-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120B, 406, 420

Citation : (2011) 1 PLJR 15

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—Two petitioners have filed the present petition u/s 482 of the Code of Criminal Procedure with a prayer to quash an order dated 6.12.1999 passed by the Judicial Magistrate, Patna in Complaint Case No. 1421 (c) of 1999 and also for quashing of entire prosecution in Complaint Case No. 1421 (c) of 1999.

2. Short fact of the case is that opposite party No. 2 filed a complaint in the court of Chief Judicial Magistrate, Patna, which was registered as Complaint Case No. 1421 (c) of 1999. In the complaint petition, it was alleged that petitioner No. 1, who was Area Business Manager of Cadila Pharmaceuticals Ltd., Patna and petitioner No. 2, who was Proprietor-cum-C.&F Agent of Cadila Pharmaceuticals, Patna persuaded the petitioner to be appointed as Stockist of the medicine of Cadila Pharmaceutical Ltd. It was alleged that for the purposes of his appointment as Stockist, the accused persons got a deposit of Rs. 10,00,000/- as security deposit. Out of Rs. 10,00,000/- amount, Rs. 2,50,000/- was paid to the accused persons through cash and remaining amount was paid through cheques and draft. In the complaint petition, it has been categorically stated that after being appointed as Stockist from the month of September,1996 to the month of August,1998, medicines were duly supplied to the complainant on receipt of the payment. However, without any rhyme and reason, the supply of medicine was

stocked. The complainant regularly requested the accused persons to supply the medicine and finally on 20.8.1999, it was requested either to supply the medicine or refund the deposit amount, which was never refunded.

3. On the aforesaid allegation, the complaint petition was filed and after conducting enquiry, the learned Magistrate, by the impugned order, took cognizance of offences under Sections 406, 420 and 120B of the Indian Penal Code and summoned the accused persons.

4. After the order of cognizance, the accused persons filed a bail-cum-surrender petition before the court below and they were enlarged on bail. Subsequently, the petitioners, against the order of cognizance, filed the present petition. On 31.3.2000, the petition was admitted and notice was issued to opposite party No. 2. In the meanwhile, it was directed that further proceedings in Complaint Case No. 1421 (c) of 1999 shall remain stayed till further orders and order of stay is still continuing.

5. Shri Ashwani Kumar Singh, learned Senior Counsel appearing on behalf of the petitioners, while challenging the order of cognizance as well as entire proceeding in Complaint Case No. 1421 (c) of 1999, submits that the present complaint petition was maliciously filed by the opposite party No. 2 only with a view to usurp the money, which was required to be refunded by the complainant to the petitioners. It was further submitted that in the whole complaint petition, not even a single date has been mentioned that on which date either payment through cash or through cheque was made. Learned Counsel for the petitioner has also referred to the statement of the complainant recorded on S.A. even on S.A. the complainant has not disclosed any date. It was further submitted that falsity of the complaint is proved from the fact that the complainant himself had admitted that after the start of business, medicines were regularly supplied to the complainant after due payment. It was submitted that when more than Rs. 7,00,000/- amount remained due against the complainant, the complainant, with a view to create defence, had filed the present complaint petition. Learned Counsel for the petitioners has also referred to the Bank Account, which was enclosed with the complaint petition. On aforesaid grounds, it has been prayed that the order of cognizance and entire proceeding may be set aside on the ground of malicious prosecution.

6. Shri Mahendra Prasad Bharti, learned Counsel appearing on behalf of the complainant-opposite party No. 2, has vehemently opposed the prayer of the petitioners. It was submitted by him that in the complaint petition, it was specifically mentioned that by making forgery and fraud, the petitioners had obtained Rs. 10,00,000/- from the complainant in the name of security deposit. It was submitted that after payment of security deposit, the complainant learnt that for the purposes of stockistship, there were no requirement to make a payment of security deposit. It was further submitted that materials available on record categorically indicates that the petitioners had committed offences and the learned Magistrate has rightly taken cognizance of offences as mentioned

above.

7. I have also heard Smt. Indu Bala Pandey, learned Additional Public Prosecutor appearing on behalf of the State, who has supported the stand of opposite party No. 2.

8. Besides hearing learned Counsel for the parties, I have also perused the materials available on record. On perusal of the complaint petition itself, the court is satisfied that there were no material to proceed with the case. Moreover, in petition at paragraph-13, the petitioners have categorically stated that huge amount was due against the complainant. It has been stated that medicines were supplied to the complainant by the petitioners vide Invoice dated 31.8.1998 for Rs. 5,30,471.76 and Rs. 1,70,736.05, which comes to Rs. 7,01,207.81 paise only on the confirmed order of complainant's firm namely, M/S Shakti Pharma. At the time of argument, Shri Ashwani Kumar Singh had placed the order dated 20.12.1999 passed by the learned Magistrate, whereby the petitioners were granted bail. It was submitted by Shri Singh that even though in the complaint petition, it was asserted that medicines were supplied to the complainant in between September,1996 and August,1998, the fact remains that even from the month of March,1996, the complainant were getting supply of medicine from the petitioners. It was submitted that the learned Magistrate, at the time of granting bail, had considered entire fact.

9. I have also perused the order. So far as the order dated 20.12.1999 is concerned, this Court is of the view that fact mentioned in the said order is not required to be noticed by this Court at this stage since whatever observation was given in order dated 20.12.1999 was given in respect of prayer of bail made by the petitioners. Any observation, which is given, while considering a bail petition has got relevance at a subsequent stage. Even in the complaint petition, the complainant had admitted that the complainant and petitioners were in a business term and business was continuing. On the basis of materials available on record, this Court is of the opinion that there were no material to proceed with the complaint case. From the fact, it is also evident that the prosecution was initiated maliciously by the petitioners.

10. Accordingly, I am of the view that this is a fit case for exercising inherent power in favour of the petitioners. Accordingly, order of cognizance dated 6.12.1999 passed by Judicial Magistrate, Patna and entire proceeding in Complaint case No. 1421(c) of 1999 is hereby set aside and petition stands allowed.