
(2012) 07 PAT CK 0038

In the Patna High Court

Case No : Criminal Miscellaneous of 1896 of 2010

Munakiya Devi and Yamuna Dayal @ Yamuna Prasad @
Jamuna Prasad

APPELLANT

Vs

The State of Bihar and Shri Amarnath Sinha

RESPONDENT

Date of Decision : 18-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 300
Penal Code, 1860 (IPC) — Section 120B, 405, 406, 420, 467

Citation : (2012) 07 PAT CK 0038

Hon'ble Judges : Aditya Kumar Trivedi, J

Bench : Single Bench

Advocate : Birendra Narayan Sharma, for the Appellant; Diwakar Sinha, For the O. P. NO.2 and Mr. R.S. Rai, APP For the State, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice, Aditya Kumar Trivedi

1. Cr. Mics. of 1896 of 2010 wherein Munakiya Devi and Yamuna Dayal @ Yamuna Prasad @ Jamuna Prasad happen to be petitioners out of whom Munakiya Devi died during pendency of instant petition hence her name has been deleted from the column of the petitioners vide order dated 21.12.2011 as well as Cr. Misc. of 342 of 2010 filed by petitioner, Keshav Prasad originate from the same Complaint Case of 991(c) of 2009 challenging the order dated 21.11.2009 whereby and where under the learned Judicial Magistrate had taken cognizance for an offence punishable under Sections 406, 420, 467, 477, 120B of the IPC for which they have been summoned. Cr. Misc. of 18404 of 2010 happens to be filed by Keshav Prasad against an order dated 17.08.2007 passed by learned lower court in connection with Compliant Case of 1482(c) of 2007 taking cognizance of an offence punishable under Sections 406, 420, 120B of the IPC and thereby summoning the petitioner along with others. In both the complaint petitions, Amarnath Sinha happens to be complainant who stood figured in all the Cr. Misc.

petitions as O.P. of2.

2. Facts of both the cases are dealt with independently and succinctly.

3. So far, Cr. Misc. of 1896/2010 and Cr.Misc. of 342/2010 are concerned both relate with Complaint Case 991(c)/2009. As per Annexure-1, the complaint petition, accused Keshav Prasad brought the other co-accused at the place of complainant and further disclosed that Munakiya Devi is in need of money therefore, she is ready to sell here land lying at village, Pipra Domanchak @ 92,000/- per Kattha. Keshav Prasad further disclosed that the land is free from litigation as well as encumbrance. After finalization of deal, the complainant O.P. of2 (Amarnath Sinha) had paid Rs. 1,00000/- to Munakiya Devi Yamuna Dayal, Prabhu Dayal. Again on 23.07.2003 complainant had issued cheque of Rs. 2,75000/- which was received by Yamuna Prasad. On 30.11.2003 had issued cheque of Rs. 4,00000/- which was received by Prabhu Dayal. On 13.12.2004, Prabhu Dayal further received Rs. 40,000/- in cash and so out of total consideration amount appertaining to Rs. 13,10,000/- he had already paid Rs. 8,15,000/- and so, he had requested the accused to get the sale deed executed after receiving the rest amount which they deferred for the time being. All of a sudden, he came to know that Munakiya Devi had executed power of attorney in favour of Prabhu Dayal 7 Katthas 10 Dhurs of land out of 46 decimals. On query, the accused persons demanded Rs. 1,25000/- per Kattha in stead of agreed amount of Rs. 92,000/-. Further, Keshav Prasad had also demanded Rs. 2,00000/- as commission. Then submitted that even after receiving the amount appertaining to Rs. 8,15,000/- the accused persons intentionally and deliberately adopted such tactics by which the term of agreement got expired with a clear-cut motive to digest the amount.

4. With regard to Cr. Misc. of 1896/2010, O.P. of2, Amarnath Sinha virtually, narrated the same incident whatever he narrated in Complaint Case of 991/2009 in Complaint case of 1482/2007 on account of which there happens to be inception of Cr.Misc.of 18404/2010 and Cr.Misc. of 342/2010.

5. It has been submitted on behalf of the petitioners that for the same cause when at an earlier occasion Complaint Case of 1482C/2007 was already filed by the complainant (O.P. of2) and the said matter was still being pursued at the hands of O.P. of2, then in that event subsequent filing of Complaint Case of 991(c)/2009 happens to be barred in the background of Section 300 of the Cr.P.C. Not only this, It has further been submitted that from Annexure-7, it is evident that O.P. of2 had already instituted Title Suit of 142/2009.

6. Furthermore, It has been submitted that the whole narration whatever alleged did not specify that at the time of negotiation there was any sort of fraudulent or dishonest intention on the part of the petitioners. Then, it has been submitted that actually the complainant (O.P. of2) could not honour the terms of agreement within the stipulated period so incorporated under deed of agreement failing which the earnest money whatever been paid was subject to forfeiture and

only to put upon the petitioners undue pressure, after expiry of the effectiveness of the agreement by efflux of time two complaint petitions at different stages for the same cause have been filed. Apart from this, it has further been submitted that it happens to be simply a case of breach of contract without attracting criminal prosecution which the Complainant (O.P. of2) was well aware and the subsequent step of the complainant (O.P. of2) does specify by having Title Suit of 142/2009 filed on his behalf. Accordingly, order of cognizance in both the complaint petition is fit to be set aside.

7. Then, it has been submitted that during continuance of instant proceeding, the parties have restored good feelings on account of which the amount whatever been received by the petitioners as an earnest money had already been paid through the bank draft which was filed before the learned lower court and received by the complainant (O.P. of2) himself properly identified by his learned counsel and so nothing more remains.

8. The learned counsel for O.P. of2 fairly submitted that on account of receiving back the entire amount whatever been paid by him during course of negotiation, does not want to proceed with the case hence, necessary orders could be passed in light of aforesaid development.

9. The learned APP fairly submitted that the present case happens to be private in nature relating to breach of agreement which subsequently been properly settled then in that event, it will be a worthless affair to beat the drum.

10. From the narration of the complaint petition of both the cases that means to say Complaint Petitions of 1482(c)/2007 as well as 991(c)/2009, it is apparently clear that both the complaint petitions contained same and similar allegation with regard to breach of an agreement which had properly been considered in a case of Dalip Kaur and Others Vs. Jagnar Singh and Another, . After considering the provisions of penal law at paragraph 10 it has been observed as follows:-

10. The High Court, therefore, should have posed a question as to whether any act of inducement on the part of the appellant has been raised by the second respondent and whether the appellant had an intention to cheat him from the very inception. If the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance the same would not constitute an offence of cheating. Similar is the legal position in respect of an offence of criminal breach of trust having regard to its definition contained in Section 405 of the Penal Code.

11. From both the complaint petitions it is further evident that both the petitions were filed much after expiry of the validity of deed of agreement which was taken into consideration in a decision in the case of Thermax Ltd. v. K.M. Johny reported in (2011) 13 SCC p. 412 and the relevant paragraph is 22 wherein it has been held:-

22. After finding that inasmuch as the police has given a clean chit to Accused

2-4, this Court in Danannava case concluded that the Magistrate ought not to have taken cognizance of the alleged offence against Accused 1 and that the complaint has been made to harass him to come to terms by resorting to criminal process. Regarding the delay, this Court pointed out that the complaint was filed on 17-5- 1999, after a lapse of 101/2 years and, therefore, the private complaint filed by Respondent 1 therein is not at all maintainable at this distance of time. It was further observed that it is also not clearly proved that to hold a person guilty of cheating, it is necessary to show that he had a fraudulent or dishonest intention at the time of making the promise and finding that the order of the Magistrate and of the High Court requiring Accused 1-appellant therein to face trial would not be in the interest of justice, set aside the order of the High Court and of the Magistrate.

12. Moreover, as admitted by the respective parties, the earnest money whatever been received by the petitioners had already been returned back to the O.P. of2 (Complainant) and further he is not inclined to proceed with the case.

13. Because of the fact that there happens to be total lacking of ingredient of Section 406 as well as 420 of the IPC on account of non disclosure of the fact that right from beginning of initiation the petitioners had entered with fraudulent and dishonest intention and further launching of the prosecution after expiry of the validity of deed of agreement questioning the propriety of dominion over the property and using it contradictory to direction of the complainant (O.P. of2) did not justify taking of cognizance of learned lower court under any of the provisions and the subsequent conduct of the respective parties happens to be an additional feature. Filing of Title Suit by O.P. of2 (Complainant) (Annexure-7) is indicative of the fact that the complainant was very much apprehensive with regard to validity of the criminal prosecution. Consequent thereupon, the order of cognizance dated 21.11.2009 passed with regard to Complaint Case of 991(c)/2009 as well as order of cognizance dated 17.08.2007 passed in connection with Complaint Case of 1482 (c)/2007 by the learned lower court are hereby quashed. Hence, all the three petitions are allowed