(2010) 07 PAT CK 0123

In the Patna High Court

Case No : Cr. Misc. No. 1227 of 2000

Narendra Kumar Anchalia @ Naro Anchalia and Another APPELLANT

Vs

State of Bihar and Another RESPONDENT

Date of Decision : 01-07-2010

Acts Referred:

Citation : (2010) 07 PAT CK 0123

Final Decision : Dismissed

Judgement

Dharnidhar Jha, J.—Heard.

2. The petition has been preferred by the Petitioners who are accused of Complaint Case No-. 1437 of 1998 who were summoned by Shri Jitendra Mishra, Judicial Magistrate, 1st Class, Muzaffarpur, for standing trial of offences under Sections 417 and 406 of the Indian Penal Code. The summoning order was passed in the above complaint petition on 17.12.1998.

3. Some of the facts of the case are that the movie named ''Gharwali Baharwali'' was to be released and the present Petitioners accused contacted the complainant for purchasing distribution rights of the film through the two accused, namely, Narendra Kumar Anchalia alias Naru Anchalia and Kanhaiya Lal Anchalia alias Kanu Anchalia who had acquired the rights of distribution of the film. The complainant stated that he accepted the offer of the accused persons who had asked the complainant to furnish a demand draft of Rs. 2,51,000/- and the same was handed over to them by him after they had signed an agreement in the above behalf. The demand draft of the value indicated above was paid on 3.7.1997 and bore No. 172458 and was in favour of M/s Tutu Films of which one of the accused, namely, Kanhaiya Lal Anchalia claimed himself to be the proprietor. It is alleged that the draft was encashed by putting the same into an account but in spite of a written agreement in place, the accused persons violated the terms of the same and entered into an agreement of the same nature with M/s Anjana Movies Pvt. Ltd., 606, Lav Kush Tower, Exhibition Road, Patna and, thereby, assigned the distribution, exhibition and exploitation of the

said film to them.

4. The learned Magistrate after perusing the contents of the complaint petition, the statement of the complainant on S.A. and the two witnesses who were examined during the course of inquiry held by him, found that there were sufficient grounds to proceed against the accused persons named in the complaint petition as they appeared committing offences noted above.

5. It may not be out of place to mention that one of the co-accused Pradeep Sharma alias Tutu Sharma challenged the order of summoning in Cr. Misc. No. 10218 of 2000 and that petition was dismissed by an order passed on 15.5.2001, the certified copy of the said order was produced before me during the course of hearing of the present petition. It was contended also by citing a judgment of this Court reported in Om Prakash Pathak Vs. State of Bihar and Another, that merely signing an agreement after receiving the draft may not be an offence u/s 406 of the Penal Code. It was further contended by citing a judgment reported in G. Sagar Suri and Another Vs. State of U.P. and Others, that the criminal proceedings could not be initiated in respect of the relief which could be sought for and obtained from a civil court if there was substantial tinge of civil dispute emerging from the facts alleged.

6. Replying to the above contention, learned Counsel appearing for the complainant opposite party placed before me the judgment of the Supreme Court in M/s. Medchl Chemicals and Pharma P. Ltd. Vs. M/s. Biological E. Ltd. and Others, in which it was observed that whenever on the face of the complaint petition it was found that an offence was made out then the summoning order has to be passed arid no court could interfere with such an order. The decision of the Supreme Court in Radhey Shyam Khemka and Another Vs. State of Bihar, has also been placed before me to submit that at the initial stage of transaction, the intent of cheating may not be an offence, but if that may appear developing at some subsequent stage and if such fact is placed before the court then the offence u/s 406 of the Penal Code be constituted on such facts. Learned Counsel appearing for the complainant was taking an exception to this petition and submitted that when the proceeding as against a co-accused whose petition of similar nature has been dismissed, the petition could not be taken up for consideration and allowed on this ground alone.

7. The Court has some reservations as regards the contention that individual acts of an accused who has been arrayed together with other accused, may not be taken up and considered so as to finding his guilt or innocence. This has been done in many matters and one in Municipal Corporation of Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, In that case the Supreme Court was considering the cases of Director and Managing Director of the Morton Toffees on allegation that some adulteration was committed in manufacturing the sweets and consigning them to the market for sale. An order of summoning has to be judged in the light of the allegation which might be appearing basically in the complaint petition as also which might be supported by the statements of the

witnesses or the report which might have been received after an enquiry or investigation. This is what one could discern from the provision of Sections 203 and 204 of the Code of Criminal Procedure The provisions for dismissing the complaint u/s 203 Code of Criminal Procedure as also for passing an order u/s 204 Code of Criminal Procedure would not be different but it may not be same and similar as the ingredients of the two provisions differ in spite of being almost similarly worded. The opening words of Section 204 may give sufficient indication that the same could be materials for consideration for basing the order of summoning which are the materials relevant for dismissing a complaint petition u/s 203 Code of Criminal Procedure This is all the more clear if one considers the two provisions. In formulating the above provisions the legislature utilized the same terminology. In Section 203 Code of Criminal Procedure the terminology, ''sufficient ground for proceeding'' has been utilized in the negative term and, as such, the order of dismissal could be passed, but definitely after assigning reasons; while u/s 204 Code of Criminal Procedure no reason has to be assigned by the court but the materials which are the basis of such an order have definitely to be indicated in that order so that the superior courts could have a grasp as to what was the basis on which the order could be passed and, as such, the superior courts could identify the reasons on which the order of summoning has been passed.

8. Having said the above, the Court feels that it could go into allegation as appears against an accused from the statements made in the complaint petition as also the evidence of the witnesses examined u/s 202 Code of Criminal Procedure Besides, the Court could also consider the report which might have been received by the court passing the summoning order if there had been an inquiry in the matter. After considering those materials the court could examine whether it was a fit and proper for the Magistrate or the court which was issuing the order of summoning against a particular accused to have passed that particular order on the individual acts of an accused and the same could very well be examined by any superior court, be it a revisional court or be it a court exercising powers u/s 482 of the Code of Criminal Procedure

9. Coming to the main contention of the parties, it is true that a learned Single Judge of this Court has also taken a view that in spite of having signed the agreement and having not received the draft in the circumstances, may not constitute an offence as against the person who has signed the agreement. I hold that no two cases are similar on facts and, as such, no judgment could be applicable exactly to the facts of the other case. In the present case, the allegation is not only the Petitioners signed the agreement itself but what appears stated in paragraph 5 appearing at page 3 of the complaint petition is that the Petitioner also received draft so as to carrying it to the real recipient. This is one aspect of the matter.

10. What I find, besides the above, is that if there could be an element of cheating then necessarily there has to be an element of conspiracy and when it

has been found as such, then the other accused could not say that he does not owe the criminal liability. The two accused are alleged to have approached the complainant together and to have offered him to purchase distribution rights of the film which the complainant accepted on terms as are indicated in the complaint petition. Further, it is the allegation of the complainant that the accused persons had approached him, requested him to give draft in the name of M/s Tutu Films of which they were partners and, accordingly, the draft was purchased and the same was handed over to the Petitioners which ultimately was collected by depositing it into an account. This could be the allegation which could be the only basis of discerning constitution of an offence and the Petitioners could not escape the responsibility which could be flowing from their acts as per the allegations.

11. As such, the subsequent acts of entering into other agreement with another firm could also give rise to the criminal liability of cheating and misappropriating the sum of money which was paid to the Petitioners in the form of demand draft. As regards the contention that there is no element of cheating from the very inception of the whole transaction, that is taken care of by the Supreme Court in Radheshyam Khemka (supra) that initially there could not have been an intent to cheat and thereby dishonestly defrauding person so cheated and cause him to deliver valuable security, etc., but might be that intent had appeared subsequently. This is what appears from the facts of the present case. The allegation is that after having signed the agreement and also having received the sum of amount through the demand draft, the Petitioners and other accused entered into another agreement with another firm. This shows the intent of cheating and, as such, that act constituted an offence u/s 406 of the Indian Penal Code.

12. In the light of the discussions which have been made hereinabove, I find that the order under challenge appears passed properly after considering the facts. The petition appears of no merit.

13. It is dismissed.

14. Before I part with the order, I want to impress upon the court below not to be influenced by any observations which might be wittingly and unwittingly, flowing from this order so as to prejudice the Petitioners at the time of trial.