

(2019) 02 PAT CK 0018

In the Patna High Court

Case No : Criminal Miscellaneous No. 58384 Of 2015

Narendra Prasad Pandey

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 18-02-2019

Acts Referred:

Code of Criminal Procedure, 1973 — Section 302, 482
Indian Contract Act, 1872 — Section 23
Indian Penal Code, 1860 — Section 420

Citation : (2019) 02 PAT CK 0018

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Alok Kumar Agrawal, Priya Gupta, Mohit Agrawal, Ganesh Prasad Singh, Arjun Kumar Singh, Rameshwar Singh

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioner; learned A.P.P. for the State and learned counsel for the opposite party no. 2.

2. The petitioner has moved the Court under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') for the following relief:

"That, this is an application for quashing the order dated 30.01.2013 passed by learned Sub- Divisional Judicial Magistrate, Bikramganj, Rohtas in Complaint Case No. 427 of 2012 whereby the said learned Court has taken cognizance under Section 420 of I.P.C. and has proceeded for issuance of summons against the petitioner in the said case."

3. The complainant being a Senior Officer working under the Railways is alleged by the opposite party no. 2, who incidentally happens to be a distant relative, keeping his son as a domestic servant for sometime and taking Rs. 2,75,000/- on the pretext of providing him a job under the Railways. It was alleged that neither the employment was given nor on demand the money was returned and

also that the petitioner had mixed some chemical in the tea, after consuming which the son had died.

4. Learned counsel for the petitioner submitted that the entire allegation is false and concocted and only with a view to harass. It was submitted that he is a distant relative of the opposite party no. 2 and was being pressurized for providing work to his son but when the petitioner expressed his inability he has been implicated. It was submitted that the son of the complainant is alleged to have died on 04.06.2012, whereas the complaint was filed on 28.06.2012, after 24 days without any reasonable explanation. Learned counsel submitted that the absurdity in the prosecution story is also clear from the fact that in paragraph 4, it has been stated that the petitioner had scolded the son of the opposite party no. 2 and had misbehaved with him and had turned him out of the gate and in the same breath, it has also been stated that the petitioner had offered tea to the son of the opposite party no. 2. Learned counsel submitted that the same cannot be believed by any prudent man for the reason that on the one hand a person would offer tea and on the other hand in the very next moment would scold him and turn him out from the house.

It was further submitted that the fact that the opposite party no. 2 had stated in the complaint itself that about the said development he was informed by his son and then he came to his son who informed that the petitioner had put some intoxicating substance in the tea and thereafter he was taken by the opposite party no. 2 for treatment, also cannot be accepted due to the fact that there was huge time gap between alleged drinking of tea by the son of the opposite party no. 2 at the house of the petitioner and him being taken to the doctor, as alleged in the complaint. It was further submitted that the averment that the son of opposite party no. 2 had been offered tea which was mixed with some intoxicating substance cannot be believed also for the reason that if the same was true, the son of the petitioner would not have had any sense to return home and if he had returned home and had informed his father and the father came there, there could not have been anything dangerous in the tea which was given to the son of the opposite party no. 2.

Learned counsel submitted that had there been any life taking substance, then gap between the son of the opposite party no. 2 having tea at the house of the petitioner and him dying would not have been so long. Learned counsel submitted that no such report of the doctor has been annexed and further that if the son had informed the opposite party no. 2 with regard to something being mixed in his tea due to which he had become ill and the same led to death, it was the duty of the opposite party no. 2 to inform the police about such unnatural death and not doing so and which has led to there being no postmortem, at this stage, such grave allegation cannot be entertained at all. It was submitted that it is also hard to believe that if such death, which amounts to murder, had taken place, the police could have refused to entertain the complaint and moreover, law requires that prior to filing of the complaint, the

Superintendent of Police of the district has to be informed, which has admittedly not been done. In this connection, learned counsel relied upon on judgment of Hon'ble Supreme Court in Priyanka Srivastava v. State of U.P. reported as (2015) 6 SCC 287.

5. It was further submitted that a Bench of this Court in Vijay Sharma vs. State of Bihar reported as 2011 (1) PLJR 780 has held that if the complainant voluntarily parted with money for an illegal purpose of securing appointment in Government service for a money consideration, which itself was an offence, he cannot urge that he had been cheated. In this connection, reliance was also placed on Section 23 of the Indian Contract Act, 1872 which declares void a contract which is contrary to the law or opposed to public policy. Learned counsel also produced copy of the judgment dated 08.04.2017 by a co-ordinate Bench in Cr. Misc. No. 42515 of 2013 (Manju Devi vs. The State of Bihar & Another), where at paragraphs no. 15 and 16, it has been held that such argument not only being illegal and against public policy, to which the complainant himself was a party, the same cannot be enforced and further, that concept of 'cheating' shall have no application where the act which is stated to constitute 'cheating' was itself an offence.

6. Learned counsel for the opposite party no. 2 submitted that in the complaint he has stated that it was the petitioner who had asked for money for getting job in the Railways for the son of the complainant and thus, he should also be prosecuted for having asked for money.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out. In the entire complaint case, there is no valid or reasonable ground as to why the opposite party no. 2 did not move the police at the relevant time itself. In fact in paragraph no. 7 of the complaint, it has been stated that after the death of his son, opposite party was busy in performing the last rights and then he went to the police station. This clearly shows that there was no such allegation worth believing with regard to the son of the opposite party no. 2 being given some intoxicating tea and of there being any nexus between such tea and the death of the son of the opposite party no. 2. Had there been any direct nexus, at the very time of taking his son to the doctor and even at the hospital, in the natural course of events information would have been given to the local police, either by the opposite party no. 2 or the doctor of the said hospital. Even the doctor of the so called hospital where it is alleged that the son of the opposite party no. 2 was taken, has neither been made a witness nor examined during enquiry. The totally unexplained delay of 24 days in filing of the complaint case also raises serious questions with regard to the veracity of the allegation.

As has been rightly pointed out by learned counsel for the petitioner, even in the description of the offences in the complaint case, Section 302 of the Code has not been mentioned, which indicates that for the death of the son of the opposite

party no. 2, there was no serious allegation of murder, much less against the petitioner. Further, reliance has rightly been placed by learned counsel for the petitioner on the judgments in Vijay Sharma (supra) and Manju Devi (supra) with regard to Section 420 of the Code, wherein under similar factual background, the Court has interfered. In the present case also cognizance was taken only under Section 420 of the Indian Penal Code and the opposite party no. 2 is also not aggrieved by the same. The other glaring circumstantial indication with regard to the allegations not being probable is the fact that an employed youth who was already working in the Basic Micro Finance N.S.A. as a consultant would not leave the job and start working as a domestic help.

Further, there is no detail given with regard to what post was promised to the son of the opposite party no. 2 and how the opposite party no. 2 and his son were confident that such employment would be given by the petitioner, without even being aware of the qualification and procedure for such employment. Also, the Court does not find that there is any averment as to the petitioner being in any capacity involved in recruitment so as to at least even prima facie indicate that being in a position as a recruiter, he could have asked for illegal gratification. The Court also finds that if the averments in the complaint are true then the son of the opposite party no. 2 who is said to have been introduced through his relatives to the petitioner was true, the obvious question which would arise is to why the said relatives did not intervene if the petitioner had taken a huge amount from the opposite party no. 2 and was neither getting a job for his son or in the alternative returning the money.

8. In such background, the Court finds that allowing the criminal proceeding to continue would be an abuse of a process of the Court and the present criminal case is for oblique reasons and for harassing the petitioner.

9. Moreover, the Court finds that the submission of learned counsel for the opposite party no. 2 that it was the petitioner who had asked for money, is not of any relevance, for the reason, that two wrongs cannot make a right and if at all there is any complaint with regard to the petitioner having asked for money to provide job, then the opposite party no. 2 has to move before the appropriate forum, in accordance with law.

10. For reasons aforesaid, the application stands allowed. The entire criminal proceeding arising out of Complaint Case No. 427 of 2012, including the order dated 30.01.2013 by which cognizance has been taken against the petitioner, stands quashed.