

(2008) 11 PAT CK 0059
In the Patna High Court
Case No : Cr. Misc. No. 36583 of 2007

Niranjan Kumar Modi

APPELLANT

Vs

State of Bihar, Mital Tax Shiwalaya Market and Krishna Kumar
Gupta

RESPONDENT

Date of Decision : 25-11-2008

Acts Referred:

Citation : (2008) 11 PAT CK 0059

Final Decision : Allowed

Judgement

Abhijit Sinha, J.—The petitioner is aggrieved by order dated 31.5.2007 passed by Sri Bijay Kishan Chaudhary, Judicial Magistrate, 1st Class, Patna in Complaint Case No. 1378(C) of 2007, whereby he has taken cognizance allegedly for offences under Sections 406 and 420 I.P.C.

2. The prosecution case as culled out from the petition of complaint is that the petitioner carries out business in selling clothes which he obtains on credit from the complainant's firm running in the name and style of "M/s Mittal Tex" and after selling the same pays for the cloth taken. But over the years a sum of Rs. 1,77,386/- became outstanding to the complainant firm out of which a sum of Rs. 1,21,500/- has already been paid, thereby leaving an outstanding balance of Rs. 55,886/-.

3. The complainant firm in the modus operandi adopted by Shylock in the Shakespeare's play Merchant of Venice wants his pound of flesh and, therefore, he filed the complaint case, in a matter relating to dispute which is absolutely civil in nature being a commercial transaction between two parties based on an oral agreement. Admittedly, a civil remedy, therefore, lies and no criminal prosecution is maintainable unless it is shown that the overt act was with mens rea to cheat the complainant and commit breach of trust. Apparently the ingredients of offences under Sections 406 and 420 I.P.C. are sadly lacking, for had there been any mens rea of cheating or committing criminal breach of trust the petitioner would not have returned any sum of money. This only goes to

show that there was no mens rea to cheat.

4. The Apex Court in a catena of decisions has deprecated filing of criminal cases in order to pressurize the party to bring to quick end, their claim based on civil dispute.

5. Reference in this connection may be made to the cases of G. Sagar Suri and Another Vs. State of U.P. and Others, and in Indian Oil Corporation Vs. NEPC India Ltd. and Others,

6. In my opinion this criminal prosecution is an abuse of the process of the Court and is required to be quashed.

7. The complainant may seek his remedy for recovery of the money before the appropriate forum.

8. It will not be out of place to mention here that the learned Counsel for the petitioner is ready to reimburse the amount due to the complainant and is ready to pay Rs. 1000/- per month. This is understanding between the petitioner and the complainant and this Court has no role to play in it. In the event the amount is not paid by the petitioner the complainant shall be at liberty to seek remedy before the appropriate forum in an appropriate litigation.

9. In the result the application is allowed and the impugned order taking cognizance is hereby quashed.

10. The understanding between the parties shall survive amongst themselves without any interference from this Court.