(1979) 12 PAT CK 0015

In the Patna High Court

Case No : Criminal Miscellaneous No. 4353 of 1978

Om Prakash Singhania and Babulal Singhania APPELLANT

Vs

Nauratan Mal Dudharia RESPONDENT

Date of Decision : 07-12-1979

Acts Referred:

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

Citation : (1980) PLJR 485

Hon'ble Judges : Medini Prasad Singh, J

Bench : Single Bench

Advocate : S.B. Sanyal, Parmeshwar Prasad and Miss Sangita Das Gupta, for the Appellant; Prabha Shankar Mishra and Ram Chandra Jha, for the Respondent

Final Decision : Allowed

Judgement

Medini Prasad Singh, J.—This application u/s 482, Criminal Procedure Code (for short, ''the Code'') is by two of the accused. The prayer is to quash the criminal proceedings unties Sections 420 and 406 of the Indian Penal Code arising out of the complaint Case No. 23 C of 1975 which is pending in the court of Sub-divisional Judicial Magistrate, Bhagalpur. The complain was made on 13 January 1975. A further prayer was made that the order dated 3 August 1978 by which the petitioners were summoned to face the trial be also quashed as being illegal and without jurisdiction. The petitioners are the partners of a firm known as M/s. Singhania Trading Co. Asansole (briefly, the Asansole firm) and are dealers in Food grains. The complainant Nawratan Mal Dudharia is the proprietor of M/s. Summer Mai Bahadur Singh of Shemari Bazar at Pirpainti (for short, the Pirpainti firm). He also is a dealer in Food grains. The case of the complainant; in brief, is that 95 bags of gram weighing 95 quintals belonging to the complainant namely; the Pirpainti firm were taken by the Asansole firm through its Munim Mangi Ram on 28 November 1974 on a truck bearing No. B.R.J. 2714 for disposal at the rate of Rs. 260/- per quintal the total sum, thus, being Rs. 25,700/- out of which Rs. 1,000/- was to be deducted as Arhat charges and truck hiring charges and that a bank draft for the balance amount of Rs. 23,700/- was to be sent to the complainant but the money was not sent and it was not paid. On 14 December 1974 the complainant sent a telegram to the Asansole firm directing it not to sell at a price less than Rs. 260/- per quintal, whereupon the Asansole firm informed it on 19 December 1974 that the goods had already been sold at Rs. 152/- per quintal. On receipt of that telegram the complainant sent another telegram telling them that they had wrongly sold the goods at that price. The complainant was examined on solemn affirmation and further four witnesses were also examined by the Magistrate. Those witnesses supported the fact that 95 bags of gram had been taken by the Asansole firm through their Munim Mangi Ram on 17 January 1975. Cognizance for offences under Sections 420 and 406 Penal Code was taken against Mangi Ram only. On 4 June 1977 the complainant filed an application to summon the two petitioners also to face the trial. The prayer to summon them was rejected on 19 July 1977. Charges were framed for the offences of cheating and criminal breach of trust on 20 September 1977. Two witnesses were examined before charge and one was examined after the charge. According to the last witness Babulal also was present along with Mangi Ram at the Pirpainti firm during the discussion about the taking of gram from Pirpainti firm to Asansole firm. A fresh petition was filed by the complainant on 3.8.1978 to summon the petitioners and this time it was allowed by the Magistrate by his order dated 26 August 1978. At this place I may mention one more fact, namely, that the complainant has also filed a Money Suit No. 116 of 1977 before the Subordinate Judge, Bhagalpur against the Asansole firm and their Munim Mangi Ram for realisation of a sum of Rs. 33,000/- and odd, the same being the price of 95 bags of gram with interest and cost.

2. From the alleged aforesaid facts it is clear that the case is essentially one of civil nature and not of a criminal nature. The parties entered into an agreement with their free volition to the effect that the good were sold at Rs. 260/- per quintal through the Asansole firm as Arhatia; the Asansole firm was to act practical as an agent. In the petition of complaint there is absolutely nothing to show that the Munim Mangi Ram, far less the petitioners, had any intention to cheat the Pirpainti firm from the outset. The allegations made in the complaint that on 29 November 1974 after the arrival of the goods at Asansole, the Asansole firm showed Inability to send the Bank draft due to the closure of the Bank was a subsequent event, the goods having been sent on 28 November 1974. In the complaint itself it is alleged that the Asansole firm made a further request to the Pirpainti firm for sending more gram on two trucks at the rate varying from Rs. 221 to 229/- and this shows that the Asansole firm wanted to enter into further business agreement with the Pirpainti firm. To me it appears that it was only a case of non-payment of money at the higher rate demanded by the complainant. It is a case of mere breach of contract for which the complainant had a civil remedy by way of civil suit and in fact, a money suit has been brought by the complainant as above-mentioned. It is not a case in which the complainant should have taken recourse to further criminal proceedings. In

my opinion the criminal proceeding is merely a camouflage of a civil dispute. It has been pointed out by their Lordships of the Supreme Court in (1) Mahadeo Prasad Vs. State of West Bengal, that if the accused had, at the time he promised to pay cash against delivery an intention to do so, the fact that he did not pay would not convert the transaction into one of cheating. In (2) Mobarik Ali Ahmed Vs. The State of Bombay, it was reiterated by their Lordships or the Supreme Court that the question whether the evidence discloses only a breach of civil liability or a criminal offence of cheating depends upon whether the complainant in parting with the money acted on the representation of the accused and in belief of the truth thereof and whether those representations, when made were in fact false to the knowledge of the accused and whether he had dishonest intention from the outset. In (3) Hari Prasad Chamaria Vs. Bishun Kumar Surekha and Others, the complainant intended to start business, and gave in full faith a large amount to the respondents for the same. The respondents started business in their own name and refused to render accounts or return money. The complainant prosecuted the accused u/s 420 I.P.C. The accused prayed for quashing of proceeding u/s 561-A Cr.P.C. which were quashed by the High Court. The complainant went up in appeal to the Supreme Court. Their Lordships observed that (at pages 353-354 of Cri. L.J.):--

Even assuming prima facie all the allegations in the complaint to be true they merely amount to a breach of contract and could not give rise to criminal prosecution. There was nothing in the complaint to show that the respondents had dishonest or fraudulent intention at the time the appellant parted with the money nor did the complaint indicate that the respondents had induced the appellant to pay them the amount parted with. The appellant also did not allege the respondents making any representation to him for parting with the money. Mere fact, that they did not abide by their commitment as to starting of the business in complainant''s name as agreed to would not fasten them with criminal liability.

The same principles had earlier been laid down in (4) Shiva Sagar Pandey Vs. King Emperor, [(1935) 16 P.L.T. 553] by Fazi Ali, J., as the then was. It was pointed out in that case that where there is no clear and conclusive evidence of the criminal intention of the accused at the time the offence is said to have been committed and where the party said to be aggrieved has an alternative remedy in the civil court, the matter should not be allowed to be fought in the criminal court. In (5) Bishun Kumar Surekha Vs. State of Bihar, 1970 P.L.J.R. 120 also Kanhaiyaji, J., observed that mere breach of contract cannot give rise to a criminal prosecution where there is no clear intention of the accused at the time the occurrence is said to have taken place and when the party aggrieved has alternative remedy in the civil court, the matter should not be allowed to be fought in the criminal court. Similar observations were made in the case of (6) Shri Kamakhya Narain Singh Vs. Sri Ram Lakhan Singh and The State of Bihar, and also in (7) Harnarain Sah and Others Vs. Tribeni Lal, . For the reasons already expressed I am of the opinion that the offence of criminal breach of trust as well should not be allowed to be fought in criminal court. Furthermore it seems that in the present case the complainant himself was not sure of his position. In the petition of complaint he made out a case of giving the goods to the Asansole firm for selling them and the Asansole firm was to act as an Arhatia but in the Money Suit (No. 116 of 1977) be made out a case of sale of the goods to the Asansole firm. It was said there that the transaction was one of sale to the Asansole firm on credit and that the price was payable by the Bank Draft for encashment at Shermari. It was further said in the plaint of the money suit that the grains were sent to Asansole on the assurance of that firm that the rate of gram per quintal at Asansole at that time was Rs. 260/- and it was on that assurance that 95 bags of gram were sent to the Asansole firm. Counsel appearing for the complainant argued that this Court was not competent to look into the plaint of the money suit but I am not inclined to accept this contention as valid. The fact about the filing of the money suit has been stated in the present application and the copy of the plaint also has been attached as Annexure-6 to this application. I think that this Court for doing justice in the case while exercising inherent powers u/s 482 of the Code is entitled to look into the plaint of money suit also.

3. Counsel for the complainant further contended that the Asansole firm had the clear intention to cheat because they had taken the goods on giving assurance that they would be told at Rs. 260/- per quintal but they wanted to apply the price of the gram only at the rate of Rs. 152/- per quintal. I have already stated the facts and circumstances of the case leading to the institution of the criminal case. I am not inclined to agree with the contention of the complainant that the Asansole firm had the intention to cheat the Pirpainti firm from, the very outset. To me it appears that it is simply a case of trade differences between the parties and a mere breach of contract. It is conceivable that the Munim of the Asansole firm, namely, Mangi Ram seriously intended to pay the price fetched by the goods at Asansole to the Pirpainti firm. The contention is, therefore, rejected. For the foregoing reasons I am of opinion that no case of criminal nature has been made out against the accused. The prosecution of the accused, I think, is an abuse of the process of the court and end of justice demands that the criminal proceeding should be quashed. Although accused Mangi Ram, namely, the Munim is not before this Court, in the view I take, the entire criminal proceeding has to be quashed. Hence the cognizance taken in this case on 17 January 1975 is quashed. It follows logically that the criminal proceeding arising out of complaint Case No. 23 C of 1975 pending in the Court of Sub-divisional Judicial Magistrate, Bhagalpur also deserves to be and is quashed. The application is allowed.

