(2010) 04 PAT CK 0176

In the Patna High Court

Padamchand Gupta APPELLANT

Vs

The State of Bihar and Ganesh Pandey RESPONDENT

Date of Decision : 01-04-2010

Acts Referred:

Citation : (2010) 04 PAT CK 0176

Final Decision : Dismissed

Judgement

Sheema Ali Khan, J.—This application has been filed for quashing of the order dated 23.01.2006 passed in Complaint Case No. 851 (C) of 2005 by which the Judicial Magistrate, 1st Class, Danapur has taken cognizance for the offence u/s 406 of the Indian Penal Code against the petitioner.

2. Notices were issued to the Opposite Party No. 2/complainant in this case. After notice, the Court came to know that the Opposite Party No. 2/complainant had died. On 04.11.2008, time was granted to file a substitution petition, which was not filed, as a result of which, by order dated 11.12.2008, this application stood dismissed as against Opposite Party No. 2/complainant and proceeded only against the State of Bihar.

3. Since, this case involves a dispute with respect to a business transaction involving settlement of accounts/refund of money, in my opinion, the heirs of Opposite Party No. 2/complainant are necessary party in the case and the Court below will have to consider this aspect if an application is filed by the heirs of Opposite Party No. 2/complainant.

4. The complainant had retired from Government service and entered into an agreement that the petitioner Padamchand Gupta, the Director of Raj Laxmi Commodities Pvt. Ltd. having its Office at Naya Bazar, Delhi. The allegation is that the complainant advanced a sum of Rs. 4,00,000/- as security. The petitioner was to issue him a code number by which the complainant could trade in the commodities concerned. It is alleged that the code number was not issued and as such the complainant approached the petitioner to return the security

amount and also sent him a legal notice for the return of the said security amount, but the same was not paid to the complainant.

5. Learned Counsel for the petitioner submits that the case is of a civil nature arising out of a business transaction and the sale & purchase of the commodities are subject to market risk. It is submitted that Code Number being N-23 was issued to the complainant and he traded in the said goods, however, when he failed, the present case has been filed demanding the security amount. Several documents have been annexed to this application. These documents, however, cannot be looked into by the Court at the stage of taking cognizance or for the purposes of quashing the cognizance order u/s 482 of the Code of Criminal Procedure.

6. Learned Counsel relies on a decision in the case of Indian Oil Corporation Vs. NEPC India Ltd. and Others, . He points out that infact in similar circumstances, the Court has quashed the proceeding. On perusal of the above judgment, I find that the Apex Court infact did not quash the proceeding on the ground that a money suit in which a prayer for temporary injunction had been filed by the petitioner, as the Apex Court found that the defenses that were available to the appellants before the Supreme Court would be considered at the time of trial. The Apex Court infact on facts did not find that a case is made out u/s 378, 403 & 405 of the Indian Penal Code, but found that a case is made out under Sections 415 and 425 of the Indian Penal Code and quashed only part of the proceeding.

7. In the present case, at this stage this Court cannot conclude that Section 406 of the Indian Penal Code is not applicable in the facts of this case and as such this application is dismissed.

