

(2004) 09 PAT CK 0111

In the Patna High Court

Case No : Criminal Miscellaneous No. 26534 of 2003

Patliputra Builders Pvt. Ltd. and Another

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 21-09-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 406, 420

Citation : (2005) 1 PLJR 89

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Aftab Alam, J.—Heard Mr. Ashwani Kumar Singh, counsel appearing for the petitioners and Mr. Ramesh Pd. Singh, counsel representing the complainant-Opposite party No. 2. Petitioner No. 1 is a company engaged in the business of construction which is represented through one of its Director, who joins this case separately and independently as petitioner No. 2. The petitioners seek quashing of an order dated 26.2.2002 passed by the Judicial Magistrate, 1st Class, Patna, in case No. 1107(c)/ 2001/T.R. No. 1029 of 2002. By the impugned order, passed on the basis of a complaint filed by the Opposite party No. 2, the learned Magistrate took cognizance of the offences under sections 406, 420 and 120-B of the Indian Penal Code and summoned the accused-petitioners for facing trial.

2. The complainant-opposite party No. 2 along with his two brothers is the owner of a piece of land in respect of which he entered into a development agreement with the petitioners. The matter apparently relates to the breach of the terms of the development agreement.

3. The complaint petition was placed before the court in detail. The complaint refers to the various terms of the development agreement and supplementary agreement between the parties. It is alleged that the accused-petitioners did not construct the apartment building as per the standards stipulated in the

agreement. They gave the flats, falling in the share of the owners, to the complainant and his two brothers in an incomplete condition. At that stage, the parties entered into a supplementary agreement but the accused-petitioners, violated the terms of the supplementary agreement also. There was also much delay and the construction schedule was not adhered to but the accused petitioners did not pay to the complainant the amount of damage at the rate of Rs. 40,000/- per month as stipulated in the supplementary agreement.

4. On going through the complaint petition, it appears that it is a pure and simple case of breach of agreement, giving rise to civil liabilities and on the basis of the allegations made in the complaint it is difficult to make out a case u/s 420 much less u/s 406 of the Penal Code.

5. The Court specifically asked Mr. Ramesh Prasad Singh, counsel for the opposite party No. 2 as to which allegation(s) in the complaint would give rise to the offences of which cognizance was taken by the learned Magistrate. In reply, Mr. Singh relied upon paragraph 25 of the complaint, which in Hindi, reads as follows:

6. The allegations made in the above extract from the complaint and relied upon by Mr. Singh, clearly indicate a breach of the terms of the contract between the parties but it is difficult to read in those statements any case of cheating, much less of misappropriation.

7. On hearing counsel for the parties and on going through the complaint and other materials on record, the Court, is satisfied that the complaint does not give rise to a criminal liability against the accused-petitioners and does not make out an offence for which they may be punished by a Criminal Court. The cognizance order, therefore, is clearly misconceived, bad and illegal. The cognizance order and the resultant proceedings are accordingly quashed. This quashing petition is allowed.