(2003) 07 PAT CK 0050

In the Patna High Court

Case No : Criminal Miscellaneous No. 33850 of 2002

Pawan Kumar Poddar APPELLANT

Vs

State of Bihar and Another RESPONDENT

Date of Decision : 18-07-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2003) 3 PLJR 650

Hon'ble Judges : M.L. Visa, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.L. Visa, J.—This application by Petitioner has been filed for cancellation of bail of opposite party No. 2 granted by Chief Judicial Magistrate, Patna by his order dated 8.11.2001 in Gandhi Maidan Police Station Case No. 301 of 2001 under Sections 420 and 406, Indian Penal Code (In short ''I.P.C.'') and Section 138, Negotiable Instruments Act (In short ''N.I. Act'').

2. The case of Petitioner, in short, is that he had filed a complaint case before Chief Judicial Magistrate, Patna which was numbered as complaint case No. 2022 of 2001 and on the order passed by the learned Chief Judicial Magistrate, Patna u/s 156(3), Code of Criminal Procedure, Gandhi Maidan Police Station Case No. 301 of 2001 under Sections 406 and 420, I.P.C. and Section 138, N.I. Act was registered. Opposite party No. 2 is cousin brother-in-law of Petitioner and is Director of Nirman Re-rollers Private Limited, Bihta and he took the Petitioner into confidence and persuaded him to invest in his business for sharing him good profit and also for the Directorship of factory and the Petitioner, on the assurance of opposite party No. 2, paid him a sum of Rs. 73,36,473/- for investment in his factory through drafts and cheques and after receiving the money, opposite party No. 2 started evading the Petitioner inspite of repeated requested of Petitioner

for making him Director of Nirman Re-rollers Private Limited, Bihta and when Petitioner started enquiry about the conduct of opposite party No. 2, he came to know that opposite party No. 2 has played fraud to him and his factory was closed. The Petitioner demanded back his money and after great persuasion, opposite party No. 2 gave him cheque of Rs. 73,36,473/- dated 10.5.2001 and when the Petitioner deposited the cheque for encashment on 4.9.2001, the same was bounced. Petitioner sent a legal notice to opposite party No. 2 about bouncing of cheque but inspite of receipt of notice, opposite party No. 2 did not make any payment compelling the Petitioner to file case against him (Annexure-1) and opposite party No. 2 was arrested and was remanded to jail custody and subsequently compromise agreement dated 7.11.2001 was reached between the parties in which opposite party No. 2 was required to pay the admitted amount of Rs. 73,36,473/- to Petitioner in the manner as stated in Clause (g) of compromise agreement according to which opposite party No. 2 was required to transfer some immovable property in the name of Petitioner and on the basis of this compromise, opposite party No. 2 was granted bail. Subsequently, a supplementary compromise agreement making some amendments in clause-(g) of original agreement was filed. The case of Petitioner in that after release of opposite party No. zj on bail, he did not fulfil the terms of the compromise agreement and opposite party No. 2 sent a legal notice to Petitioner making false allegation that the Petitioner was handed over some cheques dated 20.02.2002 but, thereafter, on 25.06.2002 he was paid entire amount of those cheques cash and pay order but inspite of it Petitioner presented those cheques before bank for payment. Petitioner sent reply tc the legal notice making it clear that payment received by him on 25.06.2002 through cash and pay order was made on behalf of Ravi Enterprises and not in lieu of the cheques which were given to him as for supplementary compromise agreement and he was again requested to honour the compromise agreement but opposite party No. 2, instead of honouring the agreement, sent a notice through his lawyer to Petitioner repeating the same allegation which he had levelled against the Petitioner in his first notice. The case of Petitioner is that opposite party No. 2 got bail on the basis of compromise agreement but he has not fulfilled the terms of compromise. Petitioner was prayed for cancellation of bail of opposite party No. 2.

3. Opposite party No. 2 has appeared and has filed counter-affidavit stating therein that Petitioner, who is his distant relation, developed intimacy with him and started making interest in the work of company of opposite party No. 2 and he took charge of post of the work of the company and opposite party No. 2 gave him some blank cheque for the work of his business and Petitioner by filling such blank cheques for Rs. 73,36,473/- presented it before the bank and got it dishonoured and, therefore, filed a case against opposite party No. 2 in which opposite party No. 2 was arrested and remanded to jail custody and was compelled his father to enter into a compromise with the Petitioner under pressure but inspite of all these facts, all the forms of compromise agreement

dated 7 1.2001 have been fulfilled by the father of opposite party No. 2 but inspite of it, Petitioner has his greedy eyes on the property of opposite party No. 2 and in order to put on him more pressure, has filed the application under consideration.

4. The impugned order shows that on 08.11.2001 when petition for bail of opposite party No. 2 was taken for consideration by the Court below, it was submitted on his behalf that matter between the parties had already been compromised and a compromise petition had already been filed. The impugned order further shows that Petitioner on that day was present in Court and he, accepting the plea of opposite party No. 2 of compromise between the parties, did not oppose the prayer of opposite party No. 3. Learned Counsel for the Petitioner has admitted that so far terms No. (g)(i)(ii)(iv) which are in respect of transfer of title of property at Patliputra Industrial Area on which M/s Ravi Industries was situated, for transfer of property of office No. 701 situated at Ashiana Chambers, Exhibition Road, Patna in the name of Sushma Kumari Khemka, sister of opposite party No. 2 and Smt. Meera Devi Khemka and payment of a sum of Rs. 11,50,000/- by pay order have been complied with but the remaining terms have not been complied. Only grievance of Petitioner is that because opposite party No. 2 has not complied the entire terms of agreement of compromise and he is not honouring the agreement and, therefore, he has clearly played fraud on the Court of Chief Judicial Magistrate, Patna. The further case of Petitioner is that the intention of opposite party No. 2. for accepting compromise agreement was to take bail from the Court. I am unable to accept this argument made on behalf of the Petitioner because had the opposite party No. 2 any intention to play fraud, he would not have accepted the term which is mentioned as (g)(iv) that on signing the compromise agreement, Petitioner would be paid a sum of Rs. 11,50,000/- by father of opposite party No. 2. It is the own case of Petitioner that some of the terms of compromise have already been complied with. The case of opposite party No. 2 is that Petitioner has already received a sum of Rs. 26,00,000/- in compliance of terms (g)(i) of the compromise agreement and learned Counsel for the Petitioner has also accepted the fact that this term of compromise has already been complied with.

5. After considering the cases of both the parties and hearing arguments advanced on their behalf, it is clear that the dispute is only on the point of non-compliance of some of the terms of agreement because the case of Petitioner is that those terms have not been complied with whereas case of opposite party No. 2 is that he has complied all those terms. The Petitioner has not come up with any ground that opposite party No. 2 is in any way misusing the privilege of bail.

6. I, therefore, find that there is no merit in the application of Petitioner which is, accordingly, dismissed.