
(2012) 04 PAT CK 0106

In the Patna High Court

Case No : Criminal Miscellaneous No. 3576 of 2009

P.N. Choudhary and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 05-04-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 420

Citation : (2012) 3 PLJR 892

Hon'ble Judges : Anjana Prakash, J

Bench : Single Bench

Advocate : Sanjeet Kumar, Dhananjay Kumar, for the Appellant; Nawal Kishore Singh, for the Respondent

Final Decision : Allowed

Judgement

Anjana Prakash, J.—The Petitioners seek quashing of the entire proceeding including the order dated 16.12.2008 passed in Complaint Case No. 1504 (C) of 2008 by which the Judicial Magistrate, 1st Class, Patna has taken cognizance u/s 420 IPC. The case of the Complainant is that he was a General Power of Attorney holder of Sri Puspa Dekka, Lothia Bagaicha, Amin Gaon, Kamrup (Assam). He alleged that in response to Tender Notice No. 1 of 2006-2007 (Open) of East Central Railways (Construction Department) he submitted an application for contract on 13.9.2006 with a bid of Rs. 1,11,04,923.17/- (Rs. One Crore Eleven Lac Four Thousand Nine Hundred Twenty Three and Paise Seventeen Only) which was found most suitable and accordingly his tender offer was accepted. In January, 2007 the Petitioner No. 1 called the Complainant where the Petitioners No. 2 and 3 were also present. They demanded a sum of Rs. 11.5 Lakhs for finalization of the contract and the Petitioner No. 1 promised that he would give a receipt in token of the money. The Complainant thereafter paid the money in presence of B.S. Banga and K.K. Talreja Petitioners No. 2 and 3 on account of which a false work order was issued from the Office of K.K. Talreja, Petitioner No. 3 but the amount deposited by him was not disclosed in the work order nor was

its receipt granted to him. A legal notice was thereafter served upon the Petitioners but they did not reply to the same and hence the Complaint on the belief that the accused persons had jointly cheated him and misappropriated the amount by refusing to return it nor give a receipt in its regard.

2. It has been submitted on behalf of the Petitioners that at the relevant time the Petitioner No. 1 was working as senior AFA-III (Const), Petitioner No. 2 was working as Chief Engineer (Const) North Zone whereas Petitioner No. 3 was working as Deputy Chief Engineer (Const)/Br./East Central Railway at Patna.

3. The facts of the case according to the Petitioners is that while they were discharging their official duties Tender Notice No. 1 of 2006-2007 was issued for construction of staff quarters which was opened on 13.9.2006. The Petitioners were members of the Tender Committee for evaluation of tender forms and they after due deliberation on 5.2.2007 recommended award of contract to Sri Puspa Dekka, Lothia Bagaicha, Amin Gaon, Kamrup (Assam).

4. On 6.2.2007 the aforesaid tenderer was informed of the acceptance of his bid on certain terms, conditions and stipulations. Important clauses of which are reproduced below:--

(4) This letter of acceptance will form a binding contract between you and Railway administration till formal agreement is executed and signed by you and Railway Administration, after which this will merge into the formal agreement.

(5) You have submitted along with tender document Earnest Money amounting to Rs. 2.30.000.00 vide MBD Scheme no. 031969 dated 11/09/06 on PNR Jalalpur (Patna) Bihar.

(Emphasis mine)

(6) You will have to submit a performance Guarantee in the form of bank guarantee amounting to Rs. 555246.16 (Rs. Five lakh fifty five thousand two hundred forty six and paise sixteen only) in favour of FA&CAO/Con/ECR as security deposit in token of commitment to complete the work successfully. The performance guarantee should be submitted before the execution of agreement.

5. On 27.4.2007 a letter was written by the authorized representative of the firm to Deputy Chief Engineer stating therein that in connection with Tender Notice No. 1 of 2006-2007, location had not been allocated to him therefore they could not start work.

6. However, the Construction Department of East Central Railway issued a reminder dated 22.5.2007 to the firm that it had failed to furnish the performance guarantee in absence of which the work agreement could not be executed and was requested to proceed in accordance with the terms of the contract within 15 days failing which further action as provided in the general condition of the contract would be taken.

In this connection you were also intimated that in absence of PG the agreement

for the above work cannot be executed.

In spite of our several request neither you have submitted the PG nor started the work.

Hence you are once again requested to submit the required B.G. Bond as well as start the work immediately with prior intimation to AEN/Con/Patna, failing which necessary action as per G.C.C. will be taken.

7. Yet another letter was issued by the Department on 20.8.2007 giving it 7 days notice in accordance with General Condition of Contract reproduced below:--

Vide letter reference above you were requested to submit a performance Guarantee of a value of 5% of contract value i.e. for Rs. 5,55,246/- in the form of irrevocable Bank Guarantee, which should be submitted within 15-days of issuing the acceptance letter but till date neither you have reported to this office nor submitted the Bank Guarantee. Due to that the contract agreement cannot be prepared and get approved from account.

2. Under sign (sic) have tried various time (sic) for contact with you on mobile but no response received from yours (sic) side, which shows you are not interested to do the work with E.C. Railway within this contract.

3. The validity period of this contract agreement is 11 months from date of issue of acceptance letter and upto date 06-months already have been passed without any work at site.

4. "As you have failed to abide by the instructions issued to commence the work, you are hereby given 7 days Notice in accordance with Clause 62 General Condition of Contract to make good the progress failing which further action as provided in Clause 62 of the General Condition of Contract viz. to terminate your contract and complete the work at your risk and cost will be taken."

8. Since there was no reply from the firm the last letter with similar notice was issued on 16.9.2007 giving 48 hours for deposit of the performance guarantee as provided in Clause 62 the general condition.

9. As the firm failed to comply with the said condition, the Construction Department finally issued letter dated 9.10.2007 rescinding the contract on account of its failure to submit the performance guarantee within 15 days of issuing the acceptance letter due to which the contract agreement could not be prepared and got approved.

10. It has been submitted on behalf of the Petitioners that the documented procedure adopted by the Tender Committee annexed herewith reveals the true picture and the present Complaint is fictitious and malicious, having been filed, to wreak vengeance on the Petitioners who were part of the Tender Committee since they remained unbending in the requirement of payment of performance guarantee before issuance of a contract agreement. The second submission of the Petitioners is that the Complainant was authorized through a Power of

Attorney by the firm only to the extent of submitting and signing the tender papers as is evident from Annexure-5 and had no authority to institute the present Complaint, in these circumstances, the Petitioners pray that the Complaint be set aside.

11. Contesting the arguments advanced on behalf of the Petitioners, Counsel for the Complainant submits that in the facts of the case since the accused persons received a sum of Rs. 11.50 Lakhs and failed to give him a receipt in its token, as also to record it in the contract they have committed criminal breach of trust. The further submission is that Annexure-6 which is a letter dated 27.4.2007 written by him to the Railways shows that it was only in absence of non-allotment of area that the work could not progress satisfactorily and thus the claim of the Petitioners that the contract had not been awarded to the Complainant for non-payment of Performance Guarantee was erroneous.

12. Heard the parties at length and perused the documents. It is noteworthy, that the authenticity of the documents annexed by the Petitioners have not been denied by the Complainant and thus, they, being in the nature of unimpeachable materials, are being relied upon by this Court for deciding this case. On its consideration, the indisputable position is, that concealing all of the above, the Complaint was filed giving a totally different twist to the tale. Now, a doubt has been created in the mind of the Court with regard to the veracity of the Complaint and hence this Court would think it wise to approach the Complaint cautiously and with a higher degree of circumspection.

13. On a fair evaluation of the Complaint, the core allegations against the Petitioners are of accepting Rs. 11.50 Lakhs from the Complainant but neither mentioning it in the Work Order nor granting a receipt in its regard.

14. The Complainant has not mentioned the exact date or details of the mode of payment to the accused nor its purpose. It is difficult for a person of ordinary prudence to accept that the Complainant would have paid a huge amount of Rs. 11.50 Lakhs without any specific reason. If it was illegal gratification, the Complainant is equally culpable. If it was not, but a part of the legal deal, he was required to give exact details of the transaction instead of levelling vague allegations shorn of necessary details.

15. In its absence the Court is left with no option but to speculate on such important issues which have the ability to turn and decide the fate of the case. This Court will therefore attempt to reconstruct a recognizable picture from the truncated pieces of inputs received from the parties to enable itself to decide the case.

16. Admittedly the Work order/letter of acceptance was issued on 6.2.2007 whereas he had allegedly paid the Accused in January, 2007. Thus, the Complainant had knowledge ever since 6.2.2007 that the accused had failed to mention receipt of Rs. 11.50 Lakhs in the Work Order, which stood rescinded on 9.10.2007 yet the Complaint has been filed on 26.5.2008 i.e. more than 15 and

7 months later respectively.

17. This Court does not wish to lay down some kind of a general sweeping principle of law that all belated Complaints are false. Nevertheless, in some situations it assumes such importance that it completely overtakes the decision making process and the Court is compelled to view it with great seriousness.

18. Apart from the above, the conduct of the Complainant also raises a reasonable suspicion about the veracity of the allegations. The documents admitted by him reveals that he had communicated with the authorities on 27.4.2007 i.e. about three months after the issuance of Work Order showing his inability to carry out the work on account of non-allotment of location to him, but he raised no grievance about the non-mention of Rs. 11.5 Lakhs but only Rs. 2,30,000/- in clause 5 of the Work Order. The interesting thing is that even though thereafter several reminders were issued to the Complainant by the Railways which he duly received insisting on payment of Rs. 5,55,246.00/- as Performance Guarantee, which was less than half of the figure allegedly paid by him to the accused, not once did the Complainant retort or stake a claim that he had already paid much in excess of the demanded figure and, therefore, the notices for the deposit of performance guarantee were untenable.

19. Also, in the intervening notice period or till the filing of the Complaint the complainant never addressed himself to any authority in the Railways bringing to their notice the illegal conduct of the Petitioners who were Government Officials.

20. This leads one to inevitably conclude that on the face of it the Complaint is vengeful having been filed to harass the Tender Committee Members for the failed commercial transaction.

21. In my view, for the foregoing reasons the case is thus squarely covered by a decision of State of Haryana and others Vs. Ch. Bhajan Lal and others, wherein the Hon"ble Supreme Court had enumerated certain illustrative circumstances when Courts should exercise its inherent jurisdiction to quash criminal proceedings one of them being;

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and. personal grudge.

22. I am here reminded of the comment of Francis Bacon, the English Philosopher, essayist and lawyer "Revenge is a kind of wild justice, which the more man"s nature runs to, the more ought law to weed it out".

23. Once this Court has viewed and evaluated the intent of the Complaint unfavourably this Court feels that there is no further requirement for a discussion as to whether in the facts of the case any offence is made out against the accused persons.

24. After due deliberation, I am convinced that the Complainant, by filing the Complaint, has not only vent his ire on the accused but he has also misused the Courts' machinery to fulfill his own nefarious designs. Increase in dockets of Courts no doubt demonstrate faith in the Judicial System, but then, easy access to Courts should not give liberty to a shrewd, calculating and unscrupulous litigant to control the proceedings of the Court to such an extent that the rest of the players are rendered helpless tools in his hands. And hence in these circumstances, this Court proceeds, not only to quash the entire proceeding including the order dated 16.12.2008 passed in Complaint Case No. 1504(C) of 2008 by the Judicial Magistrate, 1st Class, Patna but also directs the Complainant to deposit cost of Rs. 15,000/- payable to the District Legal Aid Committee Patna within four weeks of the receipt of this order, in the Courts below, for having misused the process of the Court. The Court below shall proceed to realize the penalty amount as provided in law. The application stands allowed with the aforesaid observations.