(2023) 10 PAT CK 0024

In the Patna High Court

Case No : Criminal Miscellaneous No. 87202 Of 2019

Polimetala Ravi Prasad @ Ravi Prasad — APPELLANT

Vs

State Of Bihar — RESPONDENT

Date of Decision : 09-10-2023

Acts Referred:

Negotiable Instrument Act, 1881 — Section 138, 142
Indian Penal Code, 1860 — Section 120B, 307, 341, 406, 420, 504, 506

Citation : (2023) 10 PAT CK 0024

Hon'ble Judges : Satyavrat Verma, J

Bench : Single Bench

Advocate : Anand Kumar Ojha, Amit Kumar Rakesh

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioners and learned A.P.P. for the State.

2. Learned counsel for the petitioners submits that in compliance of the order dated 01.12.2022, notices were issued on the opposite party no. 2 by both modes. It is further submitted that in compliance of the order dated 01.12.2022, the notices were filed in time but from the office report, it manifests that the same records that the opposite party no. 2 does not live at the given address.

3. Learned counsel for the petitioners submits that it absolutely does not stand to reason that the opposite party no. 2, who claims to be the Director of M/s Millennium Infra & Reality Projects Pvt. Ltd., in the FIR has given his address as mentioned in this application but still the service report records that he does not live at the given address which amply demonstrates that he is trying to evade the notice, as such, the notice be deemed to be accepted as validly served. It is further submitted that since the present application has been filed for quashing of the FIR in which it is the duty of the State to prosecute the accused persons, as such, the opposite party no. 2, for the present, is not even a necessary party.

4. Considering the submissions made by the learned counsel for the petitioners,

the notice is deemed to be validly served.

5. It is submitted that the informant alleges that he is the Director of M/s Millennium Infra & Reality Projects Pvt. Ltd. Further, the company of the informant entered into an agreement dated 23.10.2018 with M/s Aqua Design India Pvt. Ltd. in Joint Venture with Ramky Infrastructure Ltd. It is further alleged that under the agreement dated 23.10.2018, the company of the informant was allotted work worth 49% of the project allotted to Joint Venture which comes to Rs.30,39,76,043/-. It is next alleged that the informant continued with the work but payment was not being made and whenever the informant approached M/s Aqua Design India Pvt. Ltd. in Joint Venture with Ramky Infrastructure Ltd., the issue of payment was sidelined. It is alleged that after sometimes, three cheques bearing no. (1) 454083, dated 16.02.2019 for Rs.1,06,04,950/-, (2) 454082, dated 02.05.2019 for Rs.2,77,86,955/-and (3) 454084, dated 13.05.2019 for Rs.1,97,75,955/- were issued by M/s Aqua Design India Pvt. Ltd. in Joint Venture with Ramky Infrastructure Ltd. It is further alleged that the informant met the Regional Officials of Aqua Ramky (Joint Venture) who assured that the Joint Venture Official will come to Gaya within a month and thereafter payment would be made but despite passage of one month the payments were not made, hence, the informant again met the Regional Official of Joint Venture at Gaya in their office but nothing concrete came out rather one Sai Ram Prasad, Project Manager, Ramky talked to Ravi Prasad, CEO of Ramky about the issue when it is alleged that the CEO gave orders to oust the informant and the officials of his company from the Regional Office premises, thereafter the Project Manager talked to one Rajiv Chatterjee, Head of Account and Finance, Ramky who also gave direction to assault and abuse on which the Project Manager started abusing and also tried to strangulate the informant. Further, the Project Manager asked them never to come to the Regional Office at Gaya rather to go to Hyderabad for settling the account, thus, alleges that the accused persons after issuing the cheque did not get it encashed, thus, cheated him and even tried to kill and threatened him.

6. Learned counsel for the petitioners submits that from bare perusal of the allegation as alleged in the FIR, it would manifest that prima facie, no offence is made out. It is further submitted that the law is well settled that with respect to the offence under Section 138 of the Negotiable Instrument Act an FIR cannot be instituted, rather a complaint is maintainable in terms of Section 142 of the Negotiable Instrument Act, 1881 and for the said proposition relies on the case of Hemant Kumar Das & Anr. Vs. The State of Bihar reported in 2018(4) PLJR 725. It is next submitted that from bare reading of the FIR, it manifests that three cheques were issued in favour of the informant but then the informant does not even remotely suggest that the cheques were presented for encashment and it bounced rather what he alleges is that he tried to get the account settled but he was abused and threatened and, thus, the petitioners cheated him by issuing the cheque but not getting it encashed. Learned counsel, thus, submits that it absolutely does not stand to reason that as to on what basis

an FIR came to be instituted under Section 138 of the Negotiable Instrument Act when the cheques were not even presented for encashment. It is further submitted that an offence under Section 138 of the Negotiable Instrument Act is made out only when the cheque issued in terms of the Negotiable Instrument Act, 1881 bounces after presentation for encashment and thereafter the procedure as envisaged under the Negotiable Instrument Act is followed then only an offence under Section 138 of the Negotiable Instrument Act is said to have been committed.

7. Learned counsel for the petitioners submits that from bare perusal of the allegation as alleged in the FIR, it would manifest that M/s Aqua Design India Pvt. Ltd. had entered into Joint Venture with Ramky Infrastructure Ltd. of which the petitioner no. 1 is working as Head of the Operation of the Company, the petitioner no. 2 is the Deputy General Manager, Projects and petitioner no. 3 is working as Assistant General Manager, Projects in the Company and the Joint Venture was allotted certain work by BUIDCO and M/s Aqua Design India Pvt. Ltd. being one of the partners of the Joint Venture had entered into an agreement with the informant for completing certain works as detailed in the FIR. It is, thus, submitted that the dispute was purely civil to which a criminal colour has been given. It is submitted that if the informant was aggrieved by the conduct of the petitioners in that event he ought to have instituted complaint case on the allegation that the cheques which were issued bounced on presentation for encashment.

8. Learned counsel for the petitioners next submits that specifically in this application a ground has been taken that the cheques issued were issued under the signature of the Director, M/s Aqua Design India Pvt. Ltd. who absolutely had no authority or jurisdiction to issue cheque as by that time M/s Aqua Design India Pvt. Ltd. had gone under liquidation and the NCLT, Chennai by order dated 17.10.2018 (Annexure-2 to this application) on application of the Bank of India had imposed moratorium and had also issued an order for appointment of IRP and these facts were in the knowledge of the informant but concealing such important facts the FIR came to be instituted. It is submitted, at the cost of repetition, that absolutely civil dispute has been given a criminal colour.

9. Learned counsel next submits that an important fact has been concealed by the informant while instituting the present FIR i.e. the petitioners had presented Cheque No. 454083, dated 16.02.2019 for Rs.1,06,04,950/- for encashment but the same bounced for which he instituted Complaint Case No. 913(C) of 2019 on 19.07.2019 in the Court of learned Chief Judicial Magistrate, Nalanda at Bihar Sharif in which the petitioners have appeared and have taken their objection. It is further submitted that the conduct of the informant in instituting an FIR by concealing relevant material facts disentitles him from seeking any relief, moreso, when an FIR under Section 138 of the Negotiable Instrument Act is not maintainable and rest of the offences under which the FIR has been instituted i.e. under Sections 420 and 406 of the Indian Penal Code is not made out in the

nature of allegation as alleged in the FIR and the allegations under Sections 341, 323, 307, 504, 506 and 120(B) of the Indian Penal Code are ornamental in nature.

10. Learned A.P.P. for the State opposes this application.

11. Considering the submission of the learned counsel for the petitioners, the FIR bearing Rampur P.S. Case No. 435 of 2019, dated 26.11.2019 registered under Sections 420, 406, 341, 323, 307, 504, 506, and 120(B) of the Indian Penal Code as well as Section 138 of the Negotiable Instrument Act, is hereby quashed.

12. Accordingly, this application stands allowed.