
(2008) 01 PAT CK 0124

In the Patna High Court

Case No : Criminal Miscellaneous No. 25004 of 2007

Prasad Kharwadkar and Others

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 31-01-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 120B, 406, 420

Citation : (2008) 56 BLJR 1681 : (2009) 1 PLJR 47

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Suresh Prasad Singh No. I and Vitesh Kumar Singh, for the Appellant; Jharkhandi Upadhyay, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Abhijit Sinha, J.—Four out of the five accused of Malsalami P.S. Case No. 39 of 2004 under Sections 406, 420, 120B I.P.C. and 138 of the Negotiable Instruments Act (hereinafter referred to as "the N.I. Act") have moved this application for quashing of the entire proceedings including the order dated 19.1.2005 whereby warrant of arrest had been directed to be issued against the accused.

2. One Pawan Kumar Choudhary, the complainant impleaded as O.P. No. 2 herein, filed the aforesaid Complaint Case No. CA 303 of 2004 which was referred to the concerned police station u/s 156(3) Cr.P.C. on the basis whereof Malsalami P.S. Case No. 39 of 2004 came to be registered. According to the complainant he is the proprietor of M/S. Shree Shankar Salt Company located in Marufganj, Patna City and carries out business in salts and by virtue thereof he is the stockiest, dealer and supplier of high grade iodized edible salts and other kinds of salts which is used in chemicals. It is alleged that on 10.4.2003 at about 3 P.M., accused Nos. 3 and 4, Ashok Singh and R.P. Singh, respectively came to

the shop of the complainant and introduced themselves as Manager-cum-Production Incharge and Marketing Manager of M/S. Prakash Gram Udyog having its company at Kanpur (U.P.) which runs the office in the name and style of M/S. Carona Plus Industries Limited, the Managing Director whereof was Mr. Prasad Kharwarkar and Prakash Gram Udyog was the sister concern of Carona Industries Private Limited. The two visitors assured to give good business and invited him to enter into a business with Prakash Gram Udyog and also assured of high profit in business. Being satisfied with their assurance the complainant in good faith promised to send consignment of salt to their branch office at Hajipur and accordingly on 7.6.2003 accused No. 5 placed a heavy order of salt amounting to Rs. 614508.25 from the Kanpur Office for their sister concern at Hajipur and promised to clear the payment within one month of receiving the consignment. The complainant is said to have delivered the goods at Hajipur by different bills, the details whereof have been furnished. It is said that there were earlier dues also amounting to Rs. 7326/-. It is alleged that after receiving the consignment the accused persons did not send any payment and on reminder a payment of Rs. 1.5 lacs was received through cheque drawn on H.D.F.C. Bank and by another cheque another sum of Rs. 1 lac was received. Then again on 6.2.2004, a third cheque for Rs. 1 lac was received but due to insufficient funds the cheque bounced on 14.2.2004. It is said that a letter by fax was sent on 20.2.2004 informing the accused about the bouncing of the cheque and a demand was made for payment. On 27.2.2004, the complainant sent a lawyer's notice to the accused persons on receipt whereof a demand draft for Rs. 1 lac was sent to the complainant. It is further alleged that on 27.3.2004, he sent another lawyer's notice claiming payment for rent amount which allegedly had not been paid by the accused persons and when he went to Hajipur to enquire into the matter he found the office locked and on inquiry he came to know from the local people that the factory had been closed for about a month. The complainant claims to have tried to contact the Managing Director of Carona Plus who refused to make payment of the rest amount which was to the tune of Rs. 2,71, 834.25/-. On the aforesaid premise, it was alleged that the accused persons having entered into a conspiracy wanted to cheat the complainant.

3. It has been submitted by the learned Counsel for the petitioner that after the cheque worth Rs. 1 lac had bounced on 14.2.2004 and on the request being made by the complainant the entire amount had been paid through a demand draft dated 12.3.2004 and as such the petitioner could not be made liable for an offence u/s 138 of the N.I. Act and the learned Magistrate had completely ignored this aspect of the matter. It has also been submitted that the petitioners are innocent and have been falsely implicated in this case through a concocted story only with a motive of harassing the petitioner and extorting money.

4. It has also been submitted that no offence either under Sections 406, 420 or 120B I.P.C. can be said to have been made out against the petitioners since the entire amount for the consignment supplied by the complainant had been paid and even otherwise the entire transaction amounted to a business transaction

and dispute arising out of business transaction or breach of contract could be resolved only by seeking the remedy on the civil side and the criminal prosecution of the petitioners is unwarranted and not sustainable in the eye of law. It has also been submitted that even if the submissions of the complainant regarding non payment of rent amount is to be believed the same amounts to a matter of recovery of money for which criminal prosecution is not maintainable.

5. The learned Counsel sought to point out that in the face of such discrepancies where no case of criminal liability is made out, the learned Magistrate had acted mechanically and directed for issuance of warrant of arrest which in all circumstances would amount to an abuse of the process of the court.

6. As stated above, the complainant, O.P. No. 2, though validly served with notice, has not appeared to contest the application and as such the submissions advanced by the learned Counsel for the petitioners remain unrebutted.

7. I find sufficient force in the submissions advanced by the learned Counsel for the petitioners inasmuch as none of the offences under the Penal Code or the N.I. Act are made out from the averments made in the complaint petition and I see no reason which prompted the learned Magistrate to issue warrant of arrest against the petitioners. The said order as also the criminal prosecution of the petitioners cannot be sustained in the eye of law as the same happens to be an abuse of the process of the court.

8. Accordingly, the entire criminal proceedings including the order directing issuance of warrant of arrest is hereby quashed and the application is allowed.