

(2011) 11 PAT CK 0008

In the Patna High Court

Case No : Criminal Miscellaneous No. 11897 of 2008

R. Srinivashan

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 30-11-2011

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 406

Citation : (2012) 3 PLJR 728

Hon'ble Judges : Mandhata Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mandhata Singh, J.—This application has been filed for quashing the order of cognizance dated 13.12.2004 taken u/s 406 IPC and Section 138 of N.I. Act by Sri Manoj Kumar, Judicial Magistrate, 1st Class, Patna in Complaint Case No. 1852 (C) of 2004 against the petitioner. Heard counsel for the parties.

2. Submission on behalf of petitioner is that even after taking into consideration averment made in the complaint petition no offence is made out. In that context, going through the averment made in the complaint petition needs its consideration which in short is that the complainant was one of the stockists of the Company operating as such from June, 2001 onwards in the area of Patna in name and style of M/s Rashmi Agency. The Company decided to extend its business in each part of Bihar. Allegation/averment is that the Company namely M/s Lissome Cosmetics Pvt. Limited did not fulfill the grievances of the stockists which was sent to it through registered letter dated 25.1.2003 to the Managing Director for its redressal but there was no reimbursement resulting disturbance and suffering to complainant's agency. It is further alleged that on mutual understanding a cheque of Rs. 12,972/- was issued in favour of complainant on 5.3.2003 by another stockist namely Piyush Kishore of Muzaffarpur which stood dishonoured on 13.3.2003.

3. It is made clear on behalf of the petitioner that there was no agreement by petitioner for any of the terms and conditions with the complainant rather Regional Director was there to deal with the local agent. Complainant himself was unable to run his business, act of the Company or the petitioner is not shown fraudulent intention for dishonour of cheque.

4. After going through the averment it appears to me also that complainant himself is not clear about his grievance, no doubt a cheque is issued in his favour but by another stockist which is submitted that was the price of stocks to be supplied to it which is bounced. In any case, if the same was liability of the Company then also an offence u/s 138 of N.I. Act is made out for filing a case for the same, notice was needed to be served upon the person issued the cheque and within stipulated period, complaint should be lodged which has not been done in the case.

5. Learned counsel for the complainant also failed to point out the relevant portion of the complaint petition fixing liability on the Company or the petitioner for constituting any offence. So a cognizance order and prosecution is not liable to remain sustained. The application is allowed and order of cognizance dated 13.12.2004 passed by Judicial Magistrate, 1st Class, Patna in Complaint Case No. 1852 (C) of 2004 is hereby quashed.