

(2010) 08 PAT CK 0109
In the Patna High Court

Radha Shankar Sharma, Proprietor Assam Timber APPELLANT
Vs

State of Bihar and Bihar State Khadi and Village, Industries RESPONDENT
Board

Date of Decision : 09-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2010) 08 PAT CK 0109

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar, J.—The sole petitioner, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, has prayed for quashing of an order dated 29.2.1996 passed in Complaint Case No. 198(M) of 1996. By the said order, the learned Magistrate has taken cognizance of offences under Sections 420 and 406 of the Indian Penal Code.

2. Short fact of the case is that a complaint was filed by the Bihar State Khadi and Village Industries Board (hereinafter referred to as "Khadi Board"), a government of Bihar concern, Gandhi Maidan, Patna through its Development Officer in the court of Chief Judicial Magistrate, Patna, which was registered as Complaint Case No. 198(M) of 1996. In the complaint petition it was alleged that the petitioner had participated in a tender invited by Khadi Board for supply of Italian Bee Keeping Boxes made of seasoned Toon wood/Seasam wood and since the petitioner was lowest bidder and he had quoted rate of boxes as Rs. 450/ each, his tender was accepted. Subsequently, an advance of Rs. 1,50,000/-, on the request of the petitioner, was sanctioned and disbursed to the petitioner. It was alleged in the complaint petition that despite Rs. 1,50,000/- was received by the petitioner, neither he supplied Bee Keeping Boxes nor he refunded the advance amount and, as such, it was alleged that the petitioner has cheated the

Khadi Board officials. Since it was an official complaint the learned Magistrate on 29.2.1996 took cognizance of the offences under Sections 420 and 406 of the Indian Penal Code and directed for summoning the petitioner.

3. Aggrieved with the order of cognizance, the petitioner approached this Court by filing a quashing application vide Cr.Misc. No. 6625 of 2000. In the said case interlocutory application vide I.A. No. 326 of 2000 was also filed on behalf of the petitioner. Both, the quashing application and interlocutory application was listed at serial No. 347 in the daily cause list dated 10th and 13th July, 2000. The petitioner, in paragraph-3 of the present petition, has further stated that "there was no likelihood of the case being taken for several weeks but on 13.7.2000 Hon"ble Mr. Justice A.K. Verma, who was in Division Bench with Hon"ble Mr. Justice B.N. Singh "Neelam" but the said Division Bench stood stand over and Hon"ble Mr. Justice A.K. Verma sat singly and the quashing application listed before Mr. Justice Shiv Kriti Singh from serial No. 335 to 384 was notified to be taken up by Hon"ble Mr. Justice A.K. Verma on 13.7.2000". It has been stated that though the case was at serial No. 347 learned Counsel for the petitioner could not see notice and, as such, the petition was dismissed for default by an order dated 13.7.2000 passed by Hon"ble Mr. Justice A.K. Verma. Subsequently, a restoration petition vide Cr.Misc. No. 29041 of 2000 was filed with a prayer to restore Cr.Misc. No. 6625 of 2000 to its original file but the same stood rejected on 31.10.2000. The said order has been brought on record as annexure-1 to the present petition at page-19.

4. Mr. Ashwini Kumar Singh, learned senior counsel appearing on behalf of the petitioner, while challenging the order of cognizance, has tried to impress upon the court that the petitioner never intended to commit any offence but right from the very beginning he was inclined to supply the Bee Keeping Boxes however, the reasons best known to the officials of the Khadi Board, they were raising objection and objection. It was submitted that the petitioner was always ready to supply the same. Learned Counsel for the petitioner has referred to several documents which have been brought on the record by annexing them in the present petition. Learned Counsel has also referred to two letters under the signature of the petitioner and also few letters issued by the officials of the Khadi Board and tried to convince the court that right from the very beginning the petitioner had intended to supply Bee Keeping Boxes and he was not having any dishonest intention. Accordingly, learned Counsel for the petitioner has prayed for quashing of the order of cognizance.

5. In this case Mr. P.N. Pandit, learned Addl. Public Prosecutor appearing on behalf of the State has vehemently opposed the prayer of the petitioner. It was submitted that from the contents of the complaint petition itself it is evident that the petitioner had committed offences under Sections 420 and 406 of the Indian Penal Code. It was further argued that at the initial stage of cognizance in a criminal case this Court should refrain from exercising power u/s 482 of the Code of Criminal Procedure which is to be exercised in exceptional and rare of the

rarest cases.

6. Besides hearing learned Counsel for the petitioner and the State, I have also perused the complaint petition and the impugned order and also few documents. On the basis of materials available on the record, this Court is satisfied that the petitioner has not made out an exceptional case for exercising inherent jurisdiction in his favour and accordingly the petition stands rejected.

7. In view of rejection of the present petition, interim order of stay dated 4.9.2001 stands automatically vacated.

8. Let a copy of this order be sent to the court below forthwith.

9. The court below is directed to proceed with the case expeditiously and conclude the same as early as possible.

10. With the above observation and direction, the petition stands rejected.