
(2007) 12 PAT CK 0035

In the Patna High Court

Case No : Criminal Miscellaneous No. 39817 of 2006

Ram Babu Prasad @ Ram Babu Sah and Kanchan Devi

APPELLANT

Vs

The State of Bihar and Praveen Khanam

RESPONDENT

Date of Decision : 05-12-2007

Acts Referred:

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

Citation : (2008) 56 BLJR 698

Hon'ble Judges : Rekha Kumari, J

Bench : Single Bench

Advocate : N.K. Agrawal, Parul Ranjan and Manish, for the Appellant; Md. Obaidullah and Jharkhandi Upadhyay, for the Respondent

Final Decision : Allowed

Judgement

Rekha Kumari, J.—The petitioners have filed this criminal misc. application for quashing the order dated 6.8.2004 passed by the Judicial Magistrate, 1st Class, Patna in Complaint Case No. 861(c) of 2003 whereby he has taken cognizance u/s 406 of the Indian Penal Code and Section 138 of the Negotiable Instrument Act against the petitioners" and others and has ordered to issue summons against them to face trial. They have also prayed for quashing the order dated 28.6.2005 passed by the Sessions Judge, Patna in Criminal Revision No. 394 of 2005 whereby the revision petition filed by the petitioners against the above order of the Magistrate has been dismissed being barred by limitation.

2. The case of the complainant in short is that co-accused Raj Kishore runs a business in the share market in the name and style of Rajesh Securities. He takes money from the public and invests the same in share and earns commission and the other co-accused including the petitioners help him in business. It is further alleged that petitioner No. 1 induced the complainant to invest money for purchasing share and the complainant on different dates gave money to accused Raj Kishore for investment. It is further said that the

complainant fell in need of money and approached for selling his share and after the sale of his share he approached co-accused Raj Kishore several times but he did not return the money and after much persuasion he ultimately issued two cheques in favour of the complainant amounting to rupees five lacs and assured to pay the remaining amount soon but on presentation of those cheques in Bank they were dishonoured on account of insufficiency of fund. The complainant, hence, gave legal notices to the accused and then co-accused Raj Kishore issued another two cheques and those cheques were also bounced. Hence, this complaint was filed.

3. Learned Counsel for the petitioners submitted that no offence is made out against these petitioners who are father-in-law and wife of the main accused Raj Kishore. There has been no entrustment of money to these petitioners. Hence, important ingredients of criminal breach of trust is lacking. So, no offence u/s 406 of the Indian Penal Code is made out against them. As regards offence u/s 138 of the Negotiation Instrument Act, the cheques were drawn by co-accused Raj Kishore and so the petitioner cannot be held liable for this offence.

4. Learned Counsel for Opposite Party No. 2 defended the order and submitted that on the inducement of all the accused including the petitioner money was paid to co-accused. So, all are liable.

5. After considering the rival contentions made on behalf of both the parties. I also find that since there was no entrustment of money to either of the two petitioners, hence, there is no question of criminal breach of trust. Similarly, cheques had not been issued by these petitioners. So, no offence u/s 138 of the Negotiable Instrument Act was committed by them. As regards inducement to invest money, there is no allegation that the money was not invested, neither the allegation is that after withdrawal of share amount the same was not paid. So, case of cheating or offence u/s 406 of the Indian Penal Code is not made out against the petitioner.

6. Accordingly, the impugned order as against the petitioners is quashed and this application is allowed.