

(2011) 01 PAT CK 0101

In the Patna High Court

Case No : Criminal Miscellaneous No. 22448 of 2003

Ram Singhashan Bachhi Sanjeev and Others

APPELLANT

Vs

The State of Bihar and Pushpendra Sharma

RESPONDENT

Date of Decision : 31-01-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 120, 406, 420

Citation : (2011) 4 BC 610 : (2011) 59 BLJR 730

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar, J.—Five Petitioners , while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, have prayed for quashing of entire criminal proceeding in Complaint Case No. 755 (C) of 2003 including the order dated 31.5.2003, whereby Sri Manoj Kumar Singh, learned Judicial Magistrate, 1st Class, Patna has taken cognizance of offence u/s 420 of the Indian Penal Code and Section 138 of the Negotiable Instrument Act (hereinafter referred to as the "N.I. Act") in Complaint Case No. 755 (C) of 2003.

2. Short fact of the case is that Opp. Party No. 2 filed a complaint in the court of learned Chief Judicial Magistrate, Patna vide Complaint Case No. 755 (C) of 2003 alleging therein that the Petitioner had committed offences under Sections 406, 420, 120B of the Indian Penal Code and Section 138 of the N.I. Act. It was disclosed by the complainant that he had announced for sale of his land situated in East Champaran. Thereafter, accused persons approached the complainant for purchasing the land. Accused persons after full satisfaction agreed to purchase the land of the complainant and, accordingly, a sale deed was executed. It was alleged that after execution of the sale deed and completion of other formalities, the purchaser (accused No. 1 in the complaint) handed over a cheque for Rs. 3

Lacs to the complainant as payment required according to the sale deed in presence of witnesses. It was also alleged that accused persons thereafter got the possession over the land as disclosed in the sale deed after its registration. The said cheque was presented in Union Bank of India for its payment. However, the same was returned on 3.1.2003 along with Bank Slip issued by the Manager of the Bank dated 18.2.2003 and said dishonoured cheque along with the Banker Slip was received by the complainant on 24.2.2003. It was noticed that the Bank had given a note "PAYMENT STOPPED BY THE DRAWER". It has been disclosed in the complaint that within time registered notice was sent to the accused persons, which was also received. Despite service of notice, accused persons did not repay the cheque amount. Accordingly, the complaint was filed and after examination of the complainant on S.A. and enquiry witness, the learned Magistrate by its order dated 31.5.2003 took cognizance of offence u/s 420 of the Indian Penal Code and Section 138 of the N.I. Act.

3. Aggrieved with the order of cognizance, the Petitioners approached this Court by filing the present petition. On 8.4.2004, while issuing notice to Opp. Party No. 2, this Court directed that in the meantime, further proceeding in Complaint Case No. 755 (C) of 2003 pending before Sri Manoj Kumar Singh, Judicial Magistrate, 1st Class, Patna in so far as the Petitioner Nos. 2,3,4 and 5 are concerned shall remain stayed. Subsequently, the case was admitted for hearing on 17.1.2006 and it was directed that during the pendency of the application, interim order passed on 8.4.2004 shall remain operative.

4. Sri Yogesh Chandra Verma, learned Senior Counsel appearing on behalf of the Petitioners submits that the present complaint petition was filed by the complainant with a view to pressurize the Petitioners to purchase the land, which was disputed. Learned Senior Counsel, while referring to two supplementary affidavits, submits that the Petitioners had earlier already purchased a piece of land from the complainant on 27.6.2002 after payment of Rs. 16 Lacs. He has argued that out of Rs. 16 Lacs, Rs. 2.65 Lacs was paid in cash before execution and rest amount Rs. 13.35 Lacs was paid through seven Bank Drafts on the date of execution. He has also referred to Annexure-2 to the petition, which is photo copy of some Drafts as well as Annexure-3, which is a photo copy of sale deed. On the strength of those documents, it was submitted that the present complaint was filed by Opp. Party No. 2 with a sole object to pressurize the Petitioners to purchase the disputed land of the complainant, for which the Petitioners had agreed to purchase and an advance of Rs. 3 Lacs was paid to the complainant . Thereafter while the Petitioners went to the plot in question, it was detected that it was a disputed one and thereafter Petitioner No. 1 dropped the idea of purchase of said land and he also informed the complainant . Subsequently he intimated the Bank for stopping payment. Sri Yogesh Chandra Verma, learned Senior Counsel on the aforesaid facts has argued that the present case cannot be considered for commission of offence u/s 138 of the N.I. Act due to the reason that the complainant was not put to any loss until the agreement to sale was rescinded. For such dispute, as per Sri Verma , learned Senior Counsel , the

Complainant was entitled to approach the court of civil jurisdiction. It was submitted that prosecution of the Petitioners on the strength of such allegation will amount to abuse the process of the Court and, as such, the entire proceeding as well as order of cognizance are liable to be set aside. Sri Verma, learned Senior Counsel has further submitted that in any event if for the time being it is assumed that the allegation made in the complaint petition constitutes an offence, no case is made out against other accused persons save and except the case against Petitioner No. 1.

5. Sri Raj Ballabh Singh, learned Addl. Public Prosecutor appearing on behalf of the State even in absence of any representation on behalf of Opp. Party No. 2 has vehemently opposed the prayer of the Petitioners. It was submitted by learned Addl. Public Prosecutor that sale of land was already complete and the complainant in his statement on oath has also stated that after receipt of the cheque of Rs. 3 lacs, he handed over Chirkut (acknowledgement receipt) to the accused. The learned Addl. Public Prosecutor has pointed out and referred to the statement of the complainant, which is at page-12. It was submitted by the learned Addl. Public Prosecutor that it is not a case for interference at the initial stage.

6. Besides hearing learned Counsel for the Petitioner and the State, I have also perused the materials available on record. The plea, which has been taken by learned Senior Counsel appearing on behalf of the Petitioner that earlier same land was purchased from the complainant on payment of Rs. 16 Lacs through Annexure-2, photo copy of the Bank Drafts as well as photo copy of the sale deed, which has been annexed as Annexure-3, are concerned, the Court is of the opinion that it is not appropriate for this Court to look into such documents unless those documents are proved in accordance with law. Such documents filed along with the present petition may not be looked into by this Court for recording a conclusive finding on the issue. Those documents can be examined at the appropriate stage. So far as allegation part is concerned, after going through the materials on record as well as statement of the complainant recorded on S.A., the plea that the allegation is only made out against one accused can also be looked into by the court below.

7. Considering the facts and circumstances of the case, I am of the view that it is not a case for interference at the initial stage of cognizance. Time without number, it has been reiterated that a criminal proceeding may not be interfered with at the initial or interlocutory stages. The Court finds that it is not an exceptional case warranting exercise of inherent jurisdiction in favour of Petitioners and, as such, the petition stands rejected.

8. Accordingly, the petition stands rejected.

9. In view of rejection of the present petition, interim order of stay stands automatically vacated.

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