(2011) 01 PAT CK 0119

In the Patna High Court

Case No : Criminal Miscellaneous No. 25460 of 2003

S. Sundaram APPELLANT

Vs

The State of Bihar and Madan Gopal Chaudhary RESPONDENT

Date of Decision : 24-01-2011

Acts Referred:

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

Citation : (2011) 59 BLJR 806 : (2011) 4 PLJR 204

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

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 23.1.2002 passed by Shri D.N. Pandey, Judicial Magistrate, Patna in Complaint Case No. 102(C) of 2001 and has also prayed for quashing of entire criminal proceeding in the said case. By order dated 23.1.2002, learned Magistrate has taken cognizance of offence u/s 420 of the Indian Penal Code and summoned the accused persons including the Petitioner.

2. Short fact of the case is that opposite party No. 2 filed a complaint in the court of Chief Judicial Magistrate, Patna vide Complaint Case No. 102(C) of 2001 arraying Director, M/S Synergy Financial Exchange Ltd. and the Chief Manager, Debenture Trustee, Central Bank of India, Mumbai. It was disclosed by the complainant that he had invested in debentures of Synergy Financial Exchange Ltd. for total amount of Rs. 51,000/-, which was paid by Bank Drafts. The debentures were to mature on 23.3.1999. Despite the fact that complainant surrendered the debenture certificate prior to the date of maturity, neither principal sum nor interest was paid to the complainant. It was alleged that accused persons conniving with each other had committed the offence u/s 420 of the Indian Penal Code. After filing of the complaint, the complainant was

examined on S.A. and in support of the complaint petition, witnesses were examined and thereafter, by the impugned order i.e. order dated 23.1.2002, the learned Magistrate took cognizance of offence u/s 420 of the Indian Penal Code and summoned the accused persons.

3. Aggrieved with the order of cognizance, the Petitioner being Assistant General Manager, Central Bank of India, approached this Court by filing the present petition. On 22.4.2004 while issuing notice to opposite party No. 2, this Court directed that in the meantime, further proceedings in Complaint case No. 102(C) of 2001 pending before Judicial Magistrate, Ist Class, Patna shall remain stayed. By order dated 22.4.2004, it was directed to place this case along with Cr. Misc. No. 6299 of 2001. On 3.8.2009, the case was admitted for hearing.

4. Shri Ajay Kumar Sinha, learned Counsel appearing on behalf of the Petitioner, submitted that the Debenture Trustee, Central Bank of India, on the date of filing of the petition was being headed by the Assistant General Manager, Debenture Trustee Department, Central Bank of India and the Petitioner, being Assistant General Manager, Debenture Trustee Department, Central Bank of India, had approached this Court for quashing of the order of cognizance and entire proceeding. From the contents of the complaint petition, it is evident that the Chief Manager, Central Bank of India was made accused due to the reason that the Bank was trustee of debenture in question and being trustee, no offence is made out against the Petitioner. It was stated that the Accused No. 1 i.e. M/S Synergy Financial Exchange Ltd. approached the Central Bank of India to act as trustee to their proposed rights issued for non convertible debenture in 1995 and the bank agreed as debenture trustee for which a debenture trust deed was executed in between M/S Synergy Financial Exchange Ltd. and the Bank on 16.12.1996 and the Company i.e. M/S Synergy Financial Exchange Ltd. gave certain securities to the Bank for the due redemption of principal of debenture together with interest. Subsequently, the Bank received complaint from debenture holders regarding delay in payment of interest. Thereafter, Bank wrote several letters requesting M/S Synergy Financial Exchange Ltd. to redress the grievances of the complainant. The Bank as debenture trustee, thereafter, issued legal notice to M/S Synergy Financial Exchange Ltd. for payment of debenture amount with interest, 5 but the Company failed and as such Bank was constrained to file a suit vide Suit No. 5904 of 1999 on 8.10.1999 before Hon''ble Bombay High Court for sale of securities for payment of debenture holders. However, in the meanwhile, M/S Synergy Financial Exchange Ltd. went in liquidation vide Company Case No. 322 of 1999 in the High Court of Judicature at Madras. The Bank, in the said company petition, sought permission from the company court to continue with the suit at Bombay High Court, which was granted on 28.12.2001. On aforesaid facts, it was submitted by Shri Sinha, learned Counsel for the Petitioner that Bank had performed all its legal duties and the complainant was also having a remedy available before the official liquidator and as such it cannot be said that there was any motive to cheat the complainant at least so far as Petitioner is concerned. Moreover, it was submitted

that on the basis of complaint petition itself, no offence is made out so far as the Petitioner is concerned.

5. In this case, at the time of hearing, none appeared on behalf of the opposite party No. 2. However, a counter affidavit was filed raising a point that this Petitioner was not entitled to maintain the present petition due to the reason that complaint petition was filed against the Director, M/S Synergy Financial Exchange Ltd. and the Chief Manager, Debenture Trustee, Central Bank of India. It has been pleaded in the counter affidavit that Petitioner is only Assistant General Manager and not accused in the case. This fact has already been clarified by the Petitioner that on the date of filing of the petition, the Department of Debenture Trustee was not headed by the Chief Manager, but the same was headed by the Assistant General Manager, Debenture Trustee Department, Central Bank of India, which post the Petitioner was holding. Learned Additional Public Prosecutor has opposed the prayer of the Petitioner.

6. After hearing learned Counsel for the Petitioner and the State and perusing materials available on record particularly the complaint petition, the court is of the opinion that offence u/s 420 of the Indian Penal Code is not at all made out so far as Petitioner is concerned. The Central Bank of India was only trustee and from the facts stated above, it is evident that the Bank had taken all steps for the purpose of enforcing the right of debenture holder including the Petitioner.

7. In view of the facts and circumstances, the court is satisfied that it is a fit case for interference with the impugned order of cognizance dated 23.1.2002.

8. Accordingly, the order dated 23.1.2002 passed by Shri D.N. Pandey, learned Judicial Magistrate, Patna in Complaint Case No. 102(C) of 2001 as well as entire criminal proceeding in Complaint Case No. 102(C) of 2001, so far as Petitioner is concerned, are hereby set aside and petition stands allowed.