
(2010) 04 PAT CK 0212
In the Patna High Court

Sanjay Pratap Singh

APPELLANT

Vs

The State of Bihar and Prabhat Narain Singh

RESPONDENT

Date of Decision : 23-04-2010

Acts Referred:

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

Citation : (2010) 04 PAT CK 0212

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—Despite repeated calls, none has come forward to defend the case of Opp. Party no. 2. However, from the record, it appears that even at the stage admission, Opp. Party no. 2 had appeared through his Advocate.

2. The sole petitioner, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, has prayed for quashing of the order dated 23.4.1999 passed by Sri Rabindra Patwari, Judicial Magistrate, 1st Class, Patna in Complaint Case No. 603(C) of 1998. The petitioner has also prayed for quashing of entire subsequent proceeding in Complaint Case No. 603(C) of 1998. By the order dated 23.4.1999, the learned Magistrate has taken cognizance of the offences under Sections 406 and 420 of the Indian Penal Code and directed for issuance of process for securing the attendance of accused persons. The petitioner was arrayed as accused no. 2 in the complaint case.

3. Short fact of the case is that the complainant in his complaint petition disclosed that the complainant was Manager in a partnership firm, namely, M/S Balaji Enterprises and while he was discharging his duty as Manager of the Firm, this petitioner had approached him on behalf of accused no. 1, who was Managing Director of M/S Schevaran Laboratories Pvt. Ltd. On persuasion of the petitioner, the complainant agreed to become distributor for the goods of the Company in question. It was also disclosed that the agreement was entered in

between the parties and thereafter the petitioner handed over some draft issued in favour of the Company for delivery of the goods. It has further been disclosed in the complaint petition that goods were supplied by the Company, which was received by the complainant. However, it was alleged in the complaint petition that since the articles were not up to the mark, it could not be sold in the market and many goods were returned to the distributor. The complainant approached the Company through this petitioner for sending fresh articles, but it was not sent and, as such, it was alleged by the complainant that the complainant had suffered a huge loss. On these grounds the complaint was filed and after filing the complaint petition, the complainant was examined on S.A. and two witnesses were also examined on behalf of the complainant, who had supported the stand which was taken in the complaint petition and thereafter by the impugned order, the learned Magistrate had taken cognizance for the offences mentioned above.

4. Learned Counsel for the petitioner, while challenging the order of cognizance as well as initiation of proceeding subsequent to the complaint petition, submits that on perusal of the entire complaint petition no offence either u/s 406 or Section 420 of the Indian Penal Code is made out. He has placed the entire complaint petition and on the sole ground of non-disclosure of offences, he has prayed for quashing of the order of cognizance and entire proceeding.

5. I myself examined the complaint petition as well as materials available on the record. On perusal of the complaint petition, it is evident that hardly the allegation can be termed as breach of contract and it cannot be said that the offence of criminal breach of contract has been committed nor it can be said that the complainant was cheated by the petitioner. Perusal of the complaint petition makes it clear that on business term an agreement was entered in between the partnership firm of the complainant and the Company in question. After execution of the agreement and receipt of advance money, the goods were also supplied by the Company. The petitioner, who was Manager, after being informed regarding the defect in some of the goods also, tried to persuade the Company to send back fresh material. On examining the complaint petition, I am of the view that no offence as alleged by the complainant appears to have been committed in the instant case. It appears that it was a contractual dispute and for the purposes of suffering any loss in the business, the proper course was available to the complainant was to pursue civil remedy and not to use criminal proceeding.

6. I am of the view that the complainant virtually with a view to abuse of the process of the court had filed the present complaint petition in respect of this petitioner and, as such, with a view to prevent the abuse of the process of the court I feel inclined to exercise inherent power of this Court in favour of the petitioner and, accordingly I set aside the order dated 23.4.1999 passed by the learned Judicial Magistrate, 1st Class, Patna in Complaint Case No. 603(C) of 1998 and all the subsequent proceedings in Complaint Case so far as it relates to the petitioner.

Accordingly, the petition stands allowed.