

(2004) 11 PAT CK 0067

In the Patna High Court

Case No : Criminal Miscellaneous No. 4357 of 2004

Sarjeet Singh

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 30-11-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 142
Penal Code, 1860 (IPC) — Section 34, 420, 467, 468, 470

Citation : (2005) 1 PLJR 5

Hon'ble Judges : M.L. Visa, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.L. Visa, J.—This application by the petitioner has been filed for cancellation of bail granted provisionally to opposite party No. 2 in Kazi Mohammadpur P.S. Case No. 73 of 2002 on 16.7.2003 by Chief Judicial Magistrate, Muzaffarpur, which was extended from time to time and was ultimately confirmed on 15.9.2003. Brief facts of the case are that petitioner filed a complaint petition numbered as Complaint Case No. 916 of 2002 in the court of CJM, Muzaffarpur against opposite party No. 2 and one Ashok Kumar Chaudhary under sections 420, 467, 468, 470 and 471 read with section 34 of the Indian Penal Code (for short, IPC) and u/s 138 of Negotiable Instruments Act (for short, N.I. Act.). The case of the petitioner was that he was Regional Marketing Officer, UP. Seeds & Tarai Development Corporation Limited, a Government Company engaged in the production and sale of seeds of cereals, pulses and oil seeds of different varieties and co-accused Ashok Kumar Chaudhary was a dealer of the company of the complainant and was carrying on business of seeds at East Champaran since 1994 and opposite party No. 2 was distributor of the company at Muzaffarpur who was having direct business with the company and apart from his other duties he also acted as guarantor of the dealers carrying business in his area and got distributors commission on the total sale in the area. According to the system

of the company, before taking delivery of goods the concerned dealer was to pay the price through bank draft or deposit the price of the same in the company's bank and had to show pay-in-slip to the Marketing Officer or Incharge in proof of deposit of money. The further case of petitioner was that co-accused Ashok Kumar Chaudhary in between November, 2001 to 31.3.2002 took delivery of seeds on different dates under different store issue slips and on all the occasions he produced pay-in-slips in proof of deposit of money in favour of company and when bank statement was received by Incharge of Muzaffarpur branch of the company it was detected that a total amount of Rs. 12 Lacs and odd was not deposited in the bank and forged pay-in-slips were produced by co-accused Ashok Kumar Chaudhary showing that the amount had been deposited in the bank. When co-accused Ashok Kumar Chaudhary and opposite party No. 2 were contacted co-accused Ashok Kumar Chaudhary gave four post dated cheques on 22.3.2002 and also executed a bond admitting his guilt and also admitting that he had issued four cheques for Rs. 12,08,385.00. The further case of petitioner was that opposite party No. 2 also took responsibility for the fraud played by co-accused Ashok Kumar Chaudhary. He also executed a bond and after adjusting his distributor's commission due on the company gave post dated cheques for the remaining amount of Rs. 7 Lacs on 28.2.2002 but cheques issued by co-accused Ashok Kumar Chaudhary as well as by opposite party No. 2 when presented in the bank for payment bounced due to nonavailability of sufficient fund. Registered notices were sent to co-accused Ashok Kumar Chaudhary and opposite party No. 2 informing them about the fact of bouncing the cheques and they were requested to pay the amount but in spite of it, neither Ashok Kumar Chaudhary nor opposite party No. 2 paid any amount to the company. The allegation of petitioner was that co-accused Ashok Kumar Chaudhary and opposite party No. 2 both in connivance with each other committed offences under sections 420, 467, 468, 470, 471 read with section 34 IPC and 138 of N.I.Act. The further case of petitioner is that the complaint filed by him was sent to police for instituting a case and for investigation and accordingly, Kazi Mohammadpur P S Case No. 73/2002 was instituted and police after completing investigation submitted chargesheet against co-accused Ashok Kumar Chaudhary on 31.7.2002 and against opposite party No. 2 on 15.9.2003 under sections 420, 467, 468, 471 IPC and section 138 of N.I. Act (Annexures 2 and 3). Opposite party No. 2 filed application for anticipatory bail bearing A.B.P. No. 606/ 2002 before the Sessions Judge, Muzaffarpur which was subsequently withdrawn (Annexure-4). Thereafter opposite party No. 2 surrendered in the court of CJM, Muzaffarpur on 16.7.2003 and he was granted provisional bail till 11.8.2003 and case diary was called for and because case diary was not received till 11.8.2003 the provisional bail was extended to 25.8.2003 and finally on 15.9.2003 provisional bail was confirmed. According to the petitioner, order granting bail to opposite party No. 2 is bad in law for non-consideration and non-appreciation of seriousness of the offence and thereby company of the petitioner has been cheated to the tune of lacs of rupees by the active connivance of opposite party No. 2 and the court below without considering the gravity of offences and

materials available in the case diary and by misinterpretation of section 142 of N.I.Act granted bail to opposite party No. 2. The further case of petitioner is that grant of bail to opposite party No. 2 by learned CJM amount to improper and arbitrary exercise of judicial discretion because the learned CJM while granting bail erroneously looked at the materials and came to a conclusion which on the face of it was contrary to materials and it has resulted in apparent error of fact and law giving rise to miscarriage of justice. The petitioner has prayed for cancellation of bail granted by CJM, Muzaffarpur to opposite party No. 2.

2. Opposite party No. 2 has appeared and has opposed the prayer of petitioner.

3. First of all, I would like to consider the objection raised on behalf of the petitioner that the learned CJM while granting bail to opposite party No. 2 failed to take into consideration that application for anticipatory bail of opposite party No. 2 was dismissed by the Sessions Judge, Muzaffarpur. It is the own case of petitioner that opposite party No. 2 filed anticipatory bail application which was numbered as ABP No. 606/2002 which was withdrawn by him (Annexure-4). From the order dated 19.5.2003 (Annexure-4) it appears that a petition for withdrawal of anticipatory bail petition was filed by opposite party No. 2 and considering this prayer anticipatory bail application was dismissed as withdrawn. Thereafter opposite party No. 2 surrendered before the court below and prayed for regular bail. His prayer was considered on merit. I do not find any force in the argument advanced on behalf of the petitioner that learned CJM was required to take into consideration the fact that earlier petition filed for anticipatory bail by opposite party No. 2 was withdrawn by him.

4. It is the own case of petitioner that it was co-accused Ashok Kumar Chaudhary who by producing pay-in-slips showing deposit of money in the account of company took delivery of goods and later on, it was found that pay-in-slips which were produced by him earlier were not genuine and no amount was deposited in the bank in the account of company and in this way co-accused Ashok Kumar Chaudhary took delivery of goods of Rs. 12 Lacs and when he was contacted he issued four post dated cheques on 22.3.2002 and also executed a bond admitting his guilt. About opposite party No. 2, the petitioner has stated in para 4 of the complaint petition that opposite party No. 2 is a distributor of the company and has direct business with the company and apart from other duties he also acts as a guarantor of the dealers carrying business in his area and gets distributor commission on the total sale in the area. The order dated 16.7.2003 by which opposite party No. 2 was granted provisional bail shows that a number of documents issued in the name of opposite party No. 2 by the company of the petitioner were produced from the side of opposite party No. 2 and the learned CJM after going through those documents observed that in copy of agreement nowhere it was mentioned that distributor will also be a guarantor of dealers in his jurisdiction. Learned CJM took note of the fact that delivery of seeds was taken by co-accused Ashok Kumar Chaudhary and further observed that in view of this fact co-accused Ashok Kumar Chaudhary will be responsible. He also took note of

the fact that when co-accused Ashok Kumar Chaudhary produced pay-in-slips those were verified, sealed and signed by the petitioner and later on a letter was sent to co-accused Ashok Kumar Chaudhary by petitioner asking him to make payment and copy of that letter was sent to opposite party No. 2 for its realisation.

5. Learned counsel of opposite party No. 2 relying on the decisions in the case of Bashir and others vs. State of Haryana (AIR 1978 SC 55) and Aslam Babalal Desai vs. State of Maharashtra (AIR 1993 SC 1) has argued that no case for cancellation of bail has been made out by petitioner because petitioner has not even alleged that after release on bail opposite party No. 2 has misused the privilege of bail in any manner. To this, reply of learned counsel appearing on behalf of the petitioner is that if bail is granted by ignoring the materials on record and without giving reasons it would be perverse and contrary to principles of law and in a case where there are serious allegations and bail is granted without considering the seriousness of allegations the High Court can exercise its inherent power u/s 482 Cr. P.C. to prevent the abuse of the process of the Court even if it is an interlocutory application. He has relied upon the decisions in the case of Pappu Rai and Others Vs. The State of Bihar and Another, and Puran Vs. Rambilas and Another etc. etc., .

6. Learned counsel of petitioner further submits that learned CJM has wrongly interpreted section 142 of N.I.Act by observing that a cheque given as gift or donation or discharge of moral obligation would be outside the purview of section 138 of N.I.Act and he has further observed that a cheque which has been obtained from debtor by coercion as well as under undue influence by the creditor will not be covered by this section but then I find that bail to opposite party No. 2 has not been granted only on the basis of this interpretation. The court below has observed that it was co-accused Ashok Kumar Chaudhary who received delivery of seeds by producing forged pay-in-slips showing deposit of money in the account of company and subsequently issued post dated cheques. It shows that opposite party No. 2 was nowhere in the fraud committed by co-accused Ashok Kumar Chaudhary. The impugned order further shows that in the opinion of the learned CJM opposite party No. 2 issued post dated cheques for Rs. 7 Lacs on 28.2.2002 and made prayer to adjust in his distributor commission due with the company only in order to take moral responsibility. Besides this, section 138 of N.I. Act is bailable. I, therefore, find that it is not such a case in which allegations against opposite party No. 2 are so serious that he could not have been granted bail by learned CJM when he surrendered before him. The Court below after considering all materials on record has passed a reasoned order. The petitioner has not even whispered in the application under consideration that after release on bail opposite party No. 2 has misused the privilege of bail. Considering the entire material on record, I find no merit in this application which is accordingly dismissed.