

(2004) 11 PAT CK 0026

In the Patna High Court

Case No : Criminal Miscellaneous No. 4365 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 156(6)

Negotiable Instruments Act, 1881 (NI) — Section 142

Penal Code, 1860 (IPC) — Section 420

Citation : (2005) 1 PLJR 2

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

Bench : Single Bench

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. 72 of 2002 which was extended time to time and was ultimately confirmed by order dated 15.9.2003 by Chief Judicial Magistrate, Muzaffarpur. The case of petitioner, in short, is that he is Regional Marketing Manager in a Government Company engaged in production and sales of seeds of cereals, pulses and oil seeds of different varieties and opposite party No. 2 is the distributor of the petitioner's Company at Muzaffarpur and takes seeds for distribution to dealers and gets commission on the total value of sale in the area of his operation. He also gets commission on the goods supplied to the dealers directly by petitioner's company in his area and in return he stands as guarantor of the dealers who take delivery from the petitioner's company. Further case of the petitioner is that normal system of business of petitioner's company is that distributor or the dealer has to deposit the cost of the goods delivered and dispatched to him but sometimes goods are supplied on the understanding that price unpaid would be deducted from the amount of commission due to the distributor. According to the petitioner, account for the year 2000-2001 of opposite party No. 2 was checked and it was detected that opposite party No. 2 had taken goods in excess of the cash payment and his pending commission and

total amount of Rs. 16,70,695.43 was debited in his account with the company and this fact was brought to the notice of opposite party No. 2 and final accounting was done and after adjusting the commission amount of Rs. 4,95,572.57 for the year 2000-2001 and the price of seeds returned by him amounting to Rs. 2,20,240.00 and the balance due against the opposite party No. 2 came to Rs. 3,54,882.68 and opposite party No. 2 admitted the dues to the extent of Rs. 8,05,840.10 to the Company and on 20.3.2002 he issued three post dated cheques, one for Rs. 2 lacs and two for Rs. 3 Lacs each, altogether for a sum of Rs. 8 Lacs and those cheques were presented on 30.3.2002 in UCO Bank, Muzaffarpur. All cheques were returned uncashed on account of insufficient fund in the account of opposite party No. 2. The registered notice dated 6.4.2002 was sent to opposite party No. 2 by petitioner's company informing him that the cheques issued by him had been dishonoured and asking him to pay the amount in cash but in spite of receipt of notice, opposite party No. 2 did not pay any attention to the request of petitioner's company. According to the petitioner, opposite party No. 2 intentionally played fraud with his company and has cheated it with dishonest intention.

2. The impugned order shows that opposite party No. 2 surrendered on 16.7.2003 before the court of Chief Judicial Magistrate, Muzaffarpur who granted him provisional bail till 11.8.2003 and called for the case diary. On 15.9.2003 after perusing the case diary provisional bail granted to opposite party No. 2 was confirmed by the CJM, Muzaffarpur. The case of the petitioner is that impugned order granting bail to opposite party No. 2 is erroneous because learned CJM though summoned for the case diary but he did not consider the gravity of offence and by making erroneous interpretation of section 142 of N.I. Act granted bail to the opposite party No. 2. Further case of petitioner is that while granting bail to opposite party No. 2, learned CJM had not even looked at the complaint/ FIR of the present case and dealing the facts of another case which was Kazi Mohammadpur P.S. Case No. 73/2002 has granted bail to opposite party No. 2 which itself shows non-application of judicial mind on the part of learned CJM. Prayer has been made for cancellation of bail granted to opposite party No. 2 by the learned Chief Judicial Magistrate, Muzaffarpur.

3. Opposite party No. 2 has appeared and has opposed the prayer of petitioner for cancellation of bail granted to him.

4. From the perusal of order dated 16.7.2003 passed by the learned CJM in this case it appears that learned CJM took note of the fact that one Ashok Kumar Chaudhary was the dealer and as per allegation of petitioner's company this Ashok Kumar Chaudhary on the basis of forged pay-in-slip had lifted seeds from the petitioner's company and a sum of Rs. 12 Lacs was due against him which he admitted by executing a bond and issued post dated cheques in favour of the petitioner's company and about opposite party No. 2 it is stated that he took responsibility for the fraud played by Ashok Kumar Chaudhary and executed a bond and after adjusting his distributor's commission issued post dated cheques

for Rs. 7 Lacs in favour of the petitioner's company which as alleged were bounced. This order further shows that the learned CJM after considering a number of documents held Ashok Kumar Chaudhary responsible for the dues of petitioner's company and about opposite party No. 2 observed that he only took moral responsibility and issued post dated cheques for Rs. 7 Lacs. Learned CJM further observed that documents on record do not show that opposite party No. 2 cheated the petitioner's company or influenced the company to hand over the seeds to Ashok Kumar Chaudhary. In the order dated 15.9.2003 learned CJM again repeated the same observation that dues were against Ashok Kumar Chaudhary and opposite party No. 2 had only taken moral responsibility for realisation of dues and therefore, section 420 IPC is not attracted against him. Annexure-3 of the petition shows that petitioner's company had filed another case bearing complaint Case No. 916/2002 which was sent to police u/s 156(6) Cr. P.C. for instituting a case and accordingly Kazi Mohammadpur P.S. Case No. 73/2002 was instituted. In that case, no doubt, opposite party No. 2 was accused besides Ashok Kumar Chaudhary and prosecution case is that co-accused Ashok Kumar Chaudhary lifted seeds from the petitioner's company by producing some pay-in-slips showing that amount had already been deposited in the bank in the account of petitioner's company but subsequently it was found that those pay-in-slips were forged and no money was deposited in the bank in favour of Company and this fact was brought to the knowledge of co-accused Ashok Kumar Chaudhary who admitted the dues of petitioner's company by executing a bond and issued four cheques totalling to an amount of Rs. 12,08,385/-. Opposite party No. 2 as a distributor of his area used to receive commission on the goods directly lifted by the different dealers from the petitioner's company and he also took moral responsibility for the fraud played by Ashok Kumar Chaudhary. He also executed a bond for adjusting his distributor's commission due with the petitioner's company and gave four post dated cheques for the remaining amount of dues. In that case, cheques issued by Ashok Kumar Chaudhary as well as by opposite party No. 2 bounced due to non-availability of sufficient fund. From Annexure-4 it appears that on 16.7.2003 opposite party No. 2 surrendered in Kazi Mohammadpur P.S. Case No. 73/2002 also and filed a petition for bail and in that case he was granted provisional bail till 11.8.2003 which was confirmed on 15.9.2003 like the present case. Both the orders dated 16.7.2003 and 15.9.2003 have been annexed by the opposite party No. 2 in this case which is Kazi Mohammadpur P.S. Case No. 72/2002. It appears that the same order which was passed in Kazi Mohammadpur P.S. Case No. 73/2002 has been repeated in this case also whereas facts of both the cases are quite different.

5. In the present case which is Kazi Mohammadpur P S Case No. 72/2002 while granting bail to opposite party No. 2 facts of different case which was Kazi Mohammadpur P S Case No. 73/2002 have been considered. In the present case, Ashok Kumar Chaudhary is not an accused but still opposite party No. 2 has been granted bail observing that main allegation in this case is against co-accused Ashok Kumar Chaudhary. It is a fact that grant of bail to an accused in a criminal

case and subsequently cancellation of that bail rest on different footings but then if it is found that while granting bail to an accused the facts of the prosecution case are not considered and bail has been granted taking into consideration the facts of different cases, such order cannot be said to be a legal order and cannot be allowed to continue. In the present case, bail to opposite party No. 2 was granted taking into consideration the facts of a different case. The court below failed to take note of the fact that allegation in the present case is against opposite party No. 2 that he himself lifted the seeds from the petitioner's company and had issued cheques after final accounting for the dues. It is not the case here that he had issued cheques taking moral responsibility for the other as has been observed by the learned CJM in its order granting bail to opposite party No. 2.

6. I, therefore, find that the impugned order passed by the learned CJM, Muzaffarpur cannot be allowed to continue because it has been passed after taking into consideration the facts of a quite different case and not of the case in which opposite party No. 2 has been granted bail.

7. In result, the order dated 15.9.2003 confirming the provisional bail granted to opposite party No. 2 is hereby set aside and bail granted to opposite party No. 2 is hereby cancelled. He is directed to surrender before the court below and pray for regular bail without any delay and the court below on his surrender will consider the matter afresh and will pass appropriate order. Here I may make it clear that this Court has not expressed any opinion by this order on the merit of prayer of opposite party No. 2 which he may make either at the time of surrender or afterwards before the court below.