
(2010) 07 PAT CK 0158
In the Patna High Court

Sashidhar Bhagat

APPELLANT

Vs

The State of Bihar and Madan Poddar

RESPONDENT

Date of Decision : 22-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 192, 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 420

Citation : (2011) 59 BLJR 145

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

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 17.4.1999 passed by the learned Sub Divisional Judicial Magistrate, Darbhanga in Complaint Case No. 109 of 1999/ Tr. No. 1488 of 1999. By the said order, the learned Magistrate has taken cognizance of offences u/s 420 of the Indian Penal Code and u/s 138 of the Negotiable Instrument Act (hereinafter referred to as "the N.I. Act") and directed for summoning the petitioner.

2. Short fact of the case is that Opp. Party No. 2 , who was an Headmaster of a Government School, filed a complaint petition, which was registered as Complaint Case No. 109 of 1999 , in the Court of the learned Chief Judicial Magistrate, Darbhanga disclosing therein that with a view to purchase the house of the petitioner, an agreement was entered in between the complainant and the petitioner and a total sum of Rs. 4,00,001/- was given to the petitioner and out of the said amount Rs. 3,99,351/- was given through cheques of different dates and Rs. 650/- was paid in cash. Subsequently, at the later stage, the petitioner abandoned the agreement and agreed to return the amount, which was taken from the complainant and accordingly, vide cheque No. 242168 dated 4.9.1996 for a sum of Rs. 4,00,001/- of the State Bank of India, Darbhanga City Branch was given to the complainant by the petitioner with a view to refund the earlier amount taken by him. The said cheque was presented by the complainant in the

State Bank of India, which was subsequently returned as the same was dishonoured . After the cheque was dishonoured , the petitioner requested the complainant not to take legal action and assured to return the amount. However, such assurance continued for a long period and again in the month of December, 1998, the petitioner issued cheque Nos. 242172, 242174 and 242175 each dated 10.12.1998 for a total amount of Rs. 4, 00,000/- drawn on the State Bank of India, Darbhanga City Branch and the same was handed over to the complainant. As per complaint, the cheques were presented by the complainant in the State Bank of India, Darbhanga Branch on 14.12.1998 for collection of the amount. However, cheques were again dishonoured due to insufficiency of fund and the complainant was informed by letter dated 16.12.1998 issued from the State Bank of India, Darbhanga Branch , which was received by the complainant on 30.12.1998. It is further stated in the complaint petition that thereafter the complainant sent a notice on 12.1.1999 informing the petitioner regarding dishonour of the cheques and he was also intimated that action will be taken under the provisions of the N.I. Act. It was asserted in the complaint petition that firstly, the petitioner avoided to receive the same. However, at last he refused to receive the same on 18.1.1999 and, accordingly, on such allegation the complaint was filed on 17.12.1999 and finally after conducting enquiry, the learned Magistrate vide its order dated 17.4.1999 took cognizance of offences u/ s 138 of the N.I. Act and 420 of the Indian Penal Code against the petitioner.

3. Aggrieved with the order of cognizance, the petitioner approached this Court by filing the present petition, which was filed on 3.7.2000. On 1.12.2000, this petition was admitted and while admitting the case, this Court had directed for issuance of notice to Opp. Party No. 2 and also directed that during the pendency of this application, further proceeding in Complaint Case No. 109/99 shall remain stayed. It appears that after service of notice, Opp. Party No. 2 appeared and also filed a petition vide I.A. No. 156 of 2001 for vacating the order of stay which, too, was rejected by this Court on 7.3.2001.

4. In this case, Opp. Party No. 2 has also filed a counter affidavit enclosing therewith certain orders and documents.

5. Sri Neel Kamal, learned Counsel appearing on behalf of the petitioner, while challenging the order of cognizance, submits that complaint petition was filed in complete violation of provisions contained in Section 138(b) and (c) of the N.I. Act . It was submitted that after the cheques were dishonoured, the complainant had not issued notice to the petitioner within the prescribed period of 15 days, which was prescribed prior to the year 2002 under the provisions of the N.I. Act and, as such, the petitioner was not given an opportunity to take steps to clear the amount of dishonoured cheques. Learned Counsel for the petitioner , while pressing this point, has referred to a Judgment of Hon''ble Supreme Court reported in 2000 (1) PLJR (SC) 17; Central Bank of India and Anr. v. Saxons Farms and Ors. In that case, the order of cognizance was set aside by the High Court and thereafter Hon''ble Supreme Court on appeal preferred by the Central

Bank of India, which was the complainant, allowed the complaint petition. In the said case, same cheque was presented again and again. Learned Counsel for the petitioner has further relied upon a Judgment of this Court reported in Mahabir Prasad Bagrodia and Naresh Chandra Prasad Sinha alias S.P. Sinha Vs. State of Bihar and Another on the point that if it is established that no notice was served within fifteen days of the receipt of information from the Bank regarding return of the cheque as unpaid, no prosecution can be initiated. On the aforesaid ground learned Counsel for the petitioner has argued that the order of cognizance is liable to be set aside. Learned Counsel for the petitioner has further submitted that account number, which has been Mentioned in the order of cognizance, differs from the account number Mentioned in the complaint petition. In the complaint petition, the complainant had disclosed regarding two accounts, but on S.A. he had asserted that there was only one account. During the course of recording of statement, the complainant had not corroborated the said fact. According to the learned Counsel for the petitioner, on the ground of dispute in respect of account number also, learned Magistrate was not required to proceed with the case. Learned Counsel for the petitioner has also submitted that the learned Chief Judicial Magistrate, while transferring the case record to another Magistrate u/s 192 of the Code of Criminal Procedure without passing order of cognizance had transferred the record, which was violative in the eye of law. On the aforesaid grounds, it has been prayed to quash the order of cognizance. Sri Neel Kamal, learned Counsel for the petitioner has also submitted that notice, which was issued to the petitioner by the complainant was not even brought on record by the complainant and the complainant had earlier filed a petition for correction of address of the complainant.

6. Sri Ratan Kumar Kuer , learned Counsel appearing on behalf of Opp. Party No. 2 has opposed the prayer of the petitioner. Sri Kuer, learned Counsel for Opp. Party No. 2 submits that in the present case, the complainant has filed a counter affidavit after receipt of the notice.

7. On perusal of the complaint petition, it appears that after the order of cognizance, the learned Magistrate had firstly directed for issuance of summons. In view of non-appearance, the learned Magistrate directed for issuance of bailable warrant, subsequently non-bailable warrant and even after declaring absconder, the learned Magistrate had directed for attachment of the property of the petitioner. In paragraph-11 of the counter affidavit, it has been stated that lastly the court below declared the petitioner as absconder and passed order for attachment of the property of the petitioner on 15.3.2000. Learned Counsel for Opp. Party No. 2 has further submitted that the complainant, who was posted as Headmaster in a Government School, was cheated by the petitioner. The complainant had made payment for the purpose of purchasing the house of the petitioner after obtaining advance from his G.P.F. account as well as obtaining loan from the Life Insurance Corporation and it was hard earned money of the complainant, but the petitioner after receiving the amount had given cheque at a later stage, which was dishonoured .The complainant was cheated by the

petitioner and the petitioner had also committed offence u/s 138 of the N.I. Act . Sri Ratan Kumar Kuer has also submitted that the petitioner in paragraph 2 of the petition has made a false statement to the extent that though the prayer for anticipatory bail was rejected by the court of Sessions as well as this Court, the petitioner made specific assertion in paragraph 2 of the petition " That the petitioner has not moved earlier before this Hon"ble Court or any court in this case for anticipatory or regular bail or revision, quashing or writ.". Accordingly, it was submitted that the petitioner has committed an offence of concealment of fact and the petitioner by making false statement had got a favourable order of stay. On the aforesaid grounds, it has been prayed to reject the present petition.

8. The stand taken in the counter affidavit filed on behalf of Opp. Party No. 2 has not been controverted by the petitioner by filing any reply.

9. Sri Mukeshwar Dayal, learned Addl. Public Prosecutor appearing on behalf of the State has supported the stand taken by Opp. Party No. 2.

10. Besides hearing learned Counsel for the parties, I have also perused the materials available on record. On perusal of the complaint petition, the Court is satisfied that it was a clear-cut case of commission of offence u/s 420 of the Indian Penal Code as well as u/s 138 of the N.I. Act. So far as the point raised by the learned Counsel for the petitioner, that notice was not served on the petitioner, is concerned, from the complaint petition itself it is clear that the information in writing from the Bank was received by the complainant on 30.12.1998 and thereafter on 12.1.1999, as required, notice was issued to the petitioner, but the petitioner firstly avoided to receive the same and at last on 18.1.1999 he finally refused to receive the notice. Once the complainant refused to receive the notice, it can be considered that notice was validly served on the petitioner on the ground of its refusal. The complaint petition categorically says that the complainant had received written information on 30.12.1998 from the Bank and, thereafter, notice was issued on 12.1.1999. Meaning thereby that notice was issued within the period as required u/s 138(b) of the N.I. Act and thereafter since the petitioner refused to accept the notice, the complaint petition was filed on 17.2.1999. In view of the aforesaid facts, the Court is of the opinion that the Judgments referred by the learned Counsel for the petitioner have got no application in the facts and circumstances of the present case. So far the dispute relating to account number, which has been raised by the learned Counsel for the petitioner, is concerned, this Court is of the opinion that while examining a petition u/s 482 of the Code of Criminal Procedure, which is to be exercised in exceptional or rarest of rare cases, there is no requirement to deal with all such details. These things can be looked into at the appropriate stage by the court below and this Court is not inclined to go into such details. So far as the conduct of the petitioner is concerned, it is true that the present petition was filed on 3.7.2000, however, his anticipatory bail was earlier rejected by the Sessions Judge on 5.8.2000, i.e. after swearing of the affidavit. So, it cannot be said that false affidavit was filed by the petitioner, but at the same time it was

required on the part of the learned Counsel appearing on behalf of the petitioner, while the petition was being pressed, i.e. on 1.12.2000, to inform the Court that the situation has changed and anticipatory bail of the petitioner was rejected by the Sessions Court. In the counter affidavit, it has been categorically stated that before filing of the present petition, i.e. in the year 2000 itself, the learned Magistrate, due to non-appearance of this petitioner, had passed an order for declaring him as absconder and even the order of attachment of the property of the petitioner was passed. In view of the aforesaid facts, the Court is of the view that it was required on the part of the petitioner to bring on record all those facts while he was invoking inherent jurisdiction of this Court.

11. In view of the aforesaid facts and circumstances of the case, particularly keeping in view the fact that the poor Headmaster, who had made payment to the petitioner after obtaining advance from the G.P.F. account as well as loan from the Life Insurance Corporation, was cheated by the petitioner, this Court is not inclined to exercise inherent jurisdiction in favour of the petitioner and accordingly, the petition stands rejected.

12. While rejecting the present petition, it is also required to direct the concerned court to take steps, so that the proceeding in the present case may come to an end as early as possible.

13. With the above observation and direction, the petition stands rejected.

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