
(2000) 10 PAT CK 0013

In the Patna High Court

Case No : Criminal Miscellaneous No. 10727 of 1997

Shashi Bijpuria

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 25-10-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 204, 482
Penal Code, 1860 (IPC) — Section 406, 420, 467, 471

Citation : (2000) 3 BLJR 2308

Hon'ble Judges : B.N. Singh "Neelam", J

Bench : Single Bench

Judgement

B.N. Singh "Neelam", J.—This present application is so preferred by one of the accused-petitioner, namely, Sashi Bijpuria challenging the impugned order dated 04.03.1997 so passed by the learned Chief Judicial Magistrate, Patna, in complaint case No. 206(c)/97 by virtue of which cognizance of the offence is so taken against the present petitioner along with one Yubraj Raja Ji under Sections 406, 420, 467 and 471 of the Indian Penal Code detailing that prima facie material was so found against them as to proceed with.

2. On behalf of the petitioner, all the points so taken as good grounds in this application so filed u/s 482 of the Code of Criminal Procedure are pressed into service and by going through the complaint petition along with the impugned order so filed for perusal, it transpires that an apartment was so constructed by one Yubraj Raja Ji, one of the accused, in the name and style of Shashi Kutir, who has not preferred any application before this Court u/s 482 of the Code though cognizance of offence is also taken against him. The said apartment was so allotted to the persons for which an agreement was so entered into and quarrel arose between the complainant on one hand and the present petitioner on the other, because of the confusion said to have been so created, particularly, by the builder by committing offence of criminal breach of trust, i.e., cheating, forgery and using forged document as genuine, etc. as detailed in the complaint-petition. It is further pointed out on behalf of the petitioner that if such offences

are at all committed that, has been committed by the builder and as far as the present petitioner is concerned who is a lady and she has nothing to do with the same. Hence, as against the present petitioner, the proceeding be quashed.

3. By filing a supplementary-affidavit, it has also been submitted that already a title suit being filed by Pradeep Kumar on behalf of his wife Anita bearing title suit No. 286 of 1997 being filed before the Sub-Judge, V, Patna, and, in that background too, the continuance of criminal proceeding be not allowed.

4. The other side's lawyer is also heard representing the complainant. The learned A.P.P is also heard in connection with this matter.

5. On behalf of the other sides lawyer it has been pointed out that by plain reading of the complaint-petition it will transpire that the ingredients of Section under which the cognizance of offence is so taken is met with, and there was since prima facie material before the learned Court below, as to proceed with after taking into consideration the evidence of some of the witnesses conducting inquiry, order was so passed under the provisions of Section 204 of the Cr.P.C. It is further pointed out that it cannot be said that the story so put coming from the mouth of the complainant is absurd or improbable and the petitioner one of the accused would be getting a chance as to put all the matters so taken as good grounds before the learned Court below in course of trial. That being the position, it is further pointed out that, since there was prima fade material, the order under challenge taking the cognizance of the offence does not require any interference. In support of his this contention on behalf of the complainant some of the reported cases are so cited they are BCCR, 1997, 178 Asiatic Oxygen Ltd. and Ors. v. State of Bihar and Anr. submitting that filing of a civil suit is not a bar for proceeding with criminal cases if there is criminal liability also levelled against, even by citing another reported case 2000(3) PLJR 56 (SC) Medchi Chemicals and Pharma P. Limited v. Biological B. Ltd. and Ors. it is also submitted that it is the mens rea which is the essence of the matter and at the time of agreement the intention of the party, particularly, the builder was as to cheat the complainant and, therefore, rightly the cognizance of offence has been taken. On the same line another reported case is also cited 1999 BCCR 11004 Raj Kishore Upadhyay and Ors. v. The State of Bihar and Anr.

6. After hearing learned lawyers appearing for the parties, I have carefully gone through the contents of the complaint-petition so filed with that of the impugned order under challenge by which u/s 204, Cr.P.C. taking cognizance of offence, after taking into consideration the evidence of some of the witnesses, the accused-persons being summoned as to face the trial. I also find after going through the record carefully that there is much of substance in the argument so advanced by the learned lawyer appearing on behalf of the complainant.

7. Taking that view, I do not feel inclined as to interfere with the impugned order. This present application, thus, so filed u/s 482, Cr.P.C. stands dismissed. The order so passed with regard to the stay of the further proceeding stands vacated.

However, before parting with this order, it hereby observed that the petitioner shall be at liberty as to press the matter at the opportune moment before the learned trial Court for his discharge where if no material is found against her the learned Court below after hearing the learned lawyers appearing for the. parties shall pass necessary orders.

8. The matter stands, accordingly, disposed of.