

(2012) 03 PAT CK 0105

In the Patna High Court

Case No : Criminal Miscellaneous No. 16432 of 2003

Smt. Lakshmi Devi Singhania and Gopi Kumar Singhania

APPELLANT

Vs

The State of Bihar and M/s. Indian Handloom

RESPONDENT

Date of Decision : 20-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 482
Penal Code, 1860 (IPC) — Section 406

Citation : (2012) 03 PAT CK 0105

Hon'ble Judges : Rajendra Kumar Mishra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Honourable Mr. Justice Rajendra Kumar Mishra

1. The petitioners have approached this Court u/s 482 of the Code of Criminal Procedure to quash the order dated 22.2.2002 passed in Complaint Case No. 430 of 2001 by Sri Prem Kumar Prasad, Judicial Magistrate, First Class, Bhagalpur, summoning the accused- petitioners, on enquiry u/s 202 of the Code of Criminal Procedure, finding prima facie case u/s 406 of the Indian Penal Code. A prayer has also been made to quash the entire criminal proceedings, arising out of the aforesaid complaint case, against the petitioners. In brief, the case is that G.K. Agrawal, Proprietor of M/s Indian Handloom, filed the Complaint Case No. 430 of 2001 in the court of Chief Judicial Magistrate, Bhagalpur, against the three accused, named in the complaint petition, including the petitioners alleging therein that he deals the Silk Fabrics Business and in course of business transaction he came in acquaintance with the accused persons named in the complaint petition. In the month of October, 1995, the accused persons arrived at Bhagalpur and allured the opposite party no. 2 to invest handsome amount in the business. In that course, it was agreed upon that the payment would be made through cheque in favour of accused-petitioner no. 1, Smt. Lakshmi Devi Singhania and the accused-petitioner no. 2, Gopi Kumar Singhania, would grant

the receipt and it would be incorporated as loan where against minimum 19.2% per annum interest would be paid in lieu of minimum profit till the project culminates. Thereafter, the opposite party no. 2 got prepared the draft of Rs. 5,00,000/-, drawn on Union Bank of India, Varansi, in favour of accused-petitioner no. 1 and handed over the same to her, on which her husband, accused-petitioner no. 2, issued a receipt of receiving the draft on 13.10.1995. It is also alleged that the accused no. 3, Shri Motilal Agrawal, who was broker in this line, also convinced the opposite party no. 2 detailing about the financial status of the accused-petitioners. The opposite party no. 2 was convinced by the subsequent attitude of the accused- petitioners as he was paid the interest upto July, 2000. When the opposite party no. 2 heard about the earning a lot from his money by the accused-petitioners and also that the accused no. 3 has also realized handsome amount from them as a broker, the opposite party no. 2 made request to the accused-petitioners to pay profit or to raise the interest but they did not pay any heed. Thereafter, the opposite party no. 2 made request to the accused-petitioners to repay the amount of investment but they did not care to repay the same. In the meantime, the opposite party no. 2 reminded the accused about their commitment to repay the amount with interest by the month of July, 2000 as the marriage of his daughter had been scheduled to be held for November, 2000, but due to non repayment of amount by the accused-petitioners and due to paucity of the fund, the opposite party no. 2 postponed the marriage of his daughter till January, 2001. Thereafter, the accused-petitioners were requested to pay off the whole of the last acknowledged sum of Rs. 5,48,000/- inclusive of interest as on 31.3.2000 plus further accrued interest as may work out till the date of payment through a legal notice dated 8.11.2000 but they did not pay any heed. As such, the accused, named in the complaint petition, including the petitioners cheated the opposite party no. 2 putting him to loss of more than Rupees six lacs.

2. After filing of the Complaint Case No. 430 of 2001 by the opposite party no. 2, the court of Sri Prem Kumar Prasad, Judicial Magistrate, First Class, Bhagalpur, on inquiry u/s 202 of the Code of Criminal Procedure, summoned only the accused- petitioners, finding prima facie case u/s 406 of the Indian Penal Code through the impugned order dated 22.2.2002, excluding the accused, Motilal Agrawal, due to lack of evidence against him.

3. Learned Counsel appearing on behalf of the petitioners made submission that from perusal of the complaint petition, it would appear that the opposite party no. 2 had given the loan of Rs. 5,00,000/- at the rate of 19.2% per annum interest to the petitioners and the petitioners stopped to pay the interest after July, 2000. If the allegation, as made in the complaint petition, is taken to be true, the liability appears to be of civil in nature and summoning the petitioners for the offence u/s 406 of the Indian Penal Code through the impugned order would amount to an abuse of the process of the court.

4. On the other hand, leaned counsel appearing on behalf of the opposite party

no. 2 made submission that the learned Magistrate on perusal of the complaint petition, solemn affirmation of the opposite party no. 2 and the statements of the witnesses, as recorded in course of inquiry, has rightly summoned the petitioners, finding prima facie case u/s 406 of the Indian Penal Code through the impugned order.

5. The allegation, as made in the complaint petition, against the petitioners is that they took the loan of Rs. 5,00,000/- from the opposite party no. 2 at the rate of 19.2% per annum interest and the interest was paid to the opposite party no. 2 till July, 2000 but, thereafter, on asking by the opposite party no. 2 to enhance the rate of interest, the accused-petitioners stopped to pay the interest and on making demand, they did not repay the amount as taken by them as a loan from the opposite party no. 2 with interest, total amounting to Rs. 5,48,000/-, till 31.3.2000. The allegation, as made in the complaint petition, makes out a case of existence of contract between the parties on certain terms, which appears to be of civil in nature, for which criminal proceeding could not be maintainable rather the opposite party no. 2 ought to have filed a suit for recovery of loan in the competent court of civil jurisdiction. Under the aforesaid facts and circumstances, the impugned order dated 22.2.2002 passed in Complaint Case No. 430 of 2001 by the court of Sri Prem Kumar Prasad, Judicial Magistrate, First Class, Bhagalpur, summoning the petitioners for the offence u/s 406 of the Indian Penal Code appears to be an abuse of the process of the court. Accordingly, the impugned order dated 22.2.2002 passed in Complaint Case No. 430 of 2001 by the court of Sri Prem Kumar Prasad, Judicial Magistrate, First Class, Bhagalpur and the entire criminal proceeding, arising out of the aforesaid complaint case, against the petitioners are hereby quashed and the application is allowed.