
(2001) 07 PAT CK 0010

In the Patna High Court

Case No : Criminal Misc. No. 14420 of 2000

Smt. Malti Sinha and Another

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 10-07-2001

Acts Referred:

Citation : (2001) 07 PAT CK 0010

Final Decision : Dismissed

Judgement

S.K. Chattopadhyaya, J.—A Vakalathama has been filed on behalf of opposite party No. 2. Let it be kept on record.

2. Heard Mr. B.K. Mody learned Counsel for the petitioners, Mr. B.P. Pandey, learned senior Counsel for opposite party No. 2 and Mr. S.S. Singh, learned State Counsel.

3. Invoking jurisdiction u/s 482 of the Code of Criminal Procedure the petitioners want to get the Criminal proceeding as well as the order taking cognizance under Sections 420 and 458 dated 16-5-2000 quashed.

4. The complainant-opposite party No. 2, through its Director Satish Kumar, lodged a complaint before the Chief Judicial Magistrate, Patna, complaining, inter alia, that some times in April, 1998, the petitioners come to the office of the complainant, which is a builder company and they expressed their intention to sell 16 Decimals of land situated at Danapur claiming the said property belongs to petitioner No. 1. On this inducement being made the complainant went to the house of the petitioners, where in support of title and possession over the land the accused persons showed a copy of registered Will dated 19-7-1973 said to have been executed by the father of petitioner No. 1, late Anup Singh of Mohalla Khajpura. As the said Will was unprobated, the petitioners assured and promised to get the same probated within three to four months. On this assurance the complainant agreed to purchase the said piece of land at the rate of Rs. 1.95 lacs per Katha. To make the urgent monetary requirement of the petitioners it is

stated that a sum of rupees two lacs was paid on 24-4-98 under a written agreement for sale-deed. The complainant has further alleged that after execution of the said agreement both the petitioners went on giving assurance by asserting that the probate case was pending and on this ground again the complainant was induced to part with further sum of rupees two lacs. This sum was also paid under receipt granted by petitioner No. 1 and witnessed by petitioner No. 2. However, after receipt of the amount of Rupees four lacs as part consideration, the petitioners went on evading and did not give correct position or information with regard to the pendency of the probate case and this created suspicion in the mind of the complainant. On enquiry, it is alleged, to his utter surprise the complainant came to know that there was no Probate case pending and moreover the father of petitioner No. 1 was still alive. A legal registered notice was sent to the petitioners on 14-3-2000, but without any results as the petitioner neither gave any reply nor executed the sale-deed. The complainant has alleged that as he came to know that father of petitioner No. 1 is still alive he believed that he was not only induced but duped by the petitioners because in the life-time of the father there was no question of pendency of a probate case. Not only that, the complainant has also alleged that he came to know that the petitioner No. 1 has also contacted with some stranger for sale of the same property for which earlier the agreement was entered into between the complainant and petitioner No. 1. With these allegations he filed the complaint petition, on which after recording statements of complainant on oath and of his witnesses and on perusal of documents submitted by the complainant the Magistrate took cognizance of the offence under Sections 420 and 468 of the Penal Code and issued processes to the petitioners.

5. Learned Counsel for the petitioners has strongly contended that even if the allegations made in the complaint petition are taken to their face value, these allegations will be only in the nature of a civil liability and by no stretch of imagination, for a breach of agreement, a criminal case can be instituted. In support of his contention he has relied on three decisions, namely *Sardar Trilok Singh and Others Vs. Satya Deo Tripathi*, His second contention is that the very agreement which was entered into between the petitioner No. 1 and the complainant does not make out any case of cheating or inducement.

6. It is well settled that merely because an act has a civil profile is not sufficient to denude it of its criminal outfit.

7. In the case of *Rajesh Bajaj Vs. State NCT of Delhi and Others*, their Lordships have observed that "it may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions." Their Lordships have quashed the order of the High Court by observing that merely because one or two ingredients of the offences have not been stated in the complaint the High Court erred in

quashing the complaint petitioner because many a cheatings were committed in the course of commercial and also money transactions.

8. Similarly, in the case of M/s. Medchl Chemicals and Pharma P. Ltd. Vs. M/s. Biological E. Ltd. and Others, their Lordships have cautioned by observing as follows:

15...it being a settled principle of law that to exercise powers u/s 482 of the Code, the complaint in its entirety shall have to be examined on the basis of the allegation made in the complaint and the High Court at that stage has no authority or jurisdiction to go into the matter or examine its correctness. Whatever appears on the face of the complaint shall be taken into consideration without any critical examination of the same. But the offence ought to appear ex facie on the complaint....

In these backgrounds if the allegations made in the complaint petition are considered it will be found that the complainant being a promoter was induced by the petitioners to purchase the land in question. It is not the case that the complainant had gone to the residence of the petitioners but it is the petitioners, who had come to the office of the complainant and induced him to purchase the land on giving assurance that the land belongs to petitioner No. 1. In this regard an alleged registered Will was produced by the petitioners and the complainant was informed that a probate case was pending. According to the complainant on two occasions a total sum of Rupees four lacs were paid to the petitioners but ultimately he came to know that the father of petitioner No. 1 was alive and no probate case was as such pending. This fact also reveals from the agreement which though not part of the complaint petition but the learned Counsel for the petitioners insists that this was before the Magistrate when he took cognizance of the offence. In the agreement itself existence of the Will has been mentioned and it is also stated if necessary Will be probated. On the other hand, it is the case of the complaint that he came to know that father of petitioner No. 1 was alive and no probate case was pending.

9. Under these circumstances, in my view, at this stage it is very difficult for the High Court to come to a conclusion that the allegations made by the complainant are false or incorrect.

10. The facts in the case of Trilok Singh (supra), in my view, is quite distinguishable inasmuch as in that case purchase of truck was under hire purchase agreement and there was default of Clause. Considering the allegations made in the complaint their Lordships were of the view that the dispute raised was purely of civil nature. In the case of Sri Shankar Lai Beheti (supra) allegation was that after supplying of Moong same amount was not paid. In those circumstances this Court held that it was a case of civil nature. Similarly in the case of Ishwar Chandra and Ors. (supra) there was an agreement between the parties for hire purchase of a vehicle and pursuant to that vehicle was handed over to the petitioner on hire purchase. Considering these facts this Court was of

the view that it was a case of civil liability and the petitioner cannot be held liable for criminal charges.

10. I have already referred the latest view of the Hon"ble Supreme Court in such type of cases and in my view the facts of the present case are fully covered by the decision referred above in the case of Rajesh Bajaj (supra).

11. In the facts and circumstance of the case I find no merit in this application, which is, accordingly, dismissed.