
(2011) 02 PAT CK 0061

In the Patna High Court

Case No : Criminal Miscellaneous No. 13629 of 2001

Sri Bharat Desai

APPELLANT

Vs

The State of Bihar and Sri Pravesh Kumar

RESPONDENT

Date of Decision : 25-02-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 34, 409, 420, 467

Citation : (2011) 59 BLJR 714

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sheema Ali Khan, J.—Heard the parties.

2. The Petitioner of Cr. Misc. No. 13629 of 2001 is the Manager (Operation), Core Healthcare Limited having its office at Ahmedabad and the opposite party No. 2 is the complainant and proprietor of Dolphin Sales having its office at Kankarbagh, Patna.

3. A complaint case was instituted by the opposite party No. 2, under Sections 409, 420, 467, 468 and 120B/34 of the Indian Penal Code. The allegation in the complaint petition is that there was an agreement to enter into business between the two parties and it is alleged that the complainant had to invest Rs. 2.5 to 3 lacs to procure the products of the company and supply them to the different stockist. It is said that he was the distributor on the basis of 5% commission. There is a dispute with respect to the supply of goods and the amount of commission to be paid to the complainant by the Petitioners, which resulted in lodging of Complaint Case No. 240(c) of 2001. The Petitioners on the other hand lodged a complaint petition numbered as 1626 of 2001 on 1.11.2010 at Ahmedabad making certain allegations against the complainant with respect to the agreement between the parties regarding the distribution and sale of the goods of the Petitioner's company.

4. In the year 2001 itself, the parties i.e. the Petitioners and the opposite party No. 2 filed a compromise petition in Complaint Case No. 240(c)/2001. The terms of the compromise petition are as follows:

3. Dolphin Sales confirms and agrees that the amount of Rs. 9,88,041/- to be paid by Core Healthcare Limited as mentioned at Clause No. 1 hereinabove shall be the full and final settlement of its dues towards Core Healthcare Limited and Dolphin Sales further agrees not to claim any amount whatsoever by way of settlement amount, interest, charges, expenses, claims etc., on any account in future.

4. Dolphin Sales further confirms and agrees to withdraw forthwith the Criminal Complaint No. 240 (C) 2001 filed in the Court of Judicial Magistrate First Class, Patna against Shri Sushi Kumar Handa and 4 other employees of the Company, on receipt of the payment as mentioned in Clause No. 2 hereinabove.

5. Core Healthcare Limited confirms and agrees to withdraw the Criminal Miscellaneous Application No. 14046 of 2001 (quashing) filed in the High Court of Judicature at Patna. Further, Core Healthcare Limited agree and confirm to withdraw the Criminal Complaint No. 1626/2001 filed in the Court of Judicial Magistrate, First Class, Ahmedabad against Shri Parvesh Kumar.

5. Learned Counsel for the Petitioners submits that a compromise was also filed in the Court of the Judicial Magistrate, Ahmedabad. However, the Court did not accept the compromise petition. The Petitioners thereafter filed a revision application and finally the compromise petition was accepted and the case filed by the Petitioners against the complainant stood withdrawn at Ahmedabad. This process apparently took place during the pendency of the present application which would be apparent from the order of this Court dated 8.7.2010 wherein it has been recorded that the "counsel appearing on behalf of the Petitioners, submits that he has got instruction that the case, which has been instituted against the opposite party No. 2 at Ahmedabad i.e. Complaint Case No. 1626 of 2001 will be withdrawn." It has also been observed in the said order that "Shri Ram Balak Mahto, learned Senior Counsel appearing on behalf of opposite party No. 2 assures the court that if the Petitioners state on affidavit that he will withdraw the Complaint Case No. 1626 of 2001, which is pending at Ahmedabad, he will not pursue the complaint at Patna and he will take steps before this Court so that the dispute in the present complaint may be finally settled and the proceeding in the complaint case here may come to an end."

6. The main contention of the counsel appearing on behalf of the opposite party No. 2 is that before this Court there was only a compromise to try and settle the dispute and there was no clear cut undertaking on behalf of the opposite party No. 2 to withdraw the case. Taking advantage of the submissions of the counsel who was earlier appearing in this case Mr. Shakil Ahmad Khan, Senior Counsel, submits that in fact the parties have not settled the dispute and it still remains pending for non payment of dues and thereby the counsel for the opposite party

No. 2 is completely giving a go bye to the compromise between the parties which was agreed and signed by them. Not only that the parties had infact stated in Court that they are ready to compromise the matter and withdraw the case, once the Petitioner had withdrawn the criminal proceedings at Ahmedabad, but they had accepted payment under the compromise quoted above.

7. The Petitioners have withdrawn the proceedings which would be apparent from Annexures 11 and 12 filed by way of supplementary affidavit. There is also no dispute that the amount of Rs. 9,88,041/- was paid by Core Healthcare Limited.

8. Therefore, in the peculiar facts of this case although this Court may have otherwise held that a prima facie case is made out, it cannot on the basis of the aforesaid compromise and undertaking taken in this Court hold that the continuance of this criminal proceeding would be justified.

9. In the result, I quash the order dated 21.4.2001, passed by the Sessions Judge, Patna in Criminal Revision No. 185 of 2001 and order dated 19.2.2001, passed by the Judicial Magistrate, 1st Class, Patna in Complaint Case No. 240(c) of 2001.

10. These quashing applications are accordingly, allowed.