

(2010) 09 PAT CK 0118
In the Patna High Court

Syed Askari Hadi Ali Augustine Imam	APPELLANT
Vs	
The State of Bihar and Pylon Homes	RESPONDENT

Date of Decision : 03-09-2010

Acts Referred:

Citation : (2010) 09 PAT CK 0118

Final Decision : Allowed

Judgement

Akhilesh Chandra, J.—Heard learned Counsel for the petitioner, learned Additional Public Prosecutor for the State and learned Counsel for the opposite party No. 2.

2. The sole petitioner has come for quashing of entire criminal proceedings of complaint case No. 1327(C)/2004 pending in the court of Shri Sudhir Kumar Sinha, Judicial Magistrate, 1st Class, Patna, besides order dated 17.01.2005 passed therein taking cognizance for the offence under Sections 406/420/120B of the Indian Penal Code.

3. The relevant facts of this case is that there was an agreement for sale between the petitioner and opposite party No. 2 for a piece of land measuring 9.6 Kathas containing building also for Rs. 1,05,60,000/- (One Crore Five Lacs Sixty Thousand) out of which through different installments a sum of Rs. 7,65,000/- was paid to the petitioner through different bank drafts payable at Hazaribagh and Rs. 4,35,000/- was deposited in cash in his account there, accordingly a total sum of Rs. 12,00,000/- was paid in advance. A deed of agreement was executed on 31.07.1999 and it was agreed that a sum of Rs. 4,50,000/- shall be paid by 31st October 1999, balance of consideration amounting to Rs. 89,10,000/- was to be paid in 24 equal monthly installments of Rs. 3,71,250/- each commencing from 28th February 2000. It was also agreed that time is the essence of the contract and if there is any default of payment, the agreement shall stand abrogated. The construction, considered in Clause (d) there in the agreement shall become the absolute property of the petitioner and all money paid by the vendee i.e. opposite party No. 2 to the vendor i.e.

petitioner, will be liable to be forfeited at the option of the vendor.

4. In the undisputed deed of agreement for sale, there was a reference of pendency of Title cum Partition Suit No. 10/1998 in the court of Sub-Judge, 1st Hazaribagh, at nature of claim etc. of the parties therein. It is also one of the agreed terms;

And Whereas the price to be paid is reasonable and fair considering that the sale is *lis pendens* and *caveat emptor* and that the old buildings involved will require to be demolished so that new structures may be erected to make the proposition economically viable;

5. In pursuance of the agreement aforementioned petitioner also executed power of attorney in favour of opposite party No. 2 authorizing him to take all necessary steps towards the terms and conditions entered into between the parties.

6. As per complainant opposite party No. 2 in pursuance of power of attorney when he proceeded for measurement etc. of the land in question, had to face obstructions raised by others but the petitioner in spite of requests, did not come in his rescue thereafter on further inquiry from revenue records he could come to know that the land in question stands recorded in the name of others so smelling being cheated at the hands of the petitioner, to whom, he served legal notice, in reply thereof, the petitioner taking ground of delay in payment of due installment, abrogated the contract.

7. It is also the case of the opposite party complainant that on persuasion, the petitioner, could agree and returned Rs. 4,85,000/- only but refused to return remaining amount so taken in advance on the ground of being forfeited. And accordingly on the paper prepared well in advance got signature of the complainant, which he did, since without doing so, the substantial amount of R. 4.85 lacs was also not returnable.

8. The complainant lodged the complaint petition before the court below whereon examination of complainant on S.A. other witnesses during inquiry cognizance was taken giving rise to instant case. On notice opposite party No. 2 appeared filed counter affidavit, wherein also it is stated that even, during pendency of the case, efforts have been made for refund of the money but it is not being done by the petitioner.

9. The main contention of learned Counsel for the petitioner is that at the time of agreement nothing was concealed from the complainant who in spite of knowing about pendency of civil suit and effect of any *lis pendens* transaction, entered into agreement with the petitioner, made some payment in advance agreed to complete payment within stipulated period knowing fully well that even one single default in payment of installments during stipulated period shall cause forfeiture of the amount so paid earlier willfully defaulted so under law the entire amount paid by him stand forfeited, as per terms of the agreement, but the

petitioner refunded substantial partition for which the complainant made an willful endorsement on the deed of agreement as early as on 04.06.2000 clearly stating that now he has no claim against the petitioner but lodged the complaint on 14.06.2004 i.e. more than 4 years after executing such receipt concealing the details of agreement and relevant dates of the events in the complaint petition. So, neither any offence has been committed by the petitioner nor the complaint which has been filed just to put undue pressure upon the petitioner for realization of amount so forfeited under agreement must not be permitted to continue. On the other hand, learned Counsel for the opposite party as well as Additional Public Prosecutor both submitted that agreement was entered into between the parties at the inducement of the petitioner who initially did not cooperate in getting the agreement properly implemented into but on the bare excuse of delay in payment of installment refused to refund the money so advanced since beginning, intention of petitioner was to commit fraud and cheat the complainant. No interference is required in the order of the court below as well as for further proceeding of the complaint.

10. Admittedly, the parties i.e. petitioner and complainant opposite party No. 2 entered into agreement involving immovable property worth more than of Rs. one crore, knowing fully well that such agreement may be hit by theory of lis pendens and the complainant was knowing fully well that there is possible risk of suit deciding against the petitioner or obstruction made by or on behalf of the other contesting parties in the suit in case he proceeds to get the agreement implemented, inspite of that, he entered into the agreement advanced a sum of Rs. 12,00,000/- with further promise to pay the remaining amount at fixed EMI within stipulated period and on further tough condition of forfeiture of money paid in the event of one single default. It cannot be said under law that there is any element of concealment or cheating.

11. It is also now admitted position that more than four years before filing of the complaint opposite party No. 2 received a sum of Rs. 4.85 lacs on executing a receipt with endorsement that he has now no claims against petitioner but in the complaint petition the date of such transaction has not been mentioned. Such concealment may lead towards interference to withdraw that the complainant did not come with clean hands.

12. The dispute between the parties is nothing but a civil dispute for refund of money so advanced, but, as per terms of the agreement according to petitioner bound to be forfeited.

13. The law does not permit any party to initiate criminal proceeding, to achieve his target through a shorter route for which only remedy lies there in civil court.

14. The complainant apprehending long time consumed in normal civil litigation or to avoid payment of court fee on the amount claimed adopted a short cut method by initiating criminal proceeding which is not at all permitted to continue. In view of the several decisions of the Apex Court including famous case State of

Haryana and others Vs. Ch. Bhajan Lal and others, Where in the following tests have been prescribed inviting inference in exercise of inherent jurisdiction by this Court u/s 482 of the Criminal Procedure Code.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;
4. Where the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.
5. Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

And instant case covers more than one of the above yardsticks.

15. In that view of the matter, impugned order as well as further proceedings of the complaint case is hereby quashed. This application stands allowed, without affecting any right of the complainant opposite party No. 2 to initiate proceeding before civil court or Legal Services Authority where the dispute may also be settled at pre-litigation stage.