
(2013) 10 PAT CK 0027

In the Patna High Court

Case No : Criminal Miscellaneous No's. 13971 of 2004 and 33593 of 2003

T.P. Chowadhary

APPELLANT

Vs

The State of Bihar, Umesh Kumar Singh and Arvind Kumar
Singh
 Sanjay Majumdar Vs State of Bihar

RESPONDENT

Date of Decision : 07-10-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)

Citation : (2013) 10 PAT CK 0027

Hon'ble Judges : Anjana Prakash, J

Bench : Single Bench

Advocate : Y.C. Verma, Mr. Sandeep Kumar, Mr. Bikash Jha, Mr. Jharkhandi Upadhyay, in Cr. Misc. No. 13971 of 2004 and Mr. Krishna Prasad Singh, Mr. J. Upadhyay, Ms. Meena Singh, in Cr. Misc. No. 1022 of 2004 and Mr. Sandeep Kumar, Mr. Alok Kumar Shahi in Cr. Misc. Nos. 33593 of 2003 and 14114 and 14490 of 2004, for the Appellant; C. Jawahar, Assistant Public Prosecutor, Mr. R. Narayain, Mr. Rajesh Shukla, Advocate in Cr. Misc. No. 13971 of 2004 and Mr. Binod Bihari Singh, A.P.P, Mr. Paras Nath in Cr. Misc. No. 1022 of 2004 and Mr. Shakti Suman Kumar, Advocate, Mr. Rajesh Ranjan -1, Advocate in Cr. Misc. No. 33593 of 2003 and Mr. Shakti Suman Kumar and Mr. Vikas Kr. Sharma, Advocates in Cr. Misc. Nos. 14114 and 14490 of 2004, for the Respondent

Judgement

Anjana Prakash, J.—The Petitioners seek quashing of the entire proceeding including the order of cognizance dated 29.9.2003 passed by the Chief Judicial Magistrate, Motihari in Trial No. 3312 of 2003 arising out of Motihari (Town) P.S. case No. 130 of 2003. The case of the Complainants is that they entered into a written agreement with NIIT limited on 12.4.1996 run by the accused persons, on the basis of which four centers were to be opened. On account of this they invested huge amount of money. As it happened later on the accused persons did not allow them to receive interest of the money which had been collected under a certain fund. Later on the accused persons kept changing the policy which was quite different from the original agreement, on account of which the Complainants suffered huge amount of financial loss. The accused persons also

did not pay them the incentive that they had promised and instead refused to enter into a dialogue with them. Hence the present Complaint.

2. It appears that the present Complaint was sent for investigation u/s 156(3) Cr. P.C. upon which Town P.S. case No. 130 of 2003 was instituted on 1.6.2003. After due investigation final report was submitted in the matter on the opinion that a pure civil dispute is made out in the facts of the case. However disagreeing with the same the Magistrate took cognizance in the matter.

3. The Counsel for the Petitioners submits that as per the Complaint itself a bilateral agreement had been entered into between the parties with a specific clause that if at all there was any dispute the process of arbitration could be adopted. However, the Complainant at no point in time took recourse to the same and instead much later filed the present criminal Complaint without any justification. The further submission is that if at all the Complainants are aggrieved on account of the changing policy of the Company since the Complainants were also party to the same they have no reason to complain. If at all it resulted in financial loss to him no ingredient of criminal offence would be made out. Moreover the admitted position being that there was a contractual obligation between both the parties default on the part of one would not necessarily justify instituting a criminal Complaint.

4. On the other hand, the Counsel for the Complainants submits that even accepting that the agreement was bilateral the ill intention of the accused persons was at the inception which is borne out from the facts that subsequently the policies were changed dramatically only to deprive the Complainants of their rightful dues. In such circumstances the Petitioners should be prosecuted.

5. Having gone through the Complaint petition, I have no manner of doubt in holding that even accepting the allegations made therein apart from the grievance of the Complainants that financial loss had resulted on account of the changing policies there is no criminal element whatsoever.

6. In such circumstances, in my opinion, the continuance of the proceedings would be gross abuse of the process of the Court.

7. Hence, these applications are allowed and the entire proceeding including the order of cognizance dated 29.9.2003 passed by the Chief Judicial Magistrate, Motihari in Trial No. 3312 of 2003 arising out of Motihari (Town) P.S. case No. 130 of 2003 are hereby set aside. However, even at this stage in case the Complainant is desirous of resorting to arbitration procedure he is permitted to do so and also the quashment of the present proceedings shall have no bearing on any civil claims of the Complainants.