(2008) 02 PAT CK 0171

In the Patna High Court

Case No : Criminal Miscellaneous No. 14156 of 2007

Trilochan Singh Kalsi — APPELLANT

Vs

State of Bihar and Another — RESPONDENT

Date of Decision : 15-02-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 166, 323, 406, 504

Citation : (2008) 3 PLJR 242

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Rana Pratap Singh and Sumant Singh, for the Appellant; Jharkhandi Upadhaya for the State and Mr. Ranjit Narayan for O.P. No. 2, for the Respondent

Final Decision : Allowed

Judgement

Abhijit Sinha, J.—The petitioner herein who is the Chief Branch Manager, State Bank of India, Munger, and has been impleaded as the sole accused in Complaint Case No. 1058(C) 2006 is aggrieved by and prays for the quashing of order dated 13.1.2007, whereby and whereunder cognizance for offences under Sections 406, 166, 323 and 504 I.P.C. have been taken against him by the learned Chief Judicial Magistrate, Munger. The complainant, Bharat Prasad Gupta, impleaded as O.P. No. 2 herein, filed the aforesaid complaint in the Court of the learned Chief Judicial Magistrate, Munger, in relation to an occurrence said to have taken place from 14.2.2006 to 1.11.2006, inter alia, alleging that the Subordinate Judge-I, Munger, had passed a decree in favour of the complainant and witness no. 1 Ramavtar Joshi for a sum of Rs. 2607/- and Rs. 587/- in Title Suit Nos. 25/1985 and 17/1985 respectively and the decree amount as per order of the Court was to be paid by the Collector, Munger. It is said that as per the order of the Court the Collector, Munger, gave payment order of the aforesaid amount in favour of the complainant and Ramavtar Joshi who gave it to the Branch Manager, State Bank of India, Munger Branch for payment and although initially it was assured that payment would be made, later on he started evading to make payment. It is alleged that the order of the Court. payment order, and the related papers were all submitted in the office of the Branch Manager which were not returned by him. It is also alleged that the Collector, Munger under his letter no. 946 dated 4.3.2006 wrote to the Branch Manager for payment and yet the payment was not made, it is further alleged that on 6.11.2006 the complainant and Ramavtar Joshi went to the office of the Branch Manager, who refused to make payment and instead abused them in filthy language, assaulted by fists and slaps and pushed them out from the office. It is stated that since the police directed them to file a case in the Court therefore the complaint was being filed.

2. It appears that the petitioner was not made an accused by name in the complaint petition filed on 7.11.2006 and on 9.11.2006 the complainant filed a petition to add the name of the Chief Branch Manager and the said prayer was allowed on the same day in pursuance whereof the name of the petitioner was inserted in the complaint petition.

3. It has been submitted on behalf of the petitioner that he is in no way responsible for non-payment of the aforesaid sums since he joined as Chief Manager of the Bank only on 10.6.2006. It has further been submitted that the complainant''s reference to letter no. 946 of the Collector, Munger, was in fact a letter written by the Personal Assistant of the Collector, Munger, to the Branch Manager enclosing the petition of Ramavtar Joshi with a request to the Branch Manager to look into the matter and do the needful. In this context it was submitted that the Chalan issued by the Court of Subordinate Judge in favour of Ramavtar Joshi for a sum of Rs. 587/- was issued on 8.9.1987 and the payment order in favour of the complainant by virtue of decree dated 15.9.1997 was issued on 11.5.1994 by the Subordinate Judge. It also appears that the Superintending Engineer, Ganga Pump Nahar Anchal, Munger, informed Ramavtar Joshi through letter that in pursuance of the order of payment, a sum of Rs. 587/- had been deposited by civil Chalan no. 395 dated 8.9.1987 in the Court. It further appears that the Chalan was deposited by the Executive Engineer, Canal Division, in Court in the Execution Case of Ramavtar Joshi through Government Pleader on 8.9.1987 whereas in pursuance to the decree dated 15.9.1987 in Money Suit No. 25/1985 an amount of decreetal Rs. 2607/ - was deposited by Chalan no. 192 dated 14.7.1988 and the chatans were deposited in the civil account of the Government. Thereafter on 11.5.1994 the payment order was issued by the Subordinate Judge directing payment to the complainant and accordingly Misc. Case No. 27/1991 filed by the complainant before the Collector, Munger, was dismissed.

4. Referring to the foot notes contained in the payment order, which is appended as Annexure 8, the learned counsel for the petitioner sought to point out that according to Note-1 "this order is not payable more than ten days after date without a renewal enfacement by the Court and it absolutely lapses and ceases to have effect on the 31st March next" and according to Note-2 "Payee is hereby

to take notice that after tender and payment of this order the Treasury Officer will admit no further responsibility. It is the duty of the Payee to see to the proper custody of this document issued it is chased". It was further pointed out that the payment order by the Court was addressed to the Treasury Officer. In this connection it was pointed out that once the amount has been deposited by judgment debtor through Chalan in the Court it would lapse within 10 days as per note no. 1. It is not the case of the complainant that after it lapsed the concerned Court renewed it before 31st March next. It would thus appear that the complainant had made false allegation against the Bank and its Manager.

5. The learned counsel further sought to point out that the Chief Manager of the Bank joined as such on 10.6.2006 and at a most belated stage whereas payment order is of the year 1994 and as it will appear it was not addressed to the Bank or its Manager and from this it would be apparent that the petitioner had not committed any offence much less the offence alleged.

6. In support of the impugned order the learned counsel for O.P. No. 2 has submitted that when the Court had passed the Chalan and order had followed from the Collector to the Bank to make the payment the Bank was bound by way of duty to make the payment. In this case the Bank instead of obeying the directions of the Court and the Collector had apparently ignored the aforesaid orders and avoided making payment on irrelevant grounds.

7. Apparently a sum of Rs. 587/- the decreetal money was deposited to the credit of Ramavtar Joshi on 8.9.1987 and amount of Rs. 2607/- was deposited in Court on 14.7.1988 and the payment order sent by the Court was to the Treasury Officer. It is true that the said amounts had been deposited under the civil account of the Government maintained in the aforesaid Bank and as per the note had lapsed by 31st March next. It is also an admitted fact that the same had not been renewed by the Court concerned. It is therefore, clear that the Bank had no responsibility to pay the amount without the lapsed Chalan having been renewed by the Court. It is also true that there is no order of the Treasury Officer to the Bank to make the payment which is the legal requirement before amounts deposited through Chalan in the civil account of the Government can be disbursed. From the above it is clear that the petitioner cannot be fastened with the liability of non-payment and his prosecution in the circumstances stated and discussed above would amount to an abuse of the process of the Court and the same cannot be sustained in the eye of law. Accordingly the impugned order taking cognizance is hereby quashed and the application is allowed.

