(2012) 09 PAT CK 0074

In the Patna High Court

Case No : Criminal Miscellaneous No. 36687 of 2009

Venniyaperumal Rajendran Muthu and Another — APPELLANT

Vs

The State of Bihar and Another — RESPONDENT

Date of Decision : 12-09-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 482

Penal Code, 1860 (IPC) — Section 34, 406, 409, 420, 504

Citation : (2013) 2 PLJR 248

Hon'ble Judges : Hemant Kr. Srivastava, J

Bench : Single Bench

Advocate : Anurag Sharma, for the Appellant;

Final Decision : Allowed

Judgement

Hemant Kr. Srivastava, J.—Heard learned counsel for petitioners, learned counsel for Opposite Party No. 2 and learned Addl. P.P. for State. This quashing petition has been filed u/s 482 of the Cr.P.C. for quashing the FIR of Kotwali (Tilkamanjhi) P.S. Case No. 187 of 2008 registered under Sections 406, 409, 420, 504/ 34 of the Indian Penal Code against the petitioners and some others.

2. The brief fact which lies to file this quashing petition is that Opposite Party No. 2, namely, Rukesh Kumar Baidya, who is informant of the abovesaid case, originally, filed complaint case bearing Complaint Case No. 406(C) of 2008 in the Court of Chief Judicial Magistrate, Bhagalpur against accused persons of the aforesaid case alleging therein that he was appointed as super stockist of "Hardil" Mustard Oil on 28.2.2007 after proper negotiation and at the time of aforesaid negotiations, Sri R.S.N. company. Kailash Chandra Mangla, S.O. Subhash Choudhary, A.S.M. Bipin Bihari Pathak and, S.R. Subodh Tiwary were present and an agreement between B.P. Baniya Perumal and Sons Company & Opposite Party No. 2 was prepared and in the said agreement, the terms and conditions of the business were stipulated. It is further alleged that in course of business, some dues of Opposite Party No. 2 was occurred on the aforesaid

company which was informed by Opposite Party No. 2 to the aforesaid company as well as officials of the aforesaid company and a request was made to clear the aforesaid dues. It has further been alleged that the claim of Opposite Party No. 2 with regard to damage was amounting to Rs. 75,117/- including Rs. 33,500/- as insurance claim and advance deposit of Rs. 50,000/- with interest at the rate of 8 percent and the aforesaid dues was sent to abovesaid company on 26.9.2007 but the officials (accused persons) of the aforesaid company did not pay any heed towards the aforesaid request nor made any payment. The Opposite Party No. 2 requested the company several times to make the abovesaid payments but the above said company did not pay any heed as a result of which, the Opposite Party No. 2 became bound to close his business. The Opposite Party No. 2 sent a legal notice to the company on 10.1.2008 through his advocate but the aforesaid company gave wrong reply and levelled false allegation against the Opposite Party No. 2. On the basis of aforesaid pleadings, the Opposite Party No. 2 filed the abovesaid complaint case which was sent to concerned police station u/s 156(3) of the Cr.P.C. by learned Chief Judicial Magistrate, Bhagalpur for institution of FIR and investigation of the case and, accordingly, abovesaid Kotwali (Tilkamanjhi) P.S. Case No. 187 of 2008 under Sections 406, 409, 420, 504/ 34 of the Indian Penal Code was registered against Sri B.R. Mathu (Managing Director), B.P. Baidya, Perumal and Sons, Bipin Bihari Pathak, Pradeep Kumar, Kailash Chand Mangla, P.N. Benkat Raman & Laxmi Chand Bhadani.

3. Learned counsel appearing for the petitioners submits that petitioner No. 1 is the Managing Director whereas; petitioner No. 2 is Human Resources Development Officer and sale head of the abovesaid company and no specific overt act has been attributed against the abovesaid petitioners. It is further contended by him that the averments of the first information report do not disclose any criminal offence and even if, the story as propounded by the Opposite Party No. 2 assumed to be true, then also, it is only a case of breach of agreement for which, no prosecution can be launched. In support of his contention, he referred a decision reported in Dalip Kaur and Others Vs. Jagnar Singh and Another, in which, it has been held by Apex Court of this country that--

the fraudulent and dishonest intention must exist from the very inception when the promise or representation was made and non-refunding of amount of advance which results in simply a breach of contract, does not constitute cheating or criminal breach of trust. It has been further held in the aforesaid decision that where allegations contained in FIR, even if given face value and taken to be correct, do not disclose commission of the alleged offence and disclose only a civil dispute, FIR is liable to be quashed.

4. It has further been contended by him that as a matter of fact, when Opposite Party No. 2 gave legal notice dated 10.1.2008 to the company, immediately, the company replied to the above notice mentioning this fact that freight and B.D. commission was never agreed to be reimbursed in the agreement and only Rs. 64,644/- was legally admissible to the Opposite Party No. 2 and the aforesaid

company was willing to settle the claims as full and final settlement. Furthermore, the company requested the Opposite Party No. 2 to check his account and, if there was any discrepancy, the Opposite Party No. 2 should give details of the aforesaid discrepancy. It is contended on behalf of the petitioners that the Opposite Party No. 2 did not give any reply to the aforesaid request of the company but filed complaint case bearing Complaint Case No. 406 of 2008 with intent to harass and coerce the officials of the company. It is further contended by him that petitioners apprehending their arrest, filed anticipatory bail petition before learned Sessions Judge, Bhagalpur and during pendency of the aforesaid anticipatory bail petition, the matter was compromised outside the court and an application to the aforesaid effect was filed before the learned Chief Judicial Magistrate, Bhagalpur on 19.9.2008 and the informant also prayed before learned Chief Judicial Magistrate, Bhagalpur to permit him to withdraw the aforesaid case. It is further pointed out by him that on 22.9.2008, the informant himself appeared before the learned Sessions Judge, Bhagalpur and filed a petition to this effect that he had already received the amount in question on 19.9.2008 and not only this, the Dy. Superintendent of Police (the Supervising Authority) also found that the matter had already been settled between the parties. It is further contended by him that petitioners had made insurance claim of Rs. 20,700/- from New India Assurance Company Ltd. but the aforesaid Insurance Company passed the claim only to the tune of Rs. 18,331/- on 26.5.2010 and petitioners are ready to pay the aforesaid amount to the Opposite Party No. 2 for which, they have got prepared a demand draft in the name of the Opposite Party No. 2. It is further contended by him that when the amount in question, has already been paid to the Opposite Party No. 2, the continuance of criminal prosecution of the petitioners is nothing but only an abuse of process of the court.

5. On the other hand, learned counsel appearing for the Opposite Party No. 2 submitted that uptil now, full and final payment has not been made and there is still some dues on the aforesaid company. It is also pointed out by him that petitioners got anticipatory bail from the Court of Sessions Judge but they never executed bail bonds before the learned Chief Judicial Magistrate, Bhagalpur and as a matter of fact, petitioners are still absconding.

6. This court had called for a report from the Superintendent of Police, Bhagalpur with regard to stage of investigation of Kotwali (Tilkamanjhi) P.S. Case No. 187 of 2008. The Superintendent of Police, Bhagalpur has reported that the abovesaid case is still under investigation.

7. Having heard the contentions of both the parties, I have gone through the record.

8. According to prosecution case itself, there was dispute between the parties in respect of payment of commission and profit of the Opposite Party No. 2 and according to Opposite Party No. 2, the company of the petitioners agreed to make payment of commission and profit of the business which started the

Opposite Party No. 2 in the light of agreement which had been executed between the aforesaid company and Opposite Party No. 2. There is nothing in the first information report that from the very inception of the aforesaid agreement, there was dishonest and fraudulent intention of the petitioners as well as aforesaid company to cheat the Opposite Party No. 2 and it appears to me that dispute arose between the parties due to accounting. Moreover, Rs. 65,000/- has already been received by the Opposite Party No. 2. So, even if, it assumed that there is still some dues on the abovesaid company, then also, it is only a matter of breach of agreement and in my view, for the breach of agreement, no prosecution can be launched.

9. No doubt, according to Opposite Party No. 2, petitioners have not executed bail bonds in the light of order passed in their anticipatory bail petitions and allegedly, they are still absconding but when the first information report does not disclose any criminal offence, in my view, the continuance of the prosecution of the petitioners is nothing but only an abuse of the process of the court.

10. Therefore, on the basis of aforesaid discussions, I am of the opinion that this quashing petition is liable to be allowed and accordingly, this quashing petition is allowed on admission stage itself and the FIR of Kotwali (Tilkamanjhi) P.S. Case No. 187 of 2008 is, hereby, quashed in respect of petitioners only. Let a copy of this order be sent to Chief Judicial Magistrate, Bhagalpur for needful.

