

Ramchandra Singh and ors. Vs. State of Bihar and anr.

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Court : Patna

Decided On : May-16-2008

Judge : Abhijit Sinha, J.

Acts : Indian Penal Code (IPC) - Sections 120B and 420; Code of Criminal Procedure (CrPC) - Sections 482

Appeal No. : Cr. Misc. No. 19185 of 2007

Appellant : Ramchandra Singh and ors.

Respondent : State of Bihar and anr.

Advocate for Def. : Jharkhandi Upadhaya, A.P.P. and Arun Kumar No. 1, Adv. for Opp. Party No. 2

Advocate for Pet/Ap. : R.K.P. Singh and Manish Kishore, Adv.

Disposition : Application allowed

Judgement :

Abhijit Sinha, J.

This application by the three petitioners who have been arrayed as accused in Complaint Case No. 699(C) of 2005 is for the quashing of the order dated 22.7.2006 passed therein by Sri Satyendra Singh, Judicial Magistrate, First Class,

Buxar, whereby he has taken cognizance under Sections-420, 120B I.P.C against the petitioners.

1. The Complainant, one Udhari Singh, impleaded herein as Opp.Party No. 2, filed the aforesaid complaint, inter alia, alleging the commission of the offences of cheating and criminal breach of trust. According to the recital in the complaint, accused No. 3, Muneshwari Devi is aunt of the complainant and she on 10.10.2004 executed a mahadnama, in favour of the wife of the complainant in lieu whereof a sum of Rs. 50,000/- was paid to her in presence of witnesses and the balance amount was agreed to be paid after execution of the sale deed. It was disclosed that accused No. 1, Ramchandra Singh, and accused No. 2, Munji Singh, were respectively the brother and nephew of Muneshwari Devi and that Ramchandra Singh and his son-in-law, Bishwanath Singh, were also witnesses in the mahadnama. It is alleged that knowing full well that Muneshwari Devi had already sold half of the lands falling in her share to some other person, yet Ramchandra and Munji figured as witnesses to the sale deed. It is further alleged that since the lands were not registered as per the stipulated time, a notice was sent but notwithstanding the same, the lands have neither been registered nor the money advanced returned.

2. Assailing the impugned order, it was submitted on behalf of the petitioners that even assuming prima facie all the allegations in the complaint to be true they merely amount to a breach of contract and could not give rise to criminal prosecution more so when the complainant's wife, the beneficiary under the mahadnama and sale deed had filed Title Suit No. 1 of 2005 for a decree for specific performance of contract which is pending adjudication before the Subordinate Judge, Buxar. It was further submitted that there was nothing in the complaint to show that the respondents had dishonest or fraudulent intention at the time the consideration money in part was parted with by the complainant's wife nor did the complaint indicate that the petitioners had induced the complainant or his wife to pay the amount parted with. In support of his submissions the learned Counsel sought to place reliance on the decisions of Hari Prasad Chamaria v. Bishun Kumar Surekha : 1974 CriLJ352 , Nageshwar Prasad Singh v. Narayan Singh : 1999 CriLJ598 and India Oil Corporation v. N.E.P.C. India reported in : AIR

3. The learned Counsel for Opp.Party No. 2 on the other hand sought to refute the submissions advanced by the learned Counsel for the petitioners and justified the impugned order taking cognizance. Relying on the decision of Navinchandra N. Majithia v. State of Maharashtra reported in 2000 (4) PLJR (SC) 2000, it was submitted that the Apex Court had clearly held that to quash an F.I.R. or Complaint the High Court has to proceed entirely on the basis of the allegations made in the complaint and it is not vested with power to examine the merit of the allegations. The learned Counsel also placed reliance on the case of Medchi Chemicals & Pharma P. Ltd v. Biological E. Ltd. (SC) reported in 2000 (3) PLJR (SC) 56 and submitted that the Apex Court was of the view that the complaint cannot be quashed merely on the ground that civil remedy is available. It was observed that simply because there is remedy provided for breach of contract that does not by itself clothe the court to infer that civil remedy is the sole court and that a criminal law and civil law remedy can be pursued in diverse situation since they are not mutually exclusive, but clearly co-extensive and essentially differed in their content and consequence.

4. In the face of the diverse opinions cited by the counsel for both the parties it would only be gainful to go back to the case of Indian Oil Corporation (Supra) wherein their Lordships in paragraph-9 have laid down the principles relevant to decide whether to exercise jurisdiction under Section 482 Cr.P.C. to quash complaints and criminal proceedings and they are as follows:

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For the purpose, the complaint has to be examined, as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the materials nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

5. In the instant case, what we have primarily to test is whether the allegations made in the complaint when taken on their face value as true and correct constitute offences defined in Sections 420 and 420B I.P.C. For an offence of cheating under Section 420 I.P.C three main ingredients are to be seen, namely, (a) deceiving any person; (b) fraudulently or dishonestly inducing the person so deceived to deliver any property to any person and, (c) to consent that any person was retained any property. To make out the offence it must be established that not only was the complainant cheated by the accused, but also by doing certain acts he was dishonestly induced to deliver or part with any property or do any act mentioned in the Section. In the instant case, the primary grievance of the

complainant is that the mahadnama has not been acted upon, but there is not allegation that the mahadnama was prepared with dishonest intention or an inducement to the complainant to deliver part of the consideration money. The main attack in the complaint petition is of non-performance of the terms of the agreement by the accused persons. Apparently, no offence under Section 420 I.P.C. is made out as the ingredients of the offence are absent.

6. Similarly, Section 120B I.P.C. would also not be applicable since it is always co-relatable with the commission of some offence. Having given my anxious thought to the submissions advanced by the parties I am of the opinion that from the averments made in the complaint petition no offence under Section 420 I.P.C. as also 120B I.P.C. is made out and, therefore, proceeding with the criminal prosecutions would be an abuse of the process of the court more so when a title suit has already been filed for similar reliefs.

7. Accordingly, the application succeeds and the impugned order taking cognizance is hereby set aside.

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