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Court : Patna

Decided On : Mar-22-2011

Judge : R.M.Doshit, J.

Acts : Code of Criminal Procedure (CrPC) (Cr.P.C) - Section 482; Indian Penal Code (IPC) - Sections 409, 420

Appeal No. : Criminal Miscellaneous No.25506 of 1998

Appellant : Mr. Chandra Barot.

Respondent : The State of Bihar, and anr.

Advocate for Def. : Mr. Tilak Sao; Mr. Satyadeo Kumar, Advs.

Advocate for Pet/Ap. : Mr. Ray Shivaji Nath; Mr. Ray Saurabh Nath, Advs.

Judgement :

1. R.M.Doshit, CJ. This application under Section 482 Cr.P.C. has been filed by one Chandra Barot, accused in Complaint Case No. 687(C) of 1996 filed in the Court of Chief Judicial Magistrate, Patna.

2. According to the complainant Satish Singh, the respondent no.2, the accused Chandra Barot approached the complainant between December, 1989 to March, 1990, presented himself as the proprietor of M/s Barot Films, assured him for the distribution rights for South Bihar of the film "BOSS", which was near completion and had thus induced the complainant to part with a sum of Rs. four lacs over a

period of four months. The accused having received Rs. four lacs did not make the film "BOSS" nor did he hand over the print of the film "BOSS" as assured. Thus, the accused had committed offence punishable under Sections 409 and 420 IPC.

3. The learned Magistrate took cognizance of the offence and issued summons on the accused. Feeling aggrieved the accused has filed the present application under Section 482 Cr.P.C. for quashing of the complaint.

4. Mr. Ray Shivaji Nath, learned senior counsel has appeared for the petitioner-accused. He has submitted that as per the agreement between the complainant and the accused, the accused received the aforesaid sum of Rs. four lacs from the complainant. He has further submitted that the accused could not make the film for various reasons and unless the film is made and cleared by the Censor Board the accused cannot deliver a print to the complainant as agreed. The complaint, therefore, deserves to be quashed. In support of his submission he has relied upon the judgment of the Hon'ble Supreme Court in *M/s Kunstocon Electronics (I) Pvt. Ltd. v. Gilt Pack Ltd.*, (AIR 2002 SC 739).

5. The petition is contested by Mr. Tilak Sao, learned counsel appearing for opposite party no.2, the complainant. He has submitted that the complaint does make out a case of criminal breach of trust and cheating and cannot be quashed at this stage. In support thereof he has relied upon the judgment of this Court in *Baliram Prasad v. State of Bihar*, [2009(2) PLJR 290].

6. In view of the above undisputed facts that the accused agreed to make the film "BOSS" and deliver a print thereof to the complainant and he having received the money did not make the film nor did he deliver the print, in my opinion, the offence punishable under sections 409 and 420 of the I.P.C. has been made out. It cannot be said to be a case of abuse of process of the Court so as to warrant exercise of power under Section 482 Cr.P.C. Besides, the accused has opportunity to put forth his defence at the stage of framing of charge. He will also have the opportunity to apply for discharge.

7. The judgment in the matter of *M/s Kunstocon Electronics (I) Pvt. Ltd.* (supra) has no application on the facts of the present case. In the case before the Hon'ble

Supreme Court the accused had already answered to the summons issued by the Chief Judicial Magistrate, the objections were filed, considered and rejected by the Magistrate. In that view of the matter, the Hon'ble Supreme Court has held that the High Court was not justified in declining to exercise its jurisdiction and adjudicating the matter on merits.

8. In the matter of Baliram Prasad (supra) this Court has, relying upon the judgment of the Hon'ble Supreme Court, observed that the test is whether the allegations in the complaint disclose a criminal offence or not.

9. For the aforesaid reasons, I consider this to be a case not fit for invoking the power under Section 482 Cr.P.C.

10. The application is dismissed. Interim stay stands vacated. (R.M. Doshit, CJ)

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