

**Arbind Kumar Sinha, and anr. Vs. State of Bihar, and anr.**

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**Court :** Patna

**Decided On :** Jul-16-2010

**Judge :** Rakesh Kumar, J.

**Acts :** Code of Criminal Procedure (CrPC) - Section 482; Indian Penal Code (IPC) - Sections 409, 420, 120B

**Appeal No. :** CRIMINAL MISCELLANEOUS No.13603 OF 2000

**Appellant :** Arbind Kumar Sinha, and anr.

**Respondent :** State of Bihar, and anr.

**Advocate for Def. :** Mrs.Indu Bala Pandey, Adv.

**Advocate for Pet/Ap. :** M/S Subhash Kumar; Sanjay Kr. Pandey, Adv.

**Judgement :**

1. Two petitioners, while invoking inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, have prayed for quashing of an order dated 5.2.1999 passed by the Chief Judicial Magistrate, Patna in Complaint Case No.105(M) of 1999. By the said order, the learned Magistrate has taken cognizance of offence under Sections 409, 420 and 120B of the Indian Penal Code.

2. Short fact of the case is that an official complaint was filed by Bihar State Khadi Village Industry Board, Gandhi Maidan, Patna on 2nd February, 1999 alleging

therein that petitioners, who were un-employed, had approached the complainant for sanctioning loan for starting Power Ghani and thereafter, in the financial year 82-83, loan was sanctioned to the petitioners for an amount of Rs.34,902.17. The payments were made on different dates. It was alleged in the complaint petition that despite the fact that loan was sanctioned to the petitioners for starting Power Ghani in the year 11983 itself, which was finally disbursed on 31.3.1984, the petitioners never started the business and they finally mis-appropriated entire amount. On aforesaid allegation, the complaint was filed. Since it was an official complaint, the learned Chief Judicial Magistrate, by its order dated 5.2.1999, took cognizance of offence under Sections 409, 420 and 120B of the Indian Penal code and directed for issuance of summon for securing attendance of petitioners.

3. Aggrieved with the order of cognizance, the petitioners approached this Court by filing the present petition. The present case was firstly taken up for hearing at the time of admission on 19.12.2000. However, a Bench of this Court directed the State counsel to file counter affidavit and in the meanwhile, it was directed that further proceeding in Complaint Case No.105(M) of 1999 pending in the court of Judicial Magistrate, 1st Class, Patna shall remain stayed. Thereafter, the matter was again taken up for hearing at the point of time on 6.7.2001. Since no counter affidavit was filed, this Court directed to issue notice to opposite party no.2, who is the complainant in the complaint case and finally, this case was admitted on 1.11.2001. It was further directed that interim order of stay shall remain operative during the pendency of this application and same is still continuing.

4. Despite the fact that opposite party no.2 entered its appearance through advocate, neither counter affidavit was filed nor did any one appear on behalf of opposite party no.2 at the time of hearing.

5. Shri Sanjay Kumar Pandey, learned counsel appearing on behalf of the petitioners, while the case was taken up, filed a supplementary affidavit. It was submitted by learned counsel for the petitioners that from the complaint petition itself, it is clear that loan was sanctioned in the year 1983 and finally, it was disbursed in the month of March, 1984 and thereafter, there was no reason for the complainant to sit tight over the matter and suddenly to file a complaint in the year

1999 with an allegation that petitioners had not started the Power Ghani. Learned counsel for the petitioners, while referring to Annexure-5 to the petition, submits that after obtaining loan and establishing the Ghani, the petitioners started to make payment of loan by different money receipts. He has brought on record few photo copies of money receipts, which makes it clear that at least in the year 1991, 1993, 1997 and 1998, payment was made against the clearance of the loan amount by the petitioners. Learned counsel for the petitioners has also brought on record a certificate granted by the mechanic of the Board, who had commissioned the Power Ghani of the petitioners. It was further submitted that to the reasons best known to the complainant, the complaint petition was filed at a very belated stage in the year 1999. Learned counsel for the petitioners has further referred to Annexure-11 to the petition, which is the photo copy of certified copy of the order sheet passed in Certificate Case No.115 of 1999-2000. It was argued that certificate case was also initiated for recovery of the amount, but since the complainant was having no record to establish that payment was not made to the Board, they failed to produce any material before the Certificate Officer and thereafter, finally certificate case was rejected on 1.3.2008. Learned counsel for the petitioners has also brought on record Annexure-10, which according to him, was monthly report as required by the Khadi Board to suggest that from time to time reports were being submitted by the petitioners regarding the profit and loss of the Power Ghani of the petitioners. On the strength of aforesaid annexures, learned counsel for the petitioners submits that at least it cannot be disputed that the petitioners had not started the Power Ghani after taking the loan amount and this is the main allegation in the complaint petition that after obtaining the loan from the complainant, the petitioners had not at all started the business. In such circumstance, it was submitted that without any material, the present complaint petition was filed and the learned Chief Judicial Magistrate, in a mechanical manner, since it was an official complaint, had taken cognizance of offence. Accordingly, it has been prayed to quash the order of cognizance as well as entire proceeding in the present case. Learned counsel for the petitioners has further referred to Annexure-7 to the petition, which is a certificate granted by Development Officer, Village Oil Industry, Khadi Board, which was issued on 28.11.2000.

6. Smt. Indu Bala Pandey, learned Additional Public Prosecutor appearing on behalf of the State even in absence of any counter affidavit has opposed the prayer of the petitioners and it was submitted that the documents, which have been brought on record by the petitioners, may not be looked by this Court, while exercising power under Section 482 of the Code of Criminal Procedure. It was submitted that the genuineness of those documents cannot be tested by this Court. It was submitted that all those facts can be scrutinized by the concerned court where the case is pending. Accordingly, she has prayed for rejection of the present petition.

7. In this case, despite appearance of opposite party no.2, none has come forward to oppose the prayer of the petitioners on behalf of the opposite party no.2. The other reason for interfering with the impugned order is that despite direction of this Court, no counter affidavit was filed either by the State of Bihar or opposite party no.2.

8. Besides hearing learned counsel for the petitioners and State, I have also perused the materials available on record. The court is aware that documents brought on record in a petition filed under Section 482 of the Code of Criminal Procedure may not be looked into unless same is a public document or same was brought on record before the court below or same was proved through process of the law, but keeping in view the facts and circumstances of the present case, this Court is of the opinion that the documents, which have been brought on record may not be overlooked. Fact remains that the loan amount of Rs.34,902.17 was sanctioned to the petitioners in the year 1983, which was finally disbursed in the month of March, 1984. In the complaint petition, there is no assertion as to whether any action was taken by the complainant for none commencement of the Power Ghani by the petitioners for such a long time. On the contrary, the petitioners have brought on record photo copies of some of the receipts which show that after commencement of the Power Ghani, they also started to pay loan amount. The second aspect for examining the document is that the rejection of certificate case, which was filed by the complainant for recovery of the loan amount. The petitioners have brought on record photo copy of certified copy of the order sheet, which has not been disputed. The order of the Certificate Officer

makes it clear that time without number, the complainant was directed to produce materials to establish the claim, but nothing was produced before the Certificate Officer and as such Certificate Case No.115 of 1999-2000 was rejected on 1.3.2008 by the Certificate Officer.

9. In the aforesaid circumstances, the court is of the opinion that the filing of the complaint petition at such belated stage, without any cogent reason, was unwarranted and, accordingly, the court feels that it is a fit case for exercising inherent jurisdiction in favour of the petitioners.

10. Accordingly, the order of cognizance dated 5.2.1999 passed by the Chief Judicial Magistrate, Patna in Complaint Case No.105 (M) of 1999 is hereby set aside and petition stands allowed.

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