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Court : Patna

Decided On : Aug-24-2010

Judge : Rakesh Kumar, J.

Acts : Code of Criminal Procedure (CrPC) - Section 482; Indian Penal Code (IPC)
- Sections 379, 406, 420

Appeal No. : CRIMINAL MISCELLANEOUS No.4052 OF 2002

Appellant : Ashok Kumar, and anr.

Respondent : State of Bihar, and anr.

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

Judgement :

1. When the case was called out, none appeared on behalf of the petitioner either to press this petition or to make a prayer for adjournment nor any one appeared on behalf of opposite party no.2, despite the fact that the opposite party no.2 had entered his appearance through his advocate.

2. I have heard Smt. Indu Bala Pandey, learned Additional Public Prosecutor appearing on behalf of the State and I have also perused the materials available on record.

3. 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 22.9.2000 passed by Shri Hussain Nawaz, Judicial Magistrate, Ist Class, Patna in Complaint Case No.1383(C) of 2000. By the said order, the learned Magistrate has taken cognizance of offence under Section 379 of the Indian Penal Code and directed for issuance of summons against the petitioners.

4. Short fact of the case is that opposite party no.2 filed a complaint in the court of Chief Judicial Magistrate, Patna, which was registered as Complaint Case No.1383(C) of 2000. In the complaint petition, it was alleged that on 15.3.2000, the complainant at his residence had prepared a cheque for an amount of Rs.10,000/-, but he had not filled up the name, in whose favour, cheque was to be issued. In the meanwhile, petitioner no.1 arrived for some work. Due to some reason for few minutes, the complainant went inside the house and after about 8-10 minutes, when he returned back, he neither found the accused- petitioner no.1 in his room nor did he find the cheque, which was signed by the complainant. It was alleged that with a view to commit theft, the accused persons had taken the cheque. Thereafter, the said cheque was deposited in the bank account of Accused No.2 in Bank of Baroda, Chapra. On the aforesaid allegation, the complaint was filed and thereafter, during enquiry, two witnesses were also examined. After conducting enquiry, the learned Magistrate, by its order dated 22.9.2000, took cognizance of offence under Section 379 of the Indian Penal Code against the petitioners.

5. Aggrieved with the order of cognizance dated 22.9.2000 passed in Complaint Case No.1383(C) of 2000; the petitioners approached this Court by filing the present petition, which was finally admitted on 26.2.2004. While admitting, it was directed that during the pendency of the application, further proceeding in Complaint case No.1383(C) of 2000 pending in the court of Judicial Magistrate, Ist Class, Patna shall remain stayed and order of stay is still continuing. Perusal of the present petition and its enclosures reveals that prior to filing of the present complaint petition; the petitioner no.2 had filed a complaint in the court of Chief Judicial Magistrate, Chapra, which was numbered as Complaint Case No.896 of 2000. In the complaint petition, it was alleged that the complainant of the present case (opposite party no.2) had given a cheque of Rs.10,000/- to the petitioners in lieu of purchase of some jewelries from the petitioner no.2. It was alleged that when the cheque was presented in the Bank by its deposit in his Bank account in

the Bank of Baroda, same was dis-honoured and, accordingly, complaint case was filed under Sections 406 and 420 of the Indian Penal code and 138 of the Negotiable Instruments Act. The said complaint was subsequently referred to the police and police thereafter registered an F.I.R. vide Chapra P.S. Case No.170 of 2000 and in that case, police also submitted charge sheet against the complainant of the present case.

6. On the basis of averments made in the present petition as well as in the Complaint Case No.869 of 2000, which was lodged by the petitioner no.2, the court is of the opinion that the complaint case i.e. Complaint Case No.1383(C) of 2000 was filed by the complainant in a complete dis-honest manner and with a view to create a defence in a case in which the complainant himself was made accused. Firstly, the complainant issued a cheque without having any amount in his Bank Account to the petitioners and when he apprehended that he may be made accused for dis-honour of the cheque, the present complaint petition was filed by the opposite party no.2-complainant.

7. In view of the facts and circumstances of the present case, the court is of the opinion that the present complaint petition was filed by opposite party no.2 maliciously and with oblique motive and as such the entire proceeding as well as order dated 22.9.2000 passed in Complaint Case No.1383(C) of 2000 by the Judicial Magistrate, 1st Class, Patna are liable to be set aside and, accordingly, the order of cognizance as well as entire proceeding in Complaint Case No.1383(C) of 2000 are hereby set aside and petition stands allowed.

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