

Kantishab. Vs. State of Bihar.

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Court : Patna

Decided On : Oct-07-2010

Judge : Rakesh Kumar, J.

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

Appeal No. : CRIMINAL MISCELLANEOUS No.23957 OF 1998

Appellant : Kantishab.

Respondent : State of Bihar.

Advocate for Def. : Mr. A.M.P. Mehta, Adv.

Advocate for Pet/Ap. : M/S Ashwani Kumar Singh; Pankaj Kumar Singh; M/S Syed Arshad Alam; Gautam Kumar Yadav, Adv.

Judgement :

1. The sole petitioner, while invoking inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, has prayed for quashing of an order dated 29.4.1998 passed by Smt. Sushma Sinha, Judicial Magistrate, Patna in Complaint Case No.382(c) of 1998. By the said order, learned Magistrate has taken cognizance of offence under Section 420 of the Indian Penal Code and directed for summoning the petitioner to face trial.

2. 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.382(c) of 1998. The complaint was filed against the sole petitioner for the offence under Sections 406 and 420 of the Indian Penal Code. It was alleged that the complainant had approached the petitioner telephonically from his Patna office for distribution, exploitation and exhibition right of a picture, namely, LOHA in Hindi for the territory of Bihar and Nepal. Initially, the total amount was fixed to the tune of Rs.34 lakhs. However, on request made by the complainant, the amount was reduced to Rs.28 lakhs and petitioner in the month of February and March, 1997 made initial payment of Rs.6.26 lakhs on different dates. In the complaint petition, it was asserted that complainant went to Mumbai and paid the balance amount to the petitioner and thereafter, a final receipt dated 16.10.1997 of full and final payment was made. The complainant has stated that the petitioner informed the complainant for release of film 'LOHA' on 17.10.1997. The complainant disclosed in the complaint petition that the petitioner sent a registration letter dated 15.2.1997 to the Secretary, Bihar Motion Picture Association for LOHA picture in favour of the complainant for Bihar and Nepal territory for seven years from the date of first release in the said territory, which was subsequently, registered for the period of ten years. Accordingly, the said film was registered to be displayed within the territory of Bihar and Nepal in favour of M/S Sankat Mochan Pictures of which the complainant was Proprietor. It has been alleged in the complaint petition that subsequently, the petitioner had given the said right in favour of one M/S Viratnagar Picture Exchange, Viratnagar, Nepal. It was asserted by the complainant that the petitioner had cheated the complainant by way of giving the right of distribution, exploitation and exhibition of the film 'LOHA' to M/S Viratnagar Picture Exchange whereas initially the payment was made by the complainant for being appointed for both the areas i.e. Bihar and Nepal and agreement was already entered in between the complainant and the petitioner. The complainant has asserted that due to the said act, the petitioner had cheated and misappropriated the amount to the tune of Rs.10 lakhs of the complainant. After filing the complaint petition, the complainant was examined on S.A. and in support of complaint petition, witnesses were examined, who corroborated the stand of the complainant and thereafter, by the impugned order i.e. by order dated 29.4.1998,

the learned Magistrate took cognizance of offence under Section 420 of the Indian Penal Code.

3. Aggrieved with the order of cognizance, the petitioner approached this Court by filing the present petition. On 23.12.1998, the petitioner was permitted to add the complainant of the case as opposite party no.2 and the case was admitted for hearing. Since opposite party no.2 had already entered his appearance through his advocate, no notice was directed to be issued to him. This Court further directed that till disposal of this case, further proceeding in Complaint Case No.382(c) of 1998 in the court below shall remain stayed. The order of stay is still continuing. After the admission of the case in the year 2003, an Interlocutory Application vide I.A. No.1172 of 2002 was filed on behalf of opposite party no.2 for vacating the stay. However, same was rejected on 31.3.2003.

4. Shri Ashwani Kumar Singh learned Senior Counsel appearing on behalf of the petitioner, while challenging the impugned order, submits that the perusal of the complaint petition itself makes it clear that the petitioner never intended to cheat the complainant. It has been submitted by Shri Singh that after appointing the complainant for exploiting and displaying the film 'LOHA' within the territory of Bihar and Nepal, the petitioner had taken sincere step and he informed the Secretary, Bihar Motion Picture Association, Patna regarding the said right of exclusive distribution, exploitation and exhibition of film title 'LOHA' to M/S Sankat Mochan Pictures, Patna for the territory of Bihar and Nepal. The said letter was issued on 15.2.1997, which was subsequently, corrected by letter dated 18.3.1997 whereby the period of seven years was enhanced to ten years. It has been submitted by Shri Singh that Nepal Motion Picture Association was not agreeable for entrusting the said right to the complainant and as such vide letter dated 27.5.1997, which was sent through the complainant i.e. M/S Sankat Mochan Pictures, the Secretary Nepal Motion Pictures Association was communicated for giving such right. It was submitted that the portion regarding the name of purchaser of the right was kept blank. Learned counsel for the petitioner has further, while referring to Annexure-1 to the petition, submitted that even after receipt of letter dated 27.6.1997, which has been annexed as Annexure-4 to the petition (at page-30), the complainant had made full and final payment to the

petitioner on 16.10.1997. Accordingly, it has been submitted that after being fully satisfied that there were difficulty in entrusting the said right to the complainant, the complainant agreed for exercising his said right to the territory of Bihar and as such final payment was made. It has been submitted that the chain of events, which has been incorporated in the complaint petition itself clarifies that the petitioner had never intended to cheat the complainant. It has been alternatively argued by learned Senior Counsel for the petitioner that hardly it can be said that it was a breach of contract and for such act; the complainant was entitled to approach the court of civil jurisdiction. In the facts and circumstances of the present case, the complainant was not at all entitled to approach the court of criminal jurisdiction and similarly, the learned Magistrate has exceeded its jurisdiction by way of entertaining the said complaint and thereafter, by way of proceeding with the said case.

5. Shri Ashwani Kumar Singh, learned Senior Counsel for the petitioner, has referred to a case law reported in 2007(7) SCC 373 (Vir Prakash Sharma v. Anil Kumar Agarwal & another). It has been submitted that in a case where the court is satisfied that the entire complaint petition, if taken to be correct in its entirety do not disclose an offence, this Court is entitled to quash the entire proceeding while exercising power under Section 482 of the Code of Criminal Procedure. Learned counsel for the petitioner has further relied on a case law reported in 2005(10) Supreme Court Cases 336(Uma Shankar Gopalika v. State of Bihar). It has been submitted by Shri Singh, on the basis of Uma Shankar Gopalika's case (Supra), that for constituting an offence under Section 420 of the Code of Criminal Procedure, it has to be established that there was intention of cheating from the very inception. Even if such intention is developed later on, the same would not amount to cheating. It has been submitted by Shri Singh that the whole complaint categorically specifies that the petitioner had never intended to cheat the complainant and even the final payment by the complainant was made after being fully satisfied that it was difficult for the petitioner to give the right of displaying and distribution of the film 'LOHA' within the territory of Nepal and as such the learned Magistrate had committed a serious error, while taking cognizance of offence under Section 420 of the Indian Penal Code in absence of any material or fact disclosing commission of offence under Section 420 of the Indian Penal Code.

Learned Senior Counsel for the petitioner has referred number of case laws on the aforesaid points. Learned counsel for the petitioner has further taken a stand that no cause of action arose within the territorial jurisdiction of the court at Patna and as such the learned Magistrate was not authorized to entertain the complaint petition and take cognizance of the offence. On the aforesaid grounds, learned counsel for the petitioner has prayed for setting aside the impugned order of cognizance.

6. Mr. Syed Arshad Alam, learned counsel appearing on behalf of opposite party no.2, has vehemently opposed the prayer of the petitioner. It has been argued by Mr. Alam that the contents of the complaint petition categorically states that the petitioner had cheated the complainant. It has been submitted that initially the petitioner had agreed to give the right of distribution, exploitation and exhibition of the film 'LOHA' within the territory of Bihar as well as Nepal and thereafter, the payment was made by the complainant. However, subsequently, the complainant noticed that he was cheated by the petitioner and in place of the complainant, one M/S Viratnagar Films was given said right for total amount of Rs.7.5 lakhs only on 18.10.1997. Mr. Arshad Alam, learned counsel appearing on behalf of opposite party no.2, has submitted that on the basis of materials on record, the learned Magistrate has rightly taken cognizance of the offence. It has been submitted that time without number; it has been clarified that at the initial or interlocutory stage of a criminal proceeding, this Court should refrain from exercising power under Section 482 of the Code of Criminal Procedure. It has been submitted that it is not a fit case for exercising power under Section 482 of the Code of Criminal Procedure in favour of the petitioner. It has further been submitted that whatever pleas have been taken by the petitioner can well be taken at appropriate stage before the concerned court. Accordingly, it has been prayed to reject the present petition.

7. Shri A.M.P. Mehta, learned Additional Public Prosecutor appearing on behalf of the State, has supported the stand of Mr. Arshad Alam, learned counsel appearing on behalf of opposite party no.2.

8. Besides hearing learned counsel for the parties, I have also perused the materials available on record particularly the contents of the complaint petition and the impugned order. After going through the contents of the complaint petition, the court is satisfied that there is no material to indicate that petitioner has committed an offence under Section 420 of the Indian Penal Code. From the contents of the complaint petition, it is evident that the petitioner never intended to cheat the petitioner. Moreover, from the contents of the complaint petition itself, it appears that full and final payment was made by the complainant even after knowing the fact that it was difficult for the petitioner to give the said right to the complainant and M/S Viratnagar Film was entrusted with the right of exploitation and exhibition within the territory of Nepal. The court is of the opinion that dispute in between the parties can be termed as a dispute of purely civil in nature, for which the criminal court may not be allowed to proceed with the case.

9. Accordingly, the order of cognizance dated 29.4.1998 passed in Complaint Case No.382(c) of 1998 by Smt. Sushma Sinha, learned Judicial Magistrate, Patna is hereby set aside and petition stands allowed.

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