IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.47371 of 2013

Amrendra Kumar Sinha S/O Late Nageshwar Prasad Sinha R/O Village Nutan Bihar, First Floor, Room No. 101, P.O. + P.S. Kankarbagh, District Patna. .... Petitioner

Versus

1. The State Of Bihar.
2. Arun Kumar Sinha S/O Sri Kailash Sinha R/O Village Gavtal Danapur, P.S. Danapur, District Patna.

.... Opposite Parties

Appearance :

For the Petitioner/s : Mr. Vijay Kumar Sinha, Advocate
For the Opposite Party/s : Mr. S.M.Rahman, A.P.P.

CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL ORDER

4 24-04-2017 The instant criminal miscellaneous has been filed for quashing the order dated 28.01.2002 passed in Complaint Case No. 2292(c) of 2001 whereby and whereunder cognizance was taken against the accused persons including the petitioner for the offence under Sections 406, 420 and 120B of the Indian Penal Code by Sri Amit Raj, the then Judicial Magistrate 1st Class, Patna.

Heard the learned counsel for the petitioner and the learned A.P.P. for the State.

In spite of valid service of notice upon opposite party No. 2, the opposite party No. 2 has not appeared.

Complaint Case No. 2292(c) of 2001 was instituted by the opposite party No. 2 on 14.12.2001. In the complaint, it is stated that the opposite party No. 2 handed over four bank drafts for a value of Rs. 45,000/- each dated 14.10.1991 along with cash amount of Rs. 20,000/- to the petitioner, an agent of M/S Jain Finance Corporation. The bank drafts were in the name of M/S Jain Finance Corporation, the amount was paid as price for purchase of an Air Conditioned Deluxe Bus to be financed by M/S Jain Finance Corporation. The opposite party No. 2 at the request of the petitioner singed various papers also but the Bus was never delivered to the opposite party No. 2. The bank drafts issued in the name of M/S Jain Finance Corporation were certified by the concerned Bank, which were encashed.

The learned counsel for the petitioner submits that opposite party No. 2 entered into a contractual deal for the purchase of a Bus to be financed by M/S Jain Finance Corporation. The opposite party No. 2 thus parted with the money voluntarily and willingly. There was no inducement or dishonest intention at the inception as per the allegation themselves. In this view of the matter, no offence under Sections 406, 420 and 120B of the Indian Penal Code could be made out. The allegations, even if true, constituted a purely civil cause of action for breach of contract to deliver the vehicle after having received the payment.

Reliance can be placed upon judgment of the Supreme Court reported in ***2000(4) SCC 168 in the case of Hridaya Ranjan Prasad Verma and others v. State of Bihar and another***. As a matter of fact, the opposite party No. 2 having received finances from one M/S Jai Shree Credit Corporation with the help of the petitioner by transfer of the fund from the M/S Jain Finance Corporation was in fact delivered a new Bus on 22.11.1991. Having defaulted in repayment M/S Jai Shree Credit Corporation seized the bus in 1994 leading to the institution of Cr.W.J.C. No. 681 of 1994 by opposite party No. 2 before this Court for release of the same. The writ application came to be dismissed on 05.07.1995. The opposite party No. 2 after seizure of the Bus by M/S Jai Shree Credit Corporation instituted Case No. 58 of 1994 before the State Consumer Commission at Patna where the parties appeared and filed their written statement thereafter that case was dismissed for default on 16.04.2001 as the complainant failed to appear on four dates. The application for restoration of the same was also rejected on 20.06.2002. The Revision Case No. 1219 of 2001 was then preferred by the opposite party No. 2 before the National Commission which was also rejected on 26.07.2002 and thereafter the present complaint was filed. When the opposite party No. 2 had lost possession of the Bus to M/S Jai Shree Credit Corporation for non-payment of hire purchase of installments, the present prosecution was then instituted malafidely to recover the alleged money from M/S Jain Finance Corporation which were already utilized to purchase a new vehicle from M/S Jai Shree Credit Corporation. The opposite party No. 2 in his own pen had consented that payment given in October 1991 to M/S Jain Finance Corporation be adjusted for purchase of the Bus by opposite party No. 2 financed by M/S Jai Shree Credit Corporation. Thus, this complaint was mala fide and it was an afterthought. The order of taking cognizance against M/S Jain Finance Corporation and its proprietor Prem Kumar Jain @ Prem Lal Jain has already been quashed by the order dated 26.04.2004 passed in Criminal Miscellaneous No. 3641 of 2004 and as such the petitioner being solely an agent has got no responsibility whatsoever. It is well settled principle of law that complaint would have to be read as a whole if the complaint appears to be mala fide, frivolous or vexatious. Such a complaint would clearly fall within category (VII) of the Bhajan Lal case. This would therefore, necessarily vary in its application from case to case.

In the present case, I find that the payments in question were made on 14.10.1991, thereafter there was complete silence on the part of the opposite party No. 2 till he instituted Complaint Case No. 58 of 1994 before the Consumer Forum. Even this prosecution came to be instituted after the vehicle of the opposite party No. 2 financed in 1991 itself by M/S Jai Shree Credit Corporation came to be seized in 1993, the challenge to which was rejected by this Court on 05.07.1995 in Cr. W.J.C. No. 681 of 1994. The opposite party No. 2 did receive a new Bus from M/S Jai Shree Credit Corporation on adjustment of accounts. Complaint Case No. 58 of 1994 stood dismissed on 16.04.2001 for non-prosecution after several dates. The restoration petition was also rejected on 20.06.2002. The revision before the National Commission was also rejected on 26.07.2002. Thereafter the complaint case was filed after ten years. On these premises, the impugned order of cognizance dated 28.01.2002 and the entire proceeding in Complaint Case No. 2292 (c) of 2001 was quashed against M/S Jain Finance Corporation and Prem Kumar Jain @ Prem Lal Jain, proprietor of M/S Jain Finance Corporation. Admittedly, this petitioner was an agent of M/S Jain Finance Corporation so the impugned order of cognizance dated 28.01.2002 and the entire proceedings in Complaint Case No.

2292(c) of 2001 against the present petitioner is also vitiated in law and are clearly an abuse of the process of law. Accordingly, the same are hereby quashed.

In the result, this Criminal Miscellaneous application is here by allowed.

(Jitendra Mohan Sharma, J)

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