

(2001) CrLJ 3814 : (2001) AIR Jhar HCR 299 : (2001) 1 JLJR(Jhar) 349

Jharkhand High Court

Case No: Criminal Miscellaneous No"s. 3436 and 3451 of 1999 (R)

Jagdish Pandey

APPELLANT

Vs

State of Bihar and
Others

RESPONDENT

Date of Decision: May 8, 2001

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 202(1), 397, 482
- Negotiable Instruments Act, 1881 (NI) - Section 138
- Penal Code, 1860 (IPC) - Section 420

Citation: (2001) CrLJ 3814 : (2001) AIR Jhar HCR 299 : (2001) 1 JLJR(Jhar) 349

Hon'ble Judges: Deoki Nandan Prasad, J

Bench: Single Bench

Advocate: A. Srivastava, for the Appellant; Jai Prakash, P. Kumar and A. Hussain, for the Respondent

Final Decision: Dismissed

Judgement

Deoki Nandan Prasad, J.

Both the criminal miscellaneous applications were heard together as the parties and the matter under consideration are same and similar and are being disposed of by this common judgment.

2. Both the applications have been filed u/s 482 of the Code of Criminal Procedure for quashing the orders dated 23.11.1998 and 8.3.1999 passed by the Judicial Magistrate, 1st Class. Jamshedpur, in C/1 Case No. 714 of 1998 and C/1 Case No. 790 of 1998, whereby and whereunder the orders passed for issuance of summons against the petitioner for the offence u/s 138 of the Negotiable Instrument Act and Section 420 of the Indian Penal Code.

3. The short facts giving rise to this applications are that a complaint case was filed by the opposite party Nos. 2 and 3 stating therein that they were appointed by the petitioner as carrying and forwarding agent to deliver Himalaya Mineral Water and accordingly they worked and also took godown on rent for the purpose of keeping articles. The petitioner paid Account Payee Cheque dated 15.7.1998 for Rs. 55,330/- but the said cheque could not be encashed by the Bank due to insufficient fund. It is also claimed that there was an agreement dated 2.3.1998 on the basis of which the petitioner has appointed opposite party Nos. 2 and 3 as carrying and forwarding agent. In between 11.4.1998 to 20.5.1998, the petitioner had sent five racks of Himalayan Mineral Water and as per the instructions of the petitioner, the opposite party Nos. 2 and 3 delivered one truck load of the said mineral water to the consignee whereas the remaining four trucks load of the said consignment are still lying in the godown taken on rent by the complainant/opposite party Nos. 2 and 3. On entering into the agreement, the petitioner induced the complainant/opposite party Nos. 2 and 3 to part with a sum of Rs. 5,00,000/- (Rupees five lacs) as security amount towards the performance of the said agreement dated 2.3.1998 and the petitioner also assured that he will pay interest per annum over the said amount and, accordingly, the opposite party Nos. 2 and 3 parted with their earned money a sum of Rupees five lacs, but the petitioner was avoiding to pay the commission and freight charges as well as the interest over Rupees five lacs and thereafter the said complaint case was filed.

4. Witnesses were examined in both the cases during enquiry u/s 202(1) of the Code of Criminal Procedure and after finding the prima facie case and material to proceed with the case, the learned Magistrate passed the orders impugned, hence these applications.

5. Learned counsel appearing on behalf of the petitioner submitted that the learned Magistrate committed error in passing the orders impugned for issuance of summons as no case u/s 420 of the Indian Penal Code is made out. It is further submitted that, several other petitions had also been filed in the case of similar nature and the parties have already compromised their dispute outside the Court and on the basis of which Cr. Misc. No. 14564 of 1999 was already allowed and the entire proceeding was quashed in terms of the compromise arrived at between the parties and no case is made out as well as the allegation as made out is of civil nature. Therefore, the orders impugned are fit to be quashed.

6. On the other hand, learned counsel appearing for the opposite party Nos. 2 and 3 contended before me that both the criminal miscellaneous applications are not maintainable as the order for issuance of processes is not an interlocutory order and. as such, criminal revision, against the order, is maintainable. It is further submitted that the cheque issued for a sum of Rs. 55,330/- was bounced due to insufficient fund and the petitioner also cheated the complainant by non-payment of the said amount and. as such, the learned Court below has rightly passed the order impugned for Issuance of processes after finding sufficient ground for proceeding in the case. It is also argued that the petitioner is a habitual offender in such type of case as the opposite party Nos. 2 and 3

moved an application for quashing the Complaint Case No. 220(C) of 1999 in the Patna High Court in Cr. Misc. No. 14564 of 1999, when the petitioners called them for amicable settlement and paid two post dated cheques of Rs. 2,17,000/- and Rs. 3,00,000/-, but the said cheques also could not be encashed and. as such, there is no illegality in the order impugned and. therefore, the applications are fit to be dismissed.

7. There is no doubt that the cheque of Rs. 55,330/- issued in favour of opposite party Nos. 2 and 3 was bounced due to nonavailability of fund. It is also an admitted position that there was an agreement executed on 2.3.1998 in respect of business entered into between the parties. There appears specific allegation about the payment being made to the petitioner. The learned Magistrate after considering the evidence on record, passed the orders impugned for issuance of summons after finding sufficient ground for proceeding with the case. It is also well settled that the criminal proceeding cannot be thwarted merely because civil proceedings are also maintainable. In this connection, reference may be made to the case of [Trisuns Chemical Industry Vs. Rajesh Agarwal and others](#). Thus there appears no illegality in the order impugned.

8. Apparently both the applications have been filed u/s 482 of the Code of Criminal Procedure but it is settled law that power u/s 482 of the Code of Criminal Procedure should not be resorted to if there is a provision in the Code for redressal of the grievance. It is also held in the case of Rajendra Kumar Sltaram Pande and otben v. Uttam and another. (1999) 2 BLJR 5. that an order of Magistrate directing issuance of processes is not purely an interlocutory but intermediate or quasi final and, therefore, the revisional jurisdiction u/s 397 could be exercised against the same.

9. Issuing processes against a person, after deciding that there is sufficient ground for proceeding, will certainly amount to direct or compel him to face trial which cannot be an order of purely temporary nature as it decides and touches he right of the person. In this view of the matter also, both the applications ae not maintainable.

10. Having regard to the above facts and circumstances, there appears no merit in both the applications which are. accordingly, dismissed.

11. Applications dismissed.