

(2006) 12 PAT CK 0086

Patna High Court

Case No: Criminal Miscellaneous No"s. 41948, 41952 and 41953 of 2005

Sri Krishna Kumar Yadav and
Another

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision: Dec. 4, 2006

Acts Referred:

- Constitution of India, 1950 - Article 12
- Criminal Procedure Code, 1973 (CrPC) - Section 202
- Negotiable Instruments Act, 1881 (NI) - Section 138
- Penal Code, 1860 (IPC) - Section 406, 409, 420

Citation: (2007) 1 PLJR 410

Hon'ble Judges: Abhijit Sinha, J

Bench: Single Bench

Advocate: Kali Kant Jha, for the Appellant; Jharkhand Upadhyay for the State and Mr. Amresh Kumar Singh for the O.P No. 2, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Abhijit Sinha, J.

All these three cases are taken up together as the parties in all these three cases are common and arise out of common transaction whereby the complainant-opposite party No. 2 had lent money to the accused company and its Managing Director. Through Criminal Misc. No. 41948 of 2005, the petitioners have sought for quashing of the order dated 27.7.2005 passed in Complaint Case No. 2057(m) of 2005 whereunder the learned Chief Judicial Magistrate, Patna, has taken cognizance of the offence under Sections 420/406/409 I.P.C, and 138 of the Negotiable Instrument Act. Through Criminal Misc. No. 41952 of 2005, the petitioners have sought for quashing of the order dated 16.6.2005 passed by the learned Chief Judicial

Magistrate, Patna in Complaint Case No. 1540(M) of 2005 wherein cognizance has been taken under similar offence and through Criminal Misc. No. 41953 of 2005 the petitioners have sought quashing of the order dated 1.8.2005 passed by the learned Chief Judicial Magistrate in Complaint Case No. 2108(M) of 2005 whereby cognizance has been taken for similar offence.

2. The brief facts of all these three cases may be culled out from the records of Criminal Misc. No. 41948 of 2005. The complainant, Bihar State Credit and Investment Corporation Limited is a registered Company under the Companies Act, a Government of Bihar undertaking and being a financial institution of the Government of Bihar is engaged mainly in providing financial aids and assistance to promote, establish and set up of small, medium and large industries in the State of Bihar and Jharkhand in a bid to make the programme and policy adopted by the Government of Bihar in the matter of industrial revolution a success. It has been empowered by various Sections of the State Financial Corporation Act, 1951. The accused No. 1, M/s Patna Poisons (Private) Limited is a Company incorporated under the Companies Act, 1956 and as such is a legal person and accused No. 2, Krishna Kumar Yadav is the Managing Director/ promotor/ guarantor of the said Company (accused No. 1) and all activities of the Company are carried out by its Promotor/Director for their gains. It is said that M/s Patna Polsan Model Dairy was engaged in manufacture of salted butter and caseni etc. and for the purpose of setting up of a Patna Polsan Model Dairy at Digha the new management proposed to increase the capacity of Butter and Ghee and with that aim in view the accused persons approached the complainant Company for financial assistance and applied for the same in the prescribed form. It is further said that the complainant Corporation after due inquiry and completion of formalities sanctioned term loan to the extent of Rs. 20 lacs to the accused Company and in pursuance thereof the accused persons executed various agreements in respect of term loan and its repayment. However, the accused persons wilfully neglected in making repayment of its loan and interest thereon and it is said that the dues against the accused persons was to the extent of Rs. 76517475.00 calculated on 31.3.2004 and further interest accrued thereupon whereafter the complainant issued several letters and notices demanding repayment of the loan amount but all its effort proved futile. It is further said that subsequently the complainant Corporation announced/advertised its One Time Settlement Scheme (Hereinafter referred to as O.T.S.) and requested the accused to settle their dues under the said Scheme vide its letter No. 1841 dated 7.11.2004 and in response to the said letter the accused persons approached the complainant Corporation and submitted three post dated cheques towards the payment of dues/ liabilities. The details whereof are as follows: Cheque No. 094682 dated 30.4.2005 for Rs. 5,00,000.00, Cheque No. 094684 dated 15.6.2005 for Rs. 5,00,000.00 and Cheque No. 094685 dated 30.6.2005 for Rs. 6,32,936.00. All these cheques were drawn on UCO Bank, Exhibition Road, Patna. When the cheques were presented for clearance by the complainant through its Bankers, Corporation Bank

they were dishonoured with the endorsement "Not Arranged for". Accordingly for dishonour of cheque No. 094682, the complainant Corporation sent a legal notice on 9.5.2005, for dishonour of cheque No. 094684, the Corporation sent legal notice dated 22.6.2005 and for dishonour of cheque No. 094685 the Corporation sent legal notice dated 7.7.2005 to the accused persons under the N.I. Act and also informed them personally but no heed was paid by the accused persons to pay the amount covered under the said bounced cheques within stipulated time. On the aforesaid ground, it was submitted that the accused persons had given the cheques to the complainant Corporation with unfair intention and with specific intention to cheat the complainant Corporation and by the said action the complainant Corporation has been put to wrongful loss and the accused persons have put themselves to wrongful gain. It was also submitted that the action of the accused persons reflected mala fide and criminal conspiracy so as to defraud and cheat the complainant.

3. The common argument in all these three cases is that there was no mala fide or wilful intention on behalf of the petitioner Company either to defraud or cheat the complainant Corporation. In this connection it was submitted that on the advertisement of the O.T.S. the petitioner Company had applied/approached the complainant and the matter was settled by making payment of Rs. 23,32,936/- and the petitioner had given two cheques of Rs. 1,00,000/- and Rs. 22,32,936/- dated 27.12.2004 and 27.3.2005, respectively with a condition that the petitioner will replace the cheques by making payment through demand draft. It has also been submitted that the petitioner had replaced one of the cheques dated 27.12.2004 of Rs. 1,00,000/- by making payment through demand draft and so far as the other cheque of Rs. 22,32,936/- was concerned, it was to be replaced by 27.3.2005 but due to unavoidable reasons, the same could not be replaced and in the meantime on 2.4.2005 the father-in-law of the petitioner died and due to the same further time was sought for by the petitioners for replacing the cheques and eventually on 27.3.2005 the cheque was replaced by making payment of Rs. 1,00,000/- through demand draft of South Indian Bank and for the balance amount, i.e., 21,32,936/- the petitioner gave four cheques of various dates and of various amounts with the application that all the four cheques will be replaced on due date. It has also been submitted that on receipt of the letter regarding the dishonouring of the cheques the petitioner had written to the complainant Corporation that those cheques were only meant to be replaced by demand draft and not for encashment and the petitioner further assured the complainant Corporation that opportunity may be given to him for replacement of the cheques till 31.12.2005. This request met with response whereby 10 days further time was given to the petitioner for repayment of dues. It is said that on receipt of the letter the petitioner prayed for further time upto 31.12.2005. However, the complainant-Corporation without responding to the said letter filed a complaint petition. The submission advanced on behalf of the petitioner is that the Company of the petitioner has not been commissioned as yet

and although loans were taken, commercial production had not been started and the complainant had auctioned some of the landed property of the Company and the money had been used to rehabilitate the Company on several occasions and this has caused mental and physical agony to the petitioner. It has also been submitted that since the petitioner had returned two lacs out of Rs. 23,32,936/- and had furnished cheques for the balance amount which were to be replaced by demand draft under the O.T.S. policy it cannot be said that the petitioner had any intention to cheat and by filing the complaint petition the complainant Corporation had sought to coerce and force the petitioner to make payment. It has also been submitted that the petitioner had always expressed his willingness to clear all his dues but he was haunted by misfortune and he could not make payment within time schedule. It has also been submitted that in view of there being no ulterior motive of the petitioner to defraud or cheat the complainant Corporation and he having paid part payment of the same and also deposited post-dated cheques which were to be replaced by demand draft no offence can be said to have been made out under any of the provisions of the Penal Code. It has also been submitted that since cheques had been deposited by way of guarantee and the amount was eventually to be paid by demand draft it was the complainant Corporation who had deposited those cheques for clearance notwithstanding the earlier agreement that the cheques will be replaced by demand draft and if the cheques were defrauded the petitioner cannot be fastened with the liability of Section 138 N.I. Act. It is also submitted that the taking of cognizance was bad in law inasmuch as the complainant was not examined on S.A. and cognizance has been taken on the very date the complaints were filed and the same cannot be sustained in the eye of law because the complainant is not a full-fledged Government Company but is a Company registered under the Companies Act and as such was a Government Undertaking and hence the process u/s 202 Cr.P.C. was required to be exhausted.

4. In this connection reference was sought to be made on the case of [Mohd. Hadi Raja Vs. State of Bihar and Another](#), and it was submitted that for the purpose of enforcing the fundamental rights, the public undertakings, which account on deep and pervasive control, can be held to be a State within the meaning of Article 12 has been treated at par with the Government Departments but in all its facets, public undertaking has not been equated with the departments run directly by the Government.

5. I am not inclined at this stage to enter into a question whether the complainant Corporation is a State within the ambit of Article 12 of the Constitution of India. I am only required to see whether the cognizance taken by the learned Chief Judicial Magistrate in all the three cases are legal and sustainable in law or not.

6. Admittedly, the accused Company had paid part of the amount dues but thereafter he had dilly-dallied with the balance payment. Admittedly, the accused had taken loan from the complainant Corporation which under the agreement he

was required to repay but he had initially made some payments to reimburse part of the loan amount and interest accrued thereupon yet for the balance amount he had issued four post dated cheques which were to be replaced by demand drafts on the dates of the cheques but when the dates written on the cheques arrived they were not replaced by drafts, for various reasons which had no bearing on the contract. Criminal breach of trust u/s 409 I.P.C. is not in respect of the property belonging to the firm but is an offence committed by a person in respect of the property which has been specifically entrusted to such a person under special contract and he holds that property in fiduciary capacity under special contract. The facts in the complaint petition also disclose offence u/s 420 I.P.C.

7. Due regard being had to the facts and the circumstances of the case and the conduct of the accused persons in. not reimbursing the complainant Corporation all the full amount of loan and the interest accrued thereupon and issuing cheques which were dishonoured, I do not find any merit in this application. Even if there was an understanding that the cheques would be replaced by demand drafts on the date noted in the cheques it was incumbent upon the accused persons to have done replacing within the stipulated time and not asked for further extension. His personal difficulties or non-commissioning of his Company could not absolve him from his contractual obligations of replacing the cheques on the stipulated dates with demand drafts. Therefore, when the cheques were not replaced with demand drafts the complainant Corporation was at liberty to get the cheques cleared for payment but in the instant case all the cheques bounced for want of funds and even after valid service of notice which was to give a chance to the drawer of the cheques to rectify his omissions the accused Company failed to reimburse the amount. Apparently there is an element of cheating. Having given my considered opinion to the issues and questions, I find no merit in all these three applications which are accordingly dismissed.