

(2007) 10 PAT CK 0079

Patna High Court

Case No: Criminal Miscellaneous No. 48447 of 2006

Awadhesh Kumar Singh

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision: Oct. 8, 2007

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 397, 397(3), 401, 482
- Negotiable Instruments Act, 1881 (NI) - Section 138
- Penal Code, 1860 (IPC) - Section 418, 420

Citation: (2008) 3 PLJR 381

Hon'ble Judges: Mihir Kr. Jha, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Mihir Kr. Jha, J.

Heard learned counsel for the parties. This is an application for quashing the order dated 14.9.2006 passed in Complaint Case No. 2131 of 2005 whereby and whereunder the learned Judicial Magistrate, 1st Class, Katihar, having taken cognizance under Sections 418 and 420 of the Indian Penal Code and Section 138 of the Negotiable Instruments Act had issued summons against the petitioner for facing trial after noticing that there were sufficient materials to indicate that the petitioner, the Managing Director of Sun Plant Agro Finance Limited had committed cheating and the cheque issued for a sum of Rs. 55,000/- in favour of the complainant-opposite party no. 2 had bounced.

2. Reference may be made to the earlier order of this Court dated 28.9.2007 in this very proceedings. It would appear from the aforementioned order that when opposite party no. 2 in his counter-affidavit had pointed out as with regard to institution of two parallel proceedings against the same impugned order taking

cognizance dated 14.9.2007 in complaint case no. 2131 of 2005 in the form of a Cr. Revision Application, being Cr. Revision No. 176 of 2006 filed on 9.10.2006 in the Court of District and Sessions Judge, Katihar, and this quashing application (Cr. Misc. no. 48447 of 2006) filed on 16.11.2006, the petitioner was asked to explain as to under what circumstances he had filed the present quashing application on 16.11.2006 when he had already filed a Cr. Revision Application against the same impugned order vide Cr. Revision No. 176 of 2006 in the Court of District and Sessions Judge, Katihar. He was further asked to explain as to why this fact was not mentioned in the quashing application which was filed on 16.11.2006 that he had already moved the Court of District & Sessions Judge by filing a Cr. Revision Application on 9.10.2006 against the same order.

3. The petitioner has filed a supplementary affidavit wherein filing of the Cr. Revision Application by him on 9.10.2006 against the same impugned order, which is the subject matter of this quashing application filed on 16.11.2006 has not been controverted. It has also not been mentioned as to why the filing of the said Cr. Revision Application was not mentioned in the present quashing application. On the other hand, all that has been sought to be explained is that the Cr. Revision No. 176 of 2006 filed by the petitioner was withdrawn on 1.9.2007 after filing of the present quashing application. It has also been stated that an application for withdrawing the revision application was filed on 19.7.2007 but the same could not be pressed on account of illness of the counsel for the petitioner, namely, Sri Ranvijay Prasad Singh and therefore, the application which was filed for withdrawal of the revision application on 19.7.2007 got disposed of on 1.9.2007.

4. From the aforementioned facts it is absolutely clear that the petitioner misled this Court on 16.11.2006 by suppressing the fact that the order dated 14.9.2007 taking cognizance had also been made the subject matter of Cr. Revision Application filed in the Court of District & Sessions Judge, Katihar, which was filed on 9.10.2006. It was on this misrepresentation that he also got notice issued on the opposite party no. 2 by order dated 20.12.2006 whereby and whereunder the further proceedings of the Complaint Case No. 2131 of 2006 had also been stayed. In fact, it now becomes clear that when a counter-affidavit dated 21.5.2007 was filed on behalf of opposite party no. 2 pointing out the said suppression of fact annexing the order-sheet of the Cr. Revision No. 176 of 2006 vide Annexure-B to the counter-affidavit, that the petitioner took steps for filing of an Application for withdrawal of the Cr. Revision application on 19.7.2007, which as stated above got withdrawn on 9.1.2007. It is very significant to mention here that in between 20.12.2006 when the petitioner obtained a stay by suppressing of fact, the case was placed for admission before this Court on two dates i.e. on 21.5.2007 and 13.8.2007 but the petitioner did not divulge this information before this Court that he had also filed a revision application or that he had also taken steps for withdrawal of the revision application. The power under Sections 397 / 401 of the Code of Criminal Procedure vesting the revisional power in the District and Sessions Court and this

Court (High Court) is concurrent and if the bar u/s 397(3) of the Code of Criminal Procedure of not filing a revision application in this Court against the same order in which a revision application has also been filed in the District and Sessions Court has to be strictly construed, no litigant can be allowed to cut loose and be permitted to abuse the jurisdiction by filing one revision application against the same order in the District and Sessions Court and the other application, before this Court u/s 482 of the Code of Criminal Procedure. Such parallel proceedings in fact is neither conceived in law nor can be said to be a bona fide conduct of a litigant. I have therefore no hesitation in coming to a conclusion that the petitioner has misused the jurisdiction of this Court u/s 482 of the Code of Criminal Procedure by filing this application at a point of time when his revision application against the same impugned order was pending in the Court of District & Sessions Judge, Katihar.

5. It is thus manifest that the petitioner had deliberately made a suppression of fact and had obtained a rule from this Court by getting the notice issued as also stay of the further proceedings of the complaint case by hoodwinking this Court. The conduct of the petitioner therefore in approaching this Court is viewed seriously with strong sense of condemnation. The petitioner having not approached this Court with clean hand is thus liable to be subjected to not only with dismissal of the present case but also be subjected to an exemplary cost of Rs. 25,000/- to be deposited by the petitioner in the Patna High Court Council for Legal Aid and Advice within a period of two weeks from today.

6. In the result, this application is dismissed. Let the records of this case be placed under the heading for orders on 31.10.2007 on which day learned counsel for the petitioner will inform this Court with regard to the depositing of the amount of Rs. 25,000/-.