(2009) 1 PLJR 274

Patna High Court

Case No: Criminal Miscellaneous No. 645 of 2008

Dhrub Prasad Singh		APPELLANT
	Vs	
The State of Bihar and Another		RESPONDENT

Date of Decision: Nov. 18, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 202
- Penal Code, 1860 (IPC) - Section 406, 420

Citation: (2009) 1 PLJR 274

Hon'ble Judges: Abhijit Sinha, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Abhijit Sinha, J.
Heard Mr. Rajiv Roy, the learned counsel for the petitioner as also Mr. Jharkhandi Upadhaya, the learned A.P.P. for the State. Although the complainant, impleaded herein as Opp. Party No. 2 was duly served notice, he has chosen not to appear and contest this application. The grievance of the petitioner is against order dated 4.6.2007 passed by Sri Kishori Lal, Judicial Magistrate, 1st Class, Vaishali at Hajipur in Complaint Case No. 226 of 2003, whereby he has rejected the prayer of the petitioner for his discharge.

2. According to the complainant, there had been an oral agreement between him and the petitioner herein for transfer of the land, measuring an area of 3640 sq. ft. appertaining to Plot No. 750, Khata No. 95 belonging to the petitioner''s wife to the complainant for consideration money of Rs. 2.25 lacs and it is alleged that since the petitioner was in need of urgent money, a sum of Rs. 1.11 lacs was paid by the complainant to the petitioner as per the verbal agreement, the advance given was to be returned by 2.2.2003

and when on that date, the complainant went to the petitioner''s house to receive back the money which he had advanced, the petitioner refused to return the same. The complainant was, therefore, sanguine that the petitioner wanted to misappropriate and embezzle his fund,

3. After due enquiry u/s 202 Cr.P.C. cognizance under Sections 406 and 420 I.P.C. was taken against the petitioner. It was felt by the petitioner that the allegations made in the complaint and the materials available in the enquiry u/s 202 Cr.P.C. no offence either Section 406 or 420 I.P.C. appeared to have been made out against him and, therefore, he filed a petition for discharge, but the learned Magistrate after due consideration of the materials available on the records, decided otherwise and rejected his prayer for his discharge.

4. The law on this aspect is settled by a catena of decisions, one of which is Ram Biraji Devi and Another Vs. Umesh Kumar Singh and Another, , wherein their Lordships after giving their anxious thought and considering the materials and on examining the contents of the complaint found that not even a whisper of allegation or averment made therein constitute an offence, for which cognizance has been taken by the learned Magistrate.

5. Similar is the situation in this case where on the one hand the complainant himself has stated in the complaint that oral agreement to sell the plot took place and on the other hand he had received money as advance from Opp. Party No. 2. This apparently cannot fulfil ingredients of offence either u/s 406 or 420 I.P.C. It is true that the complainant on S.A. and his witnesses have deposed to the fact that the verbal agreement had been violated by the petitioner and the money advanced had been refused to be paid. It is also clear that the offence either u/s 406 or 420 I.P.C. cannot be said to have been made out.

6. I am aware of the fact that by giving any decision on the issue would have adverse inference and negative in the trial. Suffice it to say that from the complaint petition, neither any intention nor any allegation can be attributed to the petitioner.

7. Due regard being had to the facts and circumstances of the case, I set aside the impugned order, refuse to discharge the petitioner and remit the matter back to the trial court to look into the matter afresh and after due diligence and circumspection the court below shall dispose of the matter in accordance with law. In the result, this application is allowed.