(2011) 02 JH CK 0039

In the Jharkhand High Court

Case No : A.B.A. No. 4803 of 2010

A.B. Shah APPELLANT

Vs

The State of Jharkhand RESPONDENT

Date of Decision : 14-02-2011

Acts Referred:

Companies Act, 1956 — Section 2
Criminal Procedure Code, 1973 (CrPC) — Section 438(2)
Penal Code, 1860 (IPC) — Section 420

Citation : (2011) 02 JH CK 0039

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prashant Kumar, J.—Anticipatory bail application filed by A.B. Shah, is moved by Sri P.P.N. Roy, learned senior counsel for the petitioner and opposed by Sri Jai Prakash, learned senior counsel for the Complainant.

2. It is alleged that complainant had entered into an agreement with M/s Champagne Indage Ltd. for being appointed as a C&F Agent of the said Company. It is also alleged that in view of the assurance given by the representatives and other executives of the Company, complainant deposited security money. It is further stated that business of complainant with the aforesaid Company continued from December 2006 to March 2009. From perusal of complaint petition, I find that during that period complainant has no grievance against the said Company. However, after 31st March, 2009 agreement expired due to efflux of time. Thereafter, no renewal of aforesaid agreement took place. It is further alleged that after termination of the agreement about Rs. 50,00,000/ of complainant remained outstanding with the aforesaid Company, which had not been returned by the Company even on several request made by the Complainant. It is further stated that later on complainant came to know that the Company and its executives were trying to leave India by cheating several

persons including the complainant. Hence, the present complaint petition filed.

3. It is submitted by learned Counsel for the petitioner that on the date of agreement petitioner and/or aforesaid Company have no intention to cheat the complainant, because as per complainant business between them continued smoothly from December 2006 to March 2009. Thus, no offence u/s 420 of the I.P.C. is made out. It is further submitted that the petitioner is an nonexecutive Director and he has not given any assurance to the complainant for entering into agreement. Thus, personally against him no offence is made out. It is further submitted that in a winding up proceeding pending in the Bombay High Court vide Company Petition No. 960 of 2009 and an official liquidator has already been appointed vide order dated 19.03.2010. Accordingly, as per Section 2 446 of the Companies Act, the present complaint petition is not maintainable.

4. Accordingly, it is submitted that petitioner may be enlarged on anticipatory bail. It is submitted by learned Counsel for the complainant that complainant had entered into agreement with the Company in question on the assurance given by the representative, Chairman and Directors of the Company that on the termination of agreement entire security money will be returned. It is submitted that admittedly agreement was after 31st of March, 2009, therefore, as per the said agreement, petitioner and Company are required to returned the aforesaid money to the complainant. It is submitted that the Company had acknowledged vide Annexure1 to the counter affidavit that in the credit of Company a balance of Rs. 43,87,895/is outstanding in the name of complainant. Thus, it is submitted that as per the said admission, petitioner and the aforesaid Company is liable to pay the said amount. Accordingly, it is submitted that unless the petitioner and/ or aforesaid Company pay aforesaid amount to the complainant, petitioner is not entitled to get anticipatory bail from this Court.

5. After going through the record of the case, I find that the dispute between the party is for violation of terms and conditions of agreement, which, prima facie, appears to be a civil dispute. I further finds that before filing of the complaint petition, a Company petition for winding up of Company has already been filed in the Bombay High Court vide Company Petition No. 960 of 2009 in which, on 19.03.2010, an official liquidator has also been appointed. The aforesaid fact has not been denied in the counter affidavit filed by the complainant.

6. Considering the aforesaid facts and circumstances, I allow this application and direct the petitioner to surrender in the court below by 28th of February, 2011 and in the event of his surrender, the learned court below is directed to enlarge him on bail on his furnishing bail bond of Rs. 10,000/ (Ten Thousand) with two sureties of the like amount each to the satisfaction of Judicial Magistrate, 1st Class, Ranchi, in connection with Complaint Case No. 134 of 2010, subject to the condition as laid down u/s 438(2) of the Cr.P.C.