

(2008) 01 PAT CK 0067

In the Patna High Court

Case No : Criminal Miscellaneous No. 40588 of 2006

Abhay Kant Sahay

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 11-01-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2008) 56 BLJR 931 : (2009) 3 PLJR 786

Hon'ble Judges : Rekha Kumari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rekha Kumari, J.—This application u/s 482 of the Code of Criminal Procedure, 1973 has been filed for quashing the order dated 8.8.2003 passed by the Judicial Magistrate, 1st Class, Patna in Complaint case No. 121 (c) of 2003 whereby he has ordered to issue summons against the petitioner for facing trial for the offences under Sections 406 and 420 of the Indian Penal Code.

2. The case of the complainant-opposite party No. 2 Subhash Chandra Sinha is that he is a dairy engineer and Ex-Director of RAPCOM Computer Education. Petitioner Abhay Kant Sahay is Ex-Managing Director of the Company. In January, 1998 the petitioner allured and induced him to join his business as Director for which he had to invest Rs. 4,54,000/-. Accordingly, the complainant paid the same to the petitioner. At that time one of the Directors, namely, Arun Sharma was to quit the office and he had to transfer his share to the complainant but the said share was not transferred. The complainant was appointed as Director which was confirmed in April, 1998. On 25.7.2000 during meeting of the Board of Directors of RAPCOM Computers Limited it was resolved that since the Tata Infotech Limited had discontinued to give its affiliation to the RAPCOM Computer (P) Ltd., the Company would be amalgamated with Excelsior Communications Private Limited and the share money of the complainant

amounting to Rs. 4,54,000/- would be refunded within two years in instalments. In spite of that resolution not a single pie was paid to the complainant. The complainant sent a notice on 12.12.2002 but the petitioner did not send any reply.

3. Learned Counsel for the petitioner submitted that no offence under Sections 420 and 406 of the Indian Penal Code is made out against the petitioner on the allegations made. He submitted that there is nothing to show that the petitioner had mens rea when he approached the complainant for being the Director. Hence, no offence u/s 420 of the Indian Penal Code is made out. He further submitted that even though there is allegation that the complainant had paid Rs. 4,54,000/- for share which was not paid back to him, the amount was paid to the company and not to the petitioner in personal capacity and as held by a Division Bench of this Court in the case of *Kanhaiya Lal Vs. The State of Bihar and Others* the liability of a Company cannot be enforced against its Officer including the Director or the Managing Director. So, neither the amount was entrusted to the petitioner nor the petitioner can be held personally liable for it. He further referred to annexure-12, the minutes of the meeting of the Board of Directors dated 25.7.2000 referred to in the complaint petition (document in dispute by the Opposite Party No. 2) and submitted that the document would show that Arun Sharma was a Director of the Company and also personal guarantor for loan sanctioned by the State Bank of India and as the Company went in loss and he was personal guarantor, at the instance of State Bank of India, Arun Sharma continued to be the Director. It is, therefore, evident that the money deposited by Opposite Party No. 2 was used for the affairs of the Company and the share could not be transferred as submitted that the document would show that there was resolution that Arun Sharma would transfer his share to the complainant provided his name is withdrawn as personal guarantor for terms loan from the State Bank of India but there is nothing to show that his name was withdrawn. So, there was no dishonest intention on the part of any person if the share money of Arun Sharma was not transferred to Opposite Party No. 2. Learned Counsel further submitted that on account of non payment of term loan to the State Bank of India, the State Bank of India had filed an application against the petitioner, opposite party No. 2 and Arun Sharma for realisation of Rs. 25,83,590/- as opposite party No. 2 continued to be the Director. Opposite Party No. 2 appeared to have fled away and the petitioner had to sell his personal property to repay the loans. Ultimately, the Registrar of Companies was requested to close the Company and the Company was closed. So, it cannot be said that the petitioner dishonestly misappropriated the amount.

4. It is well settled that to attract the offence u/s 420 of the Indian Penal Code, there must be dishonest intention on the part of the accused from the very beginning but in this case from the complaint petition itself it appears that Opposite Party No. 2 was appointed the Director and was confirmed and he continued as such and on 25.7.2000 there was a meeting of Board of Directors in which there was a resolution to refund the share money to Opposite Party No. 2

in instalments. Annexure-13 also shows that as for some reasons Mr. Arun Sharma had to continue as Director, his share could not be transferred to Opposite Party No. 2 and it was decided to refund the share money in instalments. So, it is evident that there was no dishonest intention on the part of the petitioner muchless at the beginning to cheat Opposite Party No. 2 and no offence u/s 420 of the Indian Penal Code is made out against him.

5. Then the above submissions of the learned Counsel for the petitioner and the above document also show that the share money could not be refunded to the Opposite Party No. 2 on account of financial crisis of the Company and the money actually was given to the Company and was not entrusted to the petitioner in his personal capacity. The above decision also shows that the Company is liable for such money and not the Managing Director. There is also nothing to show that the petitioner misappropriated the money. So, no criminal breach of trust is made out.

6. I, therefore, agree with the learned Counsel for the petitioner that no offence u/s 420 and 406 of the Indian Penal Code is made out against the petitioner.

So, the impugned order is quashed. This application is thus allowed.