(2001) 03 JH CK 0030

In the Jharkhand High Court

Case No : Criminal Miscellaneous No. 4106 of 1999 (R)

Allahabad Bank and Others APPELLANT

Vs

State of Bihar and Another RESPONDENT

Date of Decision : 20-03-2001

Acts Referred:
- Criminal Procedure Code, 1973 (CrPC) — Section 195, 482
- Penal Code, 1860 (IPC) — Section 120

Citation : (2001) 49 BLJR 1679

Hon'ble Judges : D.N. Prasad, J

Bench : Single Bench

Advocate : Prem Shankar Dayal and Praveen Shankar Dayal, for the Appellant; U.P. Singh, A.K. Sahani, N.K. Sahani and Sanjay Kumar and APP, for the Respondent

Final Decision : Dismissed

Judgement

Deoki Nandan Prasad, J.—This application has been filed u/s 482 of the Code of Criminal Procedure for quashing of criminal proceedings including the order taking cognizance dated 21.5.1999 in connection with Complaint Case No. 124/99.

2. The complainant, who was also one of the Directors claimed in the complaint petition that M/s. Bharat Re-rolling Mills was a Private Limited Company, registered under the Indian Companies Act, 1956. The complainant was inducted as an Additional Director on or about 6.12.1990 by co-option alongwith Mr. Vanit Kumar Seth, H.L. Gupta (accused No. 2) and Surendra Gupta, the brother of H.L. Gupta. But, both Surendra Gupta and H.L. Gupta resigned from the Board of Directors. However, accused No. 2, H.L. Gupta was appointed as Managing Director of the Company. On 5th April, 1997 the Board of Directors in their meeting resolved that hence forth the Bank Accounts that Allahabad Bank at Bokaro Steel City will be operated in one single signature of H.L. Gupta or J.K. Seth, the complainant as Director and the Bank shall honour the cheques. The

said resolution was sent to the Allahabad Bank having its main Branch Office at Naya More, Bokaro Steel City, Bokaro. The complainant, J.K. Seth tendered his resignation on 5th April, 1997 and thereafter he did not exercise any power as Director of the Company nor did he sign any document such as cheques, instruments etc. However, the complainant in course of business, while the complainant was Director, he had signed some blank and undated cheques which used to happen just to facilitate payments and adhere to commitments made in absence particularly to the Steel Authority of India Ltd. The complainant since the date of his resignation i.e., 5.4.1997, he was having no nexus or relationship with the business activities of the Company. The Complainant had parted with the Share certificate amounting to Rs. 2,63,000/- and Rs. 50,000/- and it was handed-over to the accused No. 2, H.L. Gupta. It is further alleged that although the complainant resigned on 5.4.1997 which was accepted on 7.4.1997, but the said acceptance of resignation appears to have been forged and ante dated by a letter addressed to the complainant dated 15.4.1997 under the signature of accused No. 2. H.L. Gupta in which it was added that the resignation of the complainant was accepted subject to approval of the Bank. It is further alleged that the accused No. 2 inconnivance with accused Nos. 4, 5 and 6 got encashed those cheques in favour of third party and misappro-priated by drawing more than Rs. 88 lakhs as over draft from the Bank with the help of the Bank employees, accused 5 and 6.

3. The complainant was examined on solemn affirmation and some witnesses were also examined. After perusing the evidence on record and considering the materials, the Court below took cognizance against the petitioners and others for the offences under Sections 406, 418, 468, 477A, 500, 506 and 120B, IPC by the rder impugned. Against which, this application has been filed and claimed that the Court below has committed error in taking cognizance against the petitioners without any basis as the petitioners being the Bank Officials have got no concern with the forgery, if any or encashment of money by accused No. 2.

4. A counter affidavit has also been filed by the Opposite Party No. 2 controverting the allegation made out in the petitioner. It is alleged that a huge amount was withdrawn and misappropriated in connivance with the petitioners and though the complainant, O.P. No. 2 had already resigned on 5th April, 1997 which was also accepted on 7th April, 1997. Anything mentioned in the letter dated 15.4.1997 contrary to the Resolution of the Board of Directors dated 7.4.1997 clearly proves the Criminal Act of the accused No. 2 as well as connivance with the petitioners because they used the said forged letter dated 15.4.1997 which was never served on the complainant, it is also claimed that Section 195, Cr PC is not at all applicable in the case of the petitioners and the sanction does not require in this case as regards to the petitioners. The Court below has rightly took cognizance against the petitioners.

5. The learned counsel appearing on behalf of the petitioners submitted that no case u/s 406, IPC is made out against the petitioners as the alleged cheques

were presented and encashed by accused No. 2 as well as the Bank had already filed Title Suit No. 8 of 1999 before the Sub-Judge. Bokaro, which is still pending. It is also submitted that neither the complainant nor the witnesses have stated anything about the conspiracy by the petitioners, nor the petitioners used any forged document. It is further argued that the complainant has got grievance, if any, it is against the Company regarding resignation/acceptance of resignation with which the petitioners have got no concern as the letter dated 15.4.1997 (Annexure 3) was written by accused No. 2 in which it was stipulated the acceptance of resignation of complainant, subject to approval of Bank. It is also submitted that the Title Suit No. 8/99 was filed by the Bank against Company and others for declaration that the entire hypothecated goods including finished/ unfinished goods, tools, plants and machineries etc. are the Property of Bank, but the Court below returned the Plaint for presenting before the Debt Recovery Tribunal, against which the Bank fifed Misc. Appeal No. 139/1999 (R) before the Hoh''ble High Court, which is still pending. It is further submitted that no case is made out against the petitioners and as such the entire Criminal proceedings including the order "taking cognizance is fit to be quashed.

6. On the other hand, the learned counsel appearing for the Opposite Party No. 2 contended before me that there is no illegality in the impugned order to be interfered at this stage as the learned Magistrate after considering the entire evidence on the record took cognizance rightly. It is further argued that another quashing petition being Cr. Misc. No. 6157 of 1999 (R) was already dismissed on the same score. It is also argued that the complainant had already resigned from the Company on 5th April, 1997 which was duly accepted on 7th April, 1997 vide Annexure A/2 and there was no stipulated in the said letter about "subject to approval of Bank" and letter dated 15.4.1997 clearly indicates that it was forged and fabricated later on in order to harass the complainant and also misappropriated a huge amount with the connivance of the Bank employees, the petitioners and as such the petition is fit to be dismissed.

7. Admittedly, the complainant tendered his resignation by his letter dated 5.4.1997 which was accepted as per letter dated 7.4.1997 communicated by accused No. 2 to the complainant and the said resignation was accepted unconditional, which will be evident from Annexure A/2. But, from the letter dated 15.4.1997, Annexure 3, it appears that another letter was communicated to the complainant indicating that the resignation has been accepted, subject to approval of the Bank and this letter was also communicated by the accused No. 2 and all these matters are subject to consideration during trial on merit as to under what circumstances those letters were communicated by the said accused no. 2 in different language. A huge amount said to have been withdrawn from the Bank and there appears specific allegation against the accused-person including the petitioners.

8. It is true that the Title Suit has also been filed by the Bank which is pending but it is well settled that criminal proceeding cannot be thwarted merely because

civil proceedings are also pending or maintainable. The Court below passed the order impugned in detail after discussing the evidence on record and found "the prima facie case against the petitioners as well. No doubt, if on the basis of allegation, a prima facie case is made out then this Court should be very loath to quash the proceeding. This Court, at this stage, is also not Justified in judging the probabilities, reliabilities and genuineness of the allegation made in the FIR as the scope, at this stage, is very limited as the Magistrate taking cognizance is mainly concerned with the allegation made in the complaint or the evidence led in support of the same and-he is only to be satisfied whether there are sufficient grounds for proceeding against the accused. There is no reason for the Magistrate to enter into the detail discussion of the merit or demerit of the case.

9. Having regard to the facts and circumstances of the case, there appears that the learned Magistrate has rightly took cognizance against the petitioners and as such I do not find any reason to interfere with the order impugned.

10. With the result. 1 do not find any merit in this application, which is accordingly dismissed.

11. However, the petitioners may raise all those points before the Court below at the time of framing of charge, if so desire.

12. Appeal dismissed with directions.

