

(2011) 05 JH CK 0099
In the Jharkhand High Court
Case No : Cr.M.P. No. 1232 of 2008

A.P. Arya, Dilip Sen Gupta, Brajendra Jha and A. Naresh	APPELLANT
Vs	
The State of Jharkhand and Vimal Kumar Panday	RESPONDENT

Date of Decision : 10-05-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 482
Penal Code, 1860 (IPC) — Section 120B, 192, 199, 201, 204

Citation : (2011) 7 RCR(Criminal) 2494

Hon'ble Judges : D.K. Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.K. Sinha, J.—The Petitioners have invoked the inherent jurisdiction of this Court u/s 482 Code of Criminal Procedure for quashment of the order dated 18.7.2008, passed by Sri Dhanjaya Kumar, Judicial Magistrate, 1st Class, Jamshedpur by which a prima facie case was found against the Petitioners for the alleged offence under Sections 304, 420, 269, 270, 201, 204, 323, 504, 120B/34 of the Indian Penal Code after inquiry u/s 202 of the Code of Criminal Procedure in C/I Case No. 771 of 2007. Petitioners have further requested for quashment of their entire criminal proceedings arising out of the said complaint case.

2. Prosecution story in short was that the complainant-opposite party No. 2 herein Sri Vimal Kumar Panday, an Advocate had admitted his wife Smt. Neelam Panday in the TELCO Hospital, Jamshedpur on 12.10.2006 as she was suffering from high fever and bodyache. On 14.10.2006 when temperature of Smt. Neelam Panday did not reduce, on being enquired by the complainant, the accused No. 2 Dr. Paul of TELCO Hospital said that Ms wife was suffering from malaria and would be cured on administration of drug by evening. The complainant-opposite party No. 2 requested him to discharge his wife for her better treatment by an expert doctor of Kolkata. The complainant stated that the accused No. 3 Dr. M. Ali consulted accused No. 1 Dr. Manitosh Roy and accused

No. 4 A. Naresh, who induced the complainant to get his wife treated at the TELCO Hospital itself. On 15.10.2006 at 12:30 p.m. some medicines were injected in saline water but there after she started shivering badly and became senseless. Complainant again requested for her discharge so that she may be removed to Tata Main Hospital, Jamshedpur or to any other hospital. Yet, he was assured that his wife would be cured, but her condition deteriorated and breathing problem developed in her. The accused did not disclose the nature of ailment, Ms wife was suffering from. On 18.10.2006 when the complainant arrived at the hospital at about 6:00 a.m., he found his wife was removed to semi I.C.U. and from there, she was shifted to I.C.U. and was put on ventilator being the life supporting device. He further alleged that between 12.1.2006 and 18.10.2006 all the medicines were provided by the TELCO Hospital for which he had already made payments. On 21.10.2006 accused No. 1 Dr. Manitosh Roy demanded AB+ group of blood as her septicemia converted into D.I.C. which was dangerous to her life, accordingly he was asked to arrange platelet at his own level, though it was the responsibility of the hospital to arrange the same. On 29.10.2006 he could not arrange blood on account of closure of Blood Bank on Sunday. On 30.10.2006, the complainant was again assured about early recovery and survival of his wife. It was alleged further in the complaint that he made telephone call to the Petitioner Mr. A.P. Arya on 30.10.2006 and complained about the nature of treatment what was being extended to his wife but Mr. A.P. Arya alleged that he was in regular practice of dragging him and his associates in several allegations and that whatever treatment was provided to his wife was good enough for her recovery. The complainant alleged that all the accused persons including the Petitioners in league with each other resorted to cheating for monetary gain of TELCO Hospital by inducing the complainant to continue the treatment of his wife in the said hospital. Ultimately on wrong diagnosis and treatment his wife was declared dead on 31.10.2006 and her dead body was sent hurriedly out of the campus of the hospital on a 407 truck arranged by the accused persons on their own accord and in that manner, the complainant's wife Smt. Neelam Panday became victim of intentional and malicious negligence on the part of the accused which they did under collusion and conspiracy with each other to take revenge from the complainant-opposite party No. 2 due to his legal profession. In course of inquiry u/s 202 of the Code of Criminal Procedure, three witnesses, namely, (1) Manas Kumar Panday, own nephew of complainant (2) Amar Pratap Singh, a neighbour of complainant and (3) Kavi Kumar, a correspondent of local newspaper, were examined and having been prima facie satisfied with the materials, a case was found alleged under Sections 304, 420, 269, 270 and other allied Sections of the Indian Penal Code against the accused persons.

3. By giving their introductions, the learned senior counsel Mr. Rana Pratap Singh submitted that the Petitioner No. 1 was the President, Heavy and Medium Commercial Vehicle of M/s Tata Motors Ltd., Jamshedpur, Petitioner No. 2 was posted as General Manager, Singur Plant of M/s Tata Motors Ltd., West Bengal,

Petitioner No. 3 was retired from service on 31.1.2008 and prior to that, he was posted as A.G.M. (Legal), Tata Motors Ltd. at Jamshedpur and the Petitioner No. 4 was a non-medico posted as Administrator of the TELCO Hospital, Jamshedpur. Neither specific allegation nor specific overt act could be attributed against any of the Petitioners except vague and omnibus allegations. Complainant during course of inquiry of the complaint had produced all the three interested witnesses and it would be evident from the statement that witness No. 1 being the own nephew of the complainant admitted having received the dead body of the wife of the complainant, who had made endorsement on the "certificate of handing over the body", however, other two witnesses were mere the hearsay witnesses, who simply reiterated the story narrated by the complainant.

4. The learned senior counsel Mr. Singh submitted that even statement of the complainant recorded on solemn affirmation and the depositions of the other inquiry witnesses did not make out any offence much less the offence alleged for which a prima facie case could be found. According to the complaint petition, the date of occurrence was between 12.10.2006 and 31.10.2006 but the complaint was filed after seven months on 15.5.2007 before the CJM, Jamshedpur on false, baseless and concocted allegations against the Petitioners. No explanation was given by the complainant with respect to inordinate delay of seven months for filing the complaint, which casts serious doubt as to the veracity, genuineness and the nature of the complaint made by the complainant-opposite party No. 2. At no point of time, the complainant had approached the police for registration of case as he was well aware that the occurrence had not taken place in the manner he had presented in the written complaint. The complaint was filed in the Court of CJM only with the intention to take advantage of his being a lawyer and in that position he would be able to harass the Petitioners for some ulterior gains. As a matter of fact, a bill of Rs. 86,110/- being the cost of treatment was presented to the complainant for payment, which was incurred on the treatment of his wife by the TELCO Hospital and in order to avoid such payment and to harass the Petitioners, he filed the complaint case on false and frivolous grounds.

5. Advancing his argument, the learned senior counsel further submitted that Petitioner Nos. 1, 2, and 3 were the senior officers of Tata Motors Ltd., posted in different Departments and were not at all concerned or associated with the medicare, nursing and health matters of the TELCO Hospital. Even the Petitioner No. 4 being the Administrator of the TELCO Hospital was not associated with medicare and nursing facilities of the hospital. His job was to oversee and monitor the general administration of the hospital, to maintain time schedule of the staff and doctors of the hospital and also to ensure hygiene and cleanliness to be maintained within the hospital premises. Complainant had never approached the Petitioners at any point of time in course of treatment of his wife nor he had ever talked with any of them and in that manner, ingredients required for constituting offence under Sections 304/420 of the Indian Penal Code could not be made out.

6. The complainant-opposite party failed to bring any material on the record that the Petitioners had inflicted wrongful loss to him thereby causing wrongful gain to them, nor any property was entrusted by him to the Petitioners to attract punishment u/s 420 of the Indian Penal Code. Admittedly the dead body of his wife was received by his nephew Manas Kumar Panday C.W.-1 against his endorsement on the certificate of obtaining body on 31.10.2006 and therefore, no evidence related to the disappearance of the dead body of the wife of the complainant could be made to disappear at the instance of the Petitioners so as to attract an offence u/s 201 of the Indian Penal Code.

7. A death certificate was issued by the authority of TELCO hospital that the cause of her death was cardio respiratory failure on account of pneumonia, septicemia, ARDS and multi system organs failure. Annexure-5 was the consent letter signed by the complainant himself before his wife was transferred to ICU to be put on life supporting device when her health condition started deteriorating. Consent given by the complainant-opposite party No. 2 to the TELCO Hospital (Annexure-5) would show that the complainant admitted the patient, when she was serious and suffering from septicemia and he agreed to admit the patient in ICU and for that he would have no objection, if needed for the benefit of the patient. Yet, the complainant had levelled wild allegations that the dead body of his wife was dumped on 407 truck and hurriedly sent out from the hospital rather the dead body was received by Manas Kumar Panday (C.W.-1) peacefully and without murmur. Admittedly the complaint case was filed after seven months, only then when bill was sent to the complainant for payment, with the intention to mount counter pressure upon the Petitioners who have become the prey to wretchedness of the complainant-opposite party, a lawyer of the local Bar. In the given facts and circumstances, criminal prosecution of the Petitioners would tantamount to miscarriage of justice and therefore, their entire criminal proceedings including the order by which prima facie offences have been found against them may be quashed, the learned senior counsel added.

8. In Maharashtra State Electricity Distribution Co. Ltd. and Another Vs. Datar Switchgear Ltd. and Others, the Apex Court held,

30. It is trite law that wherever by a legal fiction the principle of vicarious liability is attracted and a person who is otherwise not personally involved in the commission of an offence is made liable for the same, it has to be specifically provided in the statute concerned. In our opinion, neither Section 192 IPC nor Section 199 IPC incorporate the principle of vicarious liability, and therefore, it was incumbent on the complainant to specifically aver the role of each of the accused in the complaint. It would be profitable to extract the following observations made in S.K. Alagh: (SCC p.667, para 19)

19. As, admittedly, drafts were drawn in the name of the company, even if the Appellant was its Managing Director, he cannot be said to have committed an offence u/s 406 of the Penal Code. If and when a statute contemplates creation of such a legal fiction, it provides specifically there for. In absence of any

provision laid down under the statute, a Director of a company or an employee cannot be held to be vicariously liable for any offence committed by the company itself.

9. Therefore, in the facts and circumstances, the Petitioners may be exonerated from their criminal liability in the instant case, who have been falsely implicated without any legal evidence on the record and are suffering from the rigors of mental and physical persecution as well.

10. It is relevant to mention that the notice was issued to the complainant-opposite party No. 2 by both modes and when he did not put in appearance in spite of valid service of notice upon him, this petition was heard after a year.

11. Mr. Amaresh Kumar, the learned A.P.P. on behalf of the State-opposite party, did not dispute the fact and the contentions as raised on behalf of the Petitioners in so far as it related to the points of law.

12. Having regard to the facts and circumstances of the case, arguments advanced on behalf of the Petitioners as well as opposite party-State, I find that in the given facts and circumstances as discussed hereinbefore criminal proceedings of the Petitioners would tantamount to misuse of the process of the Court. I do not find that any offence much less offence alleged under Sections 304, 420, 269, 270, 201, 204, 323, 504, 120B/34 of the Indian Penal Code is made out against any of the Petitioners on the evidence of the complainants witnesses recorded during course of inquiry together with materials on the record presented on behalf of the Petitioners in this petition invoking inherent jurisdiction u/s 482 Code of Criminal Procedure. No statute has been referred by the complainant either in the Court-below or before this Court so as to hold the Petitioners vicariously liable for the alleged offences, who were not concerned with the alleged offence. I further find that no explanation has been accorded by the complainant of the inordinate delay of seven months in filing the complaint before the CJM, Jamshedpur, though the option was available with him to lodge an FIR before the police station. There appears prima facie substance in the submission that the complaint was filed by the complainant in the Court of CJM with the intention to put counter pressure upon the management of the TELCO Hospital and against the accused persons including the Petitioners so that the expenditure incurred on the treatment of his wife could be forcibly waived by them. Machinery of law must not be set on motion to satisfy the personal gains by putting the liberty of others in peril. In the facts and circumstances, I find that the criminal proceedings of the Petitioners, in the given facts and circumstance, cannot be sustained under law. Accordingly, it is set aside including the order impugned dated 18.7.2008 in C/I Case No. 771 of 2007 pending before Sri Dhanjaya Kumar, Judicial Magistrate, 1st Class, Jamshedpur.

13. This criminal miscellaneous petition is allowed.