(2003) 07 JH CK 0016

In the Jharkhand High Court

Case No : Criminal Writ J.C. No. 102 of 1999

Arbind Kumar Ganeriwala APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 02-07-2003

Acts Referred:
Constitution of India, 1950 — Article 21
Penal Code, 1860 (IPC) — Section 420, 467

Citation : (2004) CriLJ 1041

Hon'ble Judges : Lakshman Uraon, J

Bench : Single Bench

Advocate : S. Prasad, for the Appellant; S.C. I (for No. 1), S. Akhtar (for No. 2) and Ajay Kumar Singh (for No. 3), for the Respondent

Final Decision : Allowed

Judgement

Lakshman Uraon, J.—Petitioner in this writ petition has assailed the order dated 18-12-1998, passed by the learned Sessions Judge, Bokaro, as well as the order dated 20-5-1998, passed by the learned trial Court, Chas, rejecting the application of the petitioner for discharging him and also for quashing the entire criminal proceeding in connection with Galidih P.S. Case No. 77 of 1987 (G.R. No. 8360 of 1997), registered under Sections 420, 467 and 468 of the Indian Penal Code, pending in the Court of Sri. O. P. Srivastava, learned Judicial Magistrate, 1st Class, Chas.

2. The prosecution case, as mentioned in the First Information Report, is that S. N. Agrawala, proprietor of Chandan Agency, opened current account with the United Bank of India and opposite party No. 2 R. D. Yadav (informant) was the Bank Manager of the United Bank of India, Bokaro Industrial Estate Branch, Bokaro Steel City, Bokaro. It is alleged that S. N. Agrawala on behalf of Chandan Agency took loan of Rs. 1,10,180/- and the Bank filed Money Suit against him for recovery of Rs. 1,42,916.35 with interest. This petitioner was residing with the said S. N. Agrawala and address of both the persons is the same. The bank

issued Bank Drafts of Rs. 15,000/-, Rs. 45,000/- and Rs. 5,500/- in favour of Chandan Agency. On enquiry, the informant Bank found that all those drafts were collected in the account of Chandan Agency with Grindlays Bank, Calcutta. The informant (Manager of the Bank) apprehended that this petitioner opened bank account in the name of Chandan Agency ad also in Grindlays Bank, Calcutta. He played fraud and deceived the bank and cheated the bank by encashing all these bank drafts in his favour, interpolating the name of S. N. Agrawala alias S. N. Gaurisaria.

3. Learned Counsel for the petitioner has argued that S. N. Agrawala alias S. N. Gaurisaria had opened account with the informant Bank in the name of Chandan Agency and took loan of Rs. 1,10,180/-. The United Bank of India filed Money Suit against S. N. Agrawala bearing Money Suit No. 129 of 1984 for realization of Rs. 1,42,918.15 paise. Chandan Agency was made defendant No. 1, S. N. Agrawala as defendant No. 2 and this petitioner was made defendant No. 3 in the said Money Suit. This petitioner has also got his own account bearing No. CD 576 in the said Bank. He has taken loan of Rs. 2,44,597.75 paise in his own name. Respondent No. 3 S. N. Agrawala alias S. N. Gaurisaria has sworn affidavit that he has taken the loan from the informant''s bank in the name of Chandan Agency. This petitioner has not encashed the drafts impersonating him to be S. N. Gaurisaria. This petitioner as per his affidavit has not impersonated S. N. Gaurisaria. In the written statement, defendant No. 3 S. N. Agrawala alias S. N. Gaurisaria has taken stand that this petitioner Arbind Kumar Ganeriwala has never taken loan from the bank in his name. S. N. Agrawala alias S. N. Gaurisaria has not been made accused in the present case. Lastly it was submitted that the Money Suit, filed against Chandan Agency and others, has been settled between the plaintiff and defendants for which Manager of the United Bank of India on 7-4-2003 has granted certificate, setting thereon, that Arbind Kumar Ganeriwala personally appeared before the bank on 21-2-2001 and executed an agreement for settlement of the Bank dues in respect of CD Account No. 576 in Money Suit No. 130 of 1984. The entire amount with interest of Rs. 2,91,366.04 paise including legal charges have been paid and there remains no dues pending with the Bank against this petitioner-Arbind Kumar Ganeriwala. Again the Manager of the United Bank of India has given another certificate on the same day, stating therein, that Shambhu Nath Agrawala alias Shambhu Nath Gaurisaria also appeared before the Bank on 16th March, 2001 and executed an agreement for settlement of all the dues in respect of Money Suit No. 129 of 1984. He paid Rs. 1,20,266.47 paise with interest and other legal charges and no amount remains dues pending with the Bank.

4. The case was registered on 18-9-1987 on the written information given by the Manager of the Bank Sri R. D. Yadav (Opposite Party No. 2) against this petitioner and others. Even after-lapse of a period of more than fifteen years, the case could not be conducted. Respondent No. 3 S. N. Agrawala alias S. N. Gaurisaria and this petitioner, namely, Arbind Kumar Ganeriwala both are separate persons having same residence and both of them have opened their

accounts with Grindlays Bank, Calcutta. In course of business, both of them have taken loans from the Bank. The Bank filed two separate Money Suits bearing Money Suit Nos. 130 of 1984 and 129 of 1984 against the petitioner-Arbind Kumar Ganeriwala and Chandan Agency through its proprietor S. N. Agrawala alias S. N. Gaurisaria respectively. In Money Suit No. 129 of 1984, defendant No. 2 S. N. Agrawala filed written statement and also an affidavit, stating therein, that this petitioner-Arbind Kumar Ganeriwala has not impersonated in encashing the three bank drafts, issued by the United Bank of India (respondent No. 2), which was encashed by S. N. Agrawala alias S. N. Gaurisaria, who has got his account with Grindlays Bank, Calcutta. This petitioner-Arbind Kumar Ganeriwala has also got his own separate account with Grindlays Bank, Calcutta. On his own account, he has taken loan for which Money Suit was filed. Subsequently the matter was settled and all the dues have been cleared for which the Manager of the United Bank of India has given certificates that there is no dues pending against Arbind Kumar Ganeriwala and S. N. Agrawala alias S. N. Gaurisaria.

5. When considered all these pros and cons of this case, I find that this petitioner never impersonated S. N. Agrawala alias S. N. Gaurisaria in encashing the three bank drafts, issued by opposite party/respondent No. 2 rather S. N. Agrawala alias S. N. Gaurisaria has filed an affidavit in this regard that he encashed the bank drafts and not this petitioner-Arbind Kumar Ganeriwala.

6. When any offence regarding cheating or impersonation is committed and subsequently the matter is settled after payment of full amount to the Bank, even then the criminal liability is there to prosecute the offender. In the present case, when it is admitted fact that Arbind Kumar Ganeriwala operated his own account, lying with the Grindlays Bank, Calcutta, without cheating the bank regarding fraudulent withdrawal by encashing three bank drafts, impersonating S. N. Agrawala alias S. N. Gaurisaria, I find that there is no criminal liability against this petitioner for prosecution. It seems that due to mistake, respondent/ opposite party No. 2 R. D. Yadav, Branch Manager, United Bank of India, informed the police in writing, suspecting that this petitioner impersonated S. N. Agrawala alias S. N. Gaurisaria and encashed the bank drafts at Grindlays Bank, Calcutta. On verification, it was found that this petitioner had his own account at Grindlays Bank, Calcutta and so also S. N. Agrawala alias S. N. Gaurisaria has got his own account. Both of them in their individual capacity, in course of business, took loans from the Bank, which were ultimately settled and the entire dues were paid. It is a different matter that the matter was settled after full payment and the loan amount, which alone cannot save the petitioner from criminal liability. But in the present case, I find that when S. N. Agrawala alias S. N. Gaurisaria has filed affidavit that he encashed the bank drafts through his own account, lying at Grindlays Bank, Calcutta, and has specifically stated that this petitioner-Arbind Kumar Ganeriwala has not impersonated him. As such, I think that any further prosecution of this criminal case, which is pending since September, 1987 i.e. for more than fifteen years, will merely be an abuse of the process of the Court and also will violate the provisions of Article 21 of the

Constitution of India regarding speedy disposal or trial of the case.

7. When considered above, I am of the view that this petitioner-Arbind Kumar Ganeriwala has not impersonated the signature or person showing himself to be S. N. Agrawala alias S. N. Gaurisaria, proprietor of Chandan Agency. He has also not cheated the Bank by fraudulent withdrawal, as the said amount was encashed by S. N. Agrawala himself in his own account, lying in the same Grindlays Bank at Calcutta. Now the entire loan with interest and legal charges have been paid by the petitioner-Arbind Kumar Ganeriwala and respondent/ opposite party No. 3 S. N. Agrawala alias S. N. Gaurisaria and no dues is pending with the United Bank of India (respondent/opposite party No. 2). Under such circumstances, as discussed above, I find merit in this writ petition, which is accordingly, allowed and the impugned order dated 20-5-1998, passed by the learned trial Court, as also the order dated 1-12-1998, passed by the learned Sessions Judge, Bokaro, are hereby set aside and the entire criminal proceeding of Balidih P.S. Case No. 77 of 1987 (G.R. No. 8368 of 1987), registered under Sections 420, 467 and 468 of the Indian Penal Code is hereby quashed.