(2012) 09 JH CK 0199

In the Jharkhand High Court

Case No : Writ Petition (Cr.) No. 327 of 2010

Ashok Kumar — APPELLANT

Vs

The State of Jharkhand and Another — RESPONDENT

Date of Decision : 28-09-2012

Acts Referred:
Penal Code, 1860 (IPC) — Section 120B, 406, 420

Citation : (2013) 1 JLJR 590

Hon'ble Judges : Dhrub Narayan Upadhyay, J

Bench : Single Bench

Advocate : Indrajit Sinha and Sudhansu Kumar Deo, for the Appellant; K. Roy and R.M. Singh, for the Respondent

Final Decision : Allowed

Judgement

D.N. Upadhyay

1. The petitioner in this application has prayed for quashing the entire criminal proceedings, including the order dated 10.02.2009 passed by the learned Judicial Magistrate, 1st Class, Hazaribagh in connection with C/403 of 2008 whereby cognizance has been taken under sections 406/ 420/ 120B of the Indian Penal Code and summons have been issued against the petitioner and others. The facts of the case are that the complainant being an employee of the Central Coalfields Limited filed a complaint stating therein that for the benefit of the employees working in colliery, Karamchari Sakh Sahyog Samity Saunda D colliery was established of which Project Officer used to be the Chairman. Sri Ashok Kumar, official of the Patratu Block was in charge Secretary of the said Cooperative Society to which the complainant and the witnesses and also other workers were members and they were being granted loan by the Central Co-operative Bank through the said cooperative Society. The loan taken by the employees was to be recovered from monthly salary/wages of the members. Further case of the complainant is that he took loan of Rs. 45,000/- from the Cooperative Bank through the Co-operative Society and in due course, a sum of Rs. 77,160/- was

recovered from monthly salary of the complainant from the month of January 1996 to January, 2001. That apart, a sum of Rs. 45,000/- was paid in cash and thereby a sum of Rs. 1,22,160/- was paid against the loan advanced, but further amount was deducted from the salary for the month of December, 2007 and January to March, 2008. Now again, he was further asked to pay a sum of Rs. 45,000/- to liquidate the loan amount, though he had already paid a sum of Rs. 1,22,160/- as against the loan of Rs. 45,000/-.

2. It has also been stated that similar is the case with other members and therefore they approached the accused persons and ventilated their grievances, but they did not do anything in this regard, rather they were adamant to deduct the amount from the salary, though the complainant and the witnesses had liquidated the loan amount. In the aforesaid background, it has been alleged that the accused person including the petitioner committed offences of cheating and misappropriation.

3. Learned Counsel for the petitioner submitted that workers of Saunda D colliery had formed a Co-operative Credit Society in the year 1993, object of which was to lend money to its members by taking loan from the Hazaribagh Central Cooperative bank and the loan amount was to be recovered from the monthly salary/wages of the loanees. The said Co-operative Society was being headed by the Project Officer of the Colliery as Chairman of the Society whereas elected member of the society used to be the Secretary.

4. It has further been submitted that the Management of Saunda D colliery was only concerned with the deduction of the amount from the wages/salary of the concerned members to liquidate the loan amount and further to transmit the said amount through cheques to the Secretary of the Cooperative Credit Society. In course of time, the Commissioner, North Chotanagpur Division, Hazaribagh, forwarded a letter to the Hazaribagh Central Cooperative Bank with list of defaulters to project officer, Saunda D colliery with an advice to deduct an amount of Rs. 2000/- per month from the wages of the defaulters. On getting the said letter, list of defaulters was published over the notice board calling upon them to pay off the loan, but they did not pay any heed to it and only then the management started deducting the amount as advised. Thereupon, some complaints were received by some of the loanees regarding re payment of the loan amount which was referred to the Branch Manager, Central Co-operative Bank, Bhurkunda. In respect to that, it was communicated to the Management of the colliery that certain amounts are outstanding against the defaulters, including the complainant.

5. It was further submitted that the petitioner was an employee of the State Government then working asa Block Cooperative Extension Officer, Patratu, district Hazaribagh and he was appointed as an Administrator of the said Saunda D colliery by the Joint Registrar, Co-operative Societies vide letter No. 1390 dated 7.11.2006. he was neither an employee of the Central Coalfields Limited, nor office bearer of the said Cooperative Society. Since the Managing Committee

of the Society was dissolved w.e.f. 1.1.2006, this petitioner was appointed as Administrator and he had nothing to do with the day to day affairs of the Society. It was further pointed out that the entire issue arose when the management of Saunda D Colliery received letter No. 11000 dated 16.10.2005 issued by the Commissioner, North Chotanagpur Division, Hazaribagh wherein project officer of Saunda D Colliery was advised to deduct loan amount from the wages/salary of the concerned defaulters @ Rs. 2000/- per month. On receipt of the list of defaulters issued by the Central Co-operative Bank, Bhurkunda Branch, the management of Saunda D colliery published the list of defaulters vide notice dated 29.01.2008 in respect of piece rated employees and notice dated 5.3.2008 in respect of time rated employees. Thereafter, the management of Saunda D colliery started deducting loan amount from the concerned defaulter employees/ members of the concerned Cooperative Society, at the rate of rupees two thousand per month from monthly salary/wages and the amounts so deducted were being deposited in the account of the Hazaribagh Central Co-operative Bank Limited, Bhurkunda. When deduction started, the defaulter employees raised their grievance that they had already paid the loan amount and therefore no further deduction is required. It is necessary to mention here that certificate case no. 03 of 2007 and certificate notice dated 2.6.2006 was also issued to the Project officer, Saunda D Colliery and the Secretary of the Co-operative Society showing dues of Rs. 1,65,80,179/- for the period 1994-2001 along with interest @ 20% upto 30.6.2004 and the said case is still pending in the court of District Co-operative officer cum Certificate Officer, Hazaribagh. It is further necessary to bring on record that being aggrieved with the aforesaid orders and deduction, the complainant and other aggrieved preferred W.P. No. 2786 of 2008 before the Hon''ble High Court with a prayer to issue an appropriate writ/order or direction restraining the respondents from deducting Rs. 2000/- per month from their salary. It would be evident from a copy of the writ petition being W.P. (S) No. 2786 of 2008 that the petitioner was never elected or appointed Secretary of the said Saunda D Colliery Karamchari Co-operative Society and he was not a party to the writ petition. It is nowhere alleged in the complaint that the petitioner at any point of time had misappropriated any amount so deducted from the salary of the complainant or other aggrieved.. Rather, his duty was only to maintain day to day affairs of the Society as an Administrator. It was a matter of accounting between the aggrieved loanee and the concerned Cooperative Bank who advanced the loan through the Cooperative Society of which the complainant and the other aggrieved were members. No wrongful gain was saddled in favour of the petitioner. The case of the petitioner is squarely covered by the observations and the findings made by this Court in WP (Cr) No. 292 of 2009 whereby cognizance and proceedings arising out the said complaint case has been quashed by order dated 24.2.2010.

6. On the other hand, Learned Counsel for the complainant/ respondent has opposed the prayer and submitted that the complainant and other aggrieved employee had already liquidated the loan amount much prior to deduction

started. The office bearer of the Society had committed Criminal breach of trust, because the collected loan amount was not credited in the account of the Co-operative Bank. Learned Counsel though concedes the fact that the petitioner was appointed Administrator of the said Saunda D colliery Co-operative Society in the year 2006, but submits that deductions were made during his tenure and therefore he cannot be exonerated of his liability and responsibility.

7. Having heard both sides and after perusing the case record and earlier orders passed in other writ petition(s), it appears that the complainant and other witnesses being members of the Cooperative Society were advanced loan by the Central Cooperative Bank, Bhurkunda Branch through the aforesaid Co-operative Society and the loan amount was to be recovered from monthly wages/salary of the loanees. According to the complainant, certain amounts which they had deposited with the Society were not duly credited to the loan account. They had paid the total sum of Rs. 1,22,160/- against Rs. 45,000/- and the entire loan amount was liquidated, but even then further deductions were made from their salary and the amounts so deducted have been misappropriated.

8. I have gone through the complaint, but I do not find that the petitioner had played any role in respect of advancement of loan to the complainant or other employee or he was instrumental, in any manner, to recover the amount at the earlier point of time. He has simply performed his duty as a post office. In receipt of letter from the Co-operative Bank, it was transmitted to the authorities of the Central Coalfields Limited and the CCL authorities had deducted the amount from salary of the complainant and other aggrieved. The deducted amount was already credited into the account of the said Cooperative Society. It is nowhere alleged that the petitioner has misappropriated the said amount for any wrongful gain and wrongful loss to the complainant or other employees. Hon''ble Mr. Justice R.R. Prasad in his order dated 24.02.2010 passed in W.P.(Cr) No. 292 of 2009 has elaborately discussed the ingredients of cheating and criminal breach of trust and the observations and findings recorded in the said order dated 24.2.2010 are very much relevant to decide the case of the present petitioner. I find that the discussions and observations made by Hon''ble Mr. Justice R.R. Prasad squarely covers the case of the present petitioner and therefore in view of the order dated 24.2.2010 passed in W.P.(Cr) No. 292 of 2009, I feel inclined to allow this writ petition in respect of the petitioner.

In the result, this writ petition is allowed and, accordingly, the entire criminal proceedings arising out of case no C/403 of 2008, including the order dated 10.02.2009 by which cognizance has been taken, stands quashed to the extent of criminal prosecution of the present petitioner.