(2016) 02 JH CK 0060

In the Jharkhand High Court

Case No : W.P. (Cr.) No. 195 of 2015.

Bhushan Power & Steel Ltd. through its Director Sanjay Singhal and another — APPELLANT

Vs

State of Jharkhand and another — RESPONDENT

Date of Decision : 09-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 34, 420, 467, 468, 471

Citation : (2016) 2 ECrC 686

Hon'ble Judges : Ravi Nath Verma, J.

Bench : Single Bench

Advocate : Sumeet Gadodia and Shailendra Kumar Singh, Advocates, for the Appellant; Shailesh Singh, Advocate and Atanu Banerjee, G.A, for the Respondent

Final Decision : Allowed

Judgement

Ravi Nath Verma, J. - Invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner- Bhushan Power and Steel Ltd., a company registered under the Indian Companies Act through its Director Sanjay Singal has moved this Court for quashing of the entire criminal proceeding including the First Information Report being Dhanbad (Bank More), P.S. Case No.708 of 2012 pending in the court of learned Chief Judicial Magistrate, Dhanbad.

2. The prosecution case, which is relevant for the proper adjudication of the issue involved in this case, in short, is that at the instance of the then officer of Punjab National Bank, Bank More, Dhanbad, the aforesaid case was instituted under Sections 420/467/468/471/34 of the Indian Penal Code with the allegation that on 29.06.2012 two cheques dated 25.06.2012 for an amount of Rs.3.30 lacs and Rs.4.20 lacs respectively were presented by ICICI and Indusind Bank, Dhanbad branch for clearance in the bank in favour of one Aranya Traders and Sushil Singh respectively and the said cheques were issued by the petitioner-company

with the authorised signature of Sanjay Singal @ Sanjay Singhla (the petitioner no.2) and they were issued from bank account No. 0131008700000327 having its account in Punjab National Bank, 74-Janpath, New Delhi. After proper verification, those two cheques were cleared by Dhanbad Branch of Punjab National Bank but later on information received from the Janpath Branch, New Delhi of the said bank that the aforesaid two cheques were forged and fabricated and direction was given to respective Managers of ICICI and Indusind Bank of Dhanbad Branch to stop the payment. It is alleged that there was a conspiracy between the accused person to deceive and defraud the Bank by getting those forged cheques cleared and in that conspiracy this petitioner along with owner of Aranya Traders- Kunj Bihari and Sushil Singh were involved.

3. Before I adverting to the submissions made by the counsels appearing for the petitioners as well as the respondents, it is necessary to bring on record the background of the case. The petitioner-company is a company registered under the Indian Companies Act and the petitioner no.2 is Chairman-cum-Managing Director of the said company and is one of the authorised signatory of the company to operate the company accordingly. The said company has plants for manufacturing and processing of steel in Chandigarh, Kolkata and in the State of Orissa with an investment of approximately more than Rs. 35,000/- crores and the average turnover of the company is around Rs. 12,000/- crores per year. For the purpose of carrying out its business the company has already employed more than ten thousand persons and opportunities have been given to lacks of people by way of incidental services to the main activity of manufacturing and trading of the steel production.

4. Mr. Sumeet Gadodia, learned counsel appearing for the petitioners assailing the entire criminal proceeding and the First Information Report as misconceived and bad in law, seriously contended that the allegations made in the written report/F.I.R. even if taken at their face value as true, no offence is made out against the petitioners as there is no specific allegation of any act or involvement or role played by the petitioners in the alleged offence and as such the initiation of the proceeding or continuance thereof against the petitioners is bad in law. It was also submitted that the two original cheques are still intact and is kept with the petitioners and the alleged two cheques were never issued by the company with the signature of the petitioner no.2. It was also submitted that fraud has been committed upon the petitioner''s company by fraudulently forging the two cheques and withdrawing money from the bank account of the petitioner''s company. The petitioner has been wrongly arrayed as accused in this case. It was also submitted that at the instance of the company a case for cheating and forgery committed in respect of the bank account of the petitioner has already been lodged with the officer-in-charge of Barakhamba Road Police Station on 06.07.2012. Learned counsel further submits that the amounts which were wrongly debited from the bank account of the petitioner''s company has already been returned and redeposited in the company''s account after collecting the same from the concerned banks and the Punjab National bank, Dhanbad Branch

through its counter affidavit has admitted this fact that the bank is not at loss anymore and the bank has no grievance against these petitioners. Learned counsel further relying upon the supplementary counter affidavit filed by the bank-respondent no.2 submitted that the bank has prayed for deletion of his name from the F.I.R. and further submits that the petitioners are in fact the victim of fraud played by the beneficiaries of the two cheques.

Learned counsel Mr. Gadodia relying upon the case Gian Singh v. State of Punjab and Another; (2012) 10 SCC 303 submitted that the F.I.R. and continuation of the criminal proceeding would tantamount the abuse of the process of the court and entire criminal proceeding as it relates to the petitioners, are fit to be quashed.

5. Learned counsel appearing on behalf of the opposite party no.2-the bank also fairly submitted that the petitioners are victim of fraud committed by the beneficiaries of the cheques as the amount from their account had been debited and there is no involvement of the petitioners in the alleged offence. Similarly, the learned counsel appearing for the State also submitted that when at the instance of an Investigating Officer a notice under Section 41A of the Code of Criminal Procedure was issued to the petitioners, one official of the said company had appeared before the police and had presented original two cheques and admittedly the alleged amount of two cheques were debited from the account of the petitioners.

6. In the case Gian Singh (supra) the Hon''ble Supreme Court while dealing with the inherent power of the High Court under Section 482 of the Code of Criminal Procedure has already held in Paragraphs 55 and 56 that in the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. From the wordings of the F.I.R. of the intant case, it appears that no application whatsoever is there to show even prima facie that the petitioner did something which constitute offences under Sections 420, 467, 468, 471/34 of the Indian Penal Code. On the basis of two forged cheques of the petitioner''s company, the amount were debited by the Punjab National Bank, Dhanbad Branch but subsequently the amounts cleared in those two cheques were realised from the concerned banks as well as from the persons who were the beneficiaries. The amounts of the said two cheques were debited from the petitioner''s company even then the petitioner''s company as well as the petitioner no.2, who is the Managing Director of the said company, have been impleaded as accused. It further appears from the counter affidavit filed at the instance of the respondent no.2-Punjab National Bank that the petitioners were the victim of the fraud committed by the beneficiaries of the cheques and there was no any involvement of the petitioners in the alleged offence and even a prayer on behalf of the bank was also made for deletion of names of this petitioner from the F.I.R. The two persons Kunj Bihari-the owner/proprietor of Aranya Traders and Sushil Singh have already returned the amount relating to

the cheques which clearly stipulates that they were the beneficiaries of the cheques and not the petitioners from whose account the above cheque amounts were debited. During investigation also it has come that the money was fraudulently withdrawn by the two beneficiaries has been returned to the petitioner''s company account.

7. I have carefully considered the submissions of the learned counsels and the decision rendered in Gian Singh case (supra). It is well settled that judicial proceeding is not an instrument of needless harassment and the court should be circumspect and judicious in exercising the discretion and take relevant facts and circumstances into consideration. In view of the counter affidavit filed by the informant Bank there is no chance of recording a conviction in so far as the present petitioners are concerned and the entire exercise of trial is destined to be an exercise in futility. Summoning of an accused in a criminal case is a serious matter. So far as the written report of the respondent no.2-the bank which is part of the F.I.R., there is no specific allegation or even whisper that the petitioner being the company of the Managing Director has any role in the said fraudulent withdrawal rather the amounts in question were debited from the company''s account. Accordingly, the continuation of criminal proceeding on the basis of the F.I.R. Dhanbad (Bank More), P.S. Case No.708 of 2012 against these petitioners being absolutely uncalled for, deserves to be quashed.

8. In the result, the entire criminal proceeding of the court below relating to this petitioner in connection with Dhanbad (Bank More), P.S. Case No.708 of 2012 pending in the court of learned Chief Judicial Magistrate, Dhanbad is, hereby, quashed.

9. Accordingly, the writ petition is allowed.