(2004) 04 PAT CK 0125

In the Patna High Court

Case No : Cr. Misc. No. 875 of 2003

Birendra Kumar Jha APPELLANT

Vs

The State of Bihar and Bihar State Financial Corporation RESPONDENT

Date of Decision : 28-04-2004

Acts Referred:

Citation : (2004) 04 PAT CK 0125

Final Decision : Allowed

Judgement

Mridula Mishra, J.—This application u/s 482 of the Code of Criminal Procedure has been filed by the Petitioner for quashing the entire proceedings of complaint case No. 1312(M) of 1996 as well as the order dated 28.10.1996 whereby cognizance has been taken u/s 406, 408 and 420 of the Indian Penal Code against the Petitioner.

2. The facts narrated in this application in brief, is that Bihar State Financial Corporation filed a complaint case bearing No. 1312 of 1996 against the Petitioner who is proprietor of M/s Par Excellence. Birendra Kumar Jha, Petitioner, applied for loan with the Bihar State Financial Corporation (hereinafter referred to as the Corporation) for establishment of an industry and for purchasing computer machines. The Corporation after verification sanctioned a loan of Rs. 3,65,000/ - on 22.10.1991. The Petitioner accepted the terms and conditions and executed loan documents, agreement, hypothecation and mortgage of assets and machines as well as accepted the terms for sanction of the loan. The Petitioner availed the loan and purchased machines worth Rs. 2,83,000/- and assured the Corporation to repay the loan amount with interest but could not repay the loan amount with a motive to cheat the Corporation and shifted the industry to other place in violation of the condition of the agreement. Notice was sent to the Petitioner on 28.8.1995 asking him as to why he had shifted the hypothecated machines and tools and also to make payment of the dues but on repeated notices neither he paid the loan amount nor he located the hypothecated assets. It is, alleged that with illegal motive and with a view to

avoid the realisation of the dues, the machines and hypothecated assets have been shifted with a view to grab the money and with an intention to cheat the Corporation. It is alleged that the accused is liable to be prosecuted under Sections 406, 408 and 420 of the Indian Penal Code.

3. The Petitioner has submitted that the statement and allegation made in the complaint petition did not constitute any offence under Sections 406, 408 and 420 of the Indian Penal Code. The allegations made in the complaint petition is regarding the breach of the terms of the agreement and hypothecation which can make out a case of breach of terms of the agreement and warranting civil action. In the complaint petition there is no whisper that the Petitioner having dishonest intention from the initial stage. It is also submitted that the machines cannot be said to have been entrusted by the Corporation to the Petitioner, as such, the cognizance is bad under Sections 406, 408 and 420 of the Indian Penal Code and the continuance of prosecution is misuse of the process of the Court.

4. A counter-affidavit has been filed by the opposite party No. 2 wherein it has been stated that the Petitioner certainly committed criminal breach of trust with an intention to cheat and dishonestly inducing delivery of property. Loan was disbursed to the Petitioner to the tune of Rs. 2,83,000/- but on account of non-payment of the loan amount on 31.8.2002 the outstanding dues have come to Rs. 18,17,742/- It has also been stated that the unit was originally established at Radha Bhawan, Mainpura, Patna, and the plant and machinery were hypothecated to the Corporation but in the clandestined manner hypothecated assets have been (sic) to other premises at Machhuatoli. Neither any information was given to the Corporation nor prior permission was obtained from the Corporation to shift the hypothecated machines from the rental premises which was approved by the Corporation. The Corporation sent several letters regarding submissions of the fresh rental agreement of the new site as to bring back the machines to original site but, the Petitioner did not respond to any of the letters. The Corporation had no other option but to lodge the complaint case.

5. Heard learned Counsel for the Petitioner and the opposite party No. 2 and also perused the complaint petition and the documents annexed with the complaint petition as well as the counter-affidavit filed by opposite party No. 2.

6. There is no dispute that the Petitioner was sanctioned a loan from the Corporation on execution of an agreement between the parties and also that the Petitioner hypothecated the machines to the Corporation. It is also admitted fact that the Petitioner had given written consent that he will not remove the hypothecated assets from the approved site. Even though all these things are admitted, for making out a case of criminal breach of trust, there is no whisper of entrustment, allegation of misappropriation and misappropriation with dishonest intention is also missing. In absence of all these ingredients no criminal offences under Sections 406, 408 and 420 of the Indian Penal Code can be made out. Counsel for the Petitioner has stated that every offence of criminal breach of trust involves a civil wrong in respect of which remedy lies in the civil

court but every breach of trust in absence of dishonest intention can not justify criminal prosecution, learned Counsel for the Petitioner has placed reliance on a reported decision of Central Bureau of Investigation, SPE, SIU (X), New Delhi Vs. Duncans Agro Industries Ltd., Calcutta, In the case it was held as such:

When some goods are hypothecated by a person to another person, the ownership of the goods still remains with the person who has hypothecated such goods. The property in respect of which criminal breach of trust can be committed, must necessarily be the property of some person other than the accused or the beneficial interest in or ownership of it must be in the other person and the offender must hold such property entrust for such other person or for his benefit. In a case of pledge, the pledged article belongs to some other person but the same is kept in trust by the pledgee.'' In the instant case, a floating charge was made on the goods by way of security to cover up credit facility. In our view, in such case of disposing of the goods covering the security against credit facility, the offence of criminal breach of trust is not committed.

7. In the facts and circumstances and in view of the decision of the Supreme Court, quoted above, no criminal offence is made out in absence of any, allegation of inducement to enter into such agreement, entrustment and dishonest intention for misappropriation. No case u/s 420 of the Indian Penal Code is also made out and that the remedy available to the Corporation was a civil remedy. It is thus a fit case for quashing entire criminal proceeding of complaint case No. 1312(M) of 1996 as well as the order dated 28.10.1996. Continuation of criminal proceeding will amount to be an abuse of the process of the court.

8. This application is accordingly allowed.