(2012) 08 AHC CK 0178

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 33207 of 2006

Daya Ram Singh Rawal and Another — APPELLANT

Vs

Tahsildar and Others — RESPONDENT

Date of Decision : 09-08-2012

Acts Referred:
Public Accountants Defaults Act, 1850 — Section 4

Citation : (2012) 08 AHC CK 0178

Hon'ble Judges : Ashok Bhushan, J and Abhinava Upadhya, J

Final Decision : Dismissed

Judgement

Abhinava Upadhya, J.—Heard Counsel for the parties.

2. Petitioners No.1 and 2 are husband and wife respectively. The petitioner No.1 is said to be enlarged on bail in respect to a case crime No.272 of 2004 pursuant to a F.I.R. dated 3.7.2004 filed in Police Station Civil Lines, Aligarh under sections 409, 419, 420, 467, 468 and 471 IPC on the allegation of embezzlement to the tune of Rs.32,35,000/from the Time Deposit Account of the Post Office where he was employed and working as SubPost Master.

3. By means of this writ petition, the petitioner has challenged the recovery of Rs.32,35,000/ vide recovery certificate dated 15.6.2006 said to have been issued under section 4 of the Public Accountants Default Act, 1850 (in short, the PAD Act).

4. Brief facts giving rise to the present writ petition are that the petitioner No. 1 was employed as SubPost Master Ram Ghat Road, Post Office Aligarh from 29.7.2000 to 13.4.2004. The allegation is that during this period while working as SubPost Master at Ram Ghat and SubPost Master Dodhpur during the period 19.6.2003 to 16.4.2004, the petitioner No.1 committed fraud from TD/SB Accounts at Ram Ghat and Dodhpur while opening fake accounts giving account number which already stood opened in the Post Office in the name of persons other than shown in the fake account. It is alleged that the petitioner No. 1

received money from the depositors and prepared pass book in usual manner, signed and impressed with date, stamp and handed over to the depositors but he did not account for the amount received into the Post Office record. Vide Annexure2 to the counter affidavit, a list of account numbers has been given. It is alleged that a total sum of Rs.32,35,000/ has been embezzled by the petitioner No. 1 from the accounts of hapless depositors causing a loss to the Government of the aforesaid amount.

5. Upon receiving the complaints on the aforesaid allegation, an F.I.R. dated 3.7.2004 was lodged in Police Station Civil Lines, Aligarh under sections 409, 419, 420, 467, 468 and 471 IPC and a case crime No. 272 of 2004 was registered and the same is pending before the Chief Judicial Magistrate, Aligarh. In the said case a chargesheet has been filed by the police and the petitioner No. 1 was arrested and sent to Jail.

6. Apart from the aforesaid criminal case, departmental proceedings were also initiated under Rule (14) of CCS (CCA) Rules, 1965 and an Enquiry Officer was appointed. A memo of charge dated 3.9.2004 was served upon the petitioner No. 1 on 10.9.2004 while he was still in jail. Vide reply dated 22.9.2004, the petitioner No. 1 denied all the charges. The inquiry could not proceed as the petitioner was in Jail. However, upon his release on parole enquiry started and dates were fixed. The petitioner again denied the charges but it is alleged that thereafter the petitioner did not participate in the inquiry instead, he filed an Original Application No. 1298 of 2006 before the Central Administrative Tribunal, Allahabad challenging the departmental proceedings and the same is pending there.

7. Another serious allegation in the counteraffidavit is that the petitioner was involved in kidnapping and murder of a postal staff Sri V.K. Jain and a criminal case being crime case No. 50 of 2004 was registered under sections 364/302IPC.

8. Upon the aforesaid allegation, the Department proceeded with for recovery of the said embezzled amount under the PAD Act by issuing a recovery certificate. The grievance of the petitioner is that in order to recover the aforesaid amount, the house property which is in the name of petitioner No. 2 who is claiming to be the exclusive owner of the same was being attached which necessitated the filing of the present writ petition alleging that the petitioner No. 1 has been falsely implicated in the aforesaid case as he has not embezzled any amount of the depositors. Upon a conspiracy hatched against him by the other staff members of the Post Office, he is being penalised for no fault of his. In defence, the petitioner also alleges that in the departmental enquiry initiated by the authorities, no opportunity of any kind was given to the petitioner which necessitated in filing of the aforesaid Original Application before the CAT, Allahabad challenging the departmental proceedings itself and the matter is subjudice before the Tribunal. So far as the involvement of the petitioner in the case of kidnapping and murder of Sri V.K.Jain is concerned, it has been submitted that in S.T.No.790 of 2004 he has been acquitted in case crime No. 50 of 2004 filed under sections 364/302

IPC. The aforesaid fact has been stated in the rejoinder affidavit but the judgment of the Sessions Trial has not been filed.

9. In this writ petition, the petitioner has sought for quashing of the recovery certificate and has further sought mandamus seeking a direction to the authorities not to lock or attach the house of the petitioner No. 2 in pursuance of the aforesaid recovery notice. The petitioner has challenged the aforesaid recovery essentially on the grounds; firstly, that a criminal case and departmental proceedings are pending on the same allegations which are yet to be proved and secondly, the property of the petitioner No. 2 could not be attached for recovery of the sum alleged to be due against petitioner No. 1.

10. So far as the proceedings of recovery is concerned, the same has been initiated under the PAD Act. Section 4 of the said Act is quoted herein below:

"Prosecution of accountants and sureties:The person or persons at the head of the office to which any public accountant belongs may proceed against any such public accountant and his sureties for any loss or defalcation in his accounts, as if the amount thereof where an arrear of land revenue due to Government."

11. Undoubtedly, the petitioner is a Public Accountant Incharge of receipt of money and undoubtedly an embezzlement has taken place, therefore, the recovery can very well be proceeded with even during the pendency of criminal trial.

12. Now we have to consider the allegation of the petitioner that the property sought to be attached pursuant to the aforesaid recovery is the property of the petitioner No. 2 who is the sole owner and the petitioner No. 1 having no right, title or interest in the same, cannot be attached or sold for recovery of any amount due from the petitioners No. 1 as arrears of land revenue.

13. The respondents, as a counter claim, have alleged that the property in question is in fact that of petitioner No. 1 but in a preplanned manner he has got a saledeed executed in the name of his wife by himself acting as a holder of Power of Attorney of the original owner of the property of one Bhagwal Das, son of Hoti Singh resident of Sahibabad, Pargana and Tehsil Kol, district Aligarh. It is also alleged that no independent source of income has been shown that of petitioner No. 2 who had no means of purchasing the property by herself and build a house thereon, it is in the nature of sham transaction only in order to obliterate the fact of title. It is further alleged that the allegations of embezzlement is for the period from 19.6.2003 to 16.4.2004 and the saledeed having been executed on 4.12.2003 was during the period when the petitioner was in fact defrauding the depositors as well as the Government and as a design that no recovery be made from the petitioner, he executed the aforesaid saledeed as holder of Power of Attorney in favour of his wife.

14. To consider the said claim of the petitioner and the counterclaim of the respondents, we have to necessarily examine the transaction and the instrument

by which the property is said to have been acquired by petitioner No. 2.

15. The respondents drew our attention to a saledeed dated 4.12.2003 filed as AnnexureCA10 to the counteraffidavit. The examination of the instrument reveals that the petitioner No. 1, husband of petitioner No. 2 executed the aforesaid saledeed in favour of his wife as a holder of Power of Attorney of one Bhagwan Das. Considering the background, apparently, it does appear that the same has been done to avoid the knowledge of the true state of title as a design which is inconsistent with bona fide dealing. It does not appeal to reason as to why a husband would hold power of attorney of some third person and execute a saledeed in favour of his wife. It has not been indicated anywhere as to what was the resources of wife, the petitioner No. 2, to acquire such a property although a feeble mention has been made that she sold her ornaments to buy this property from her husband. Such a transactions is merely a sham transfer of a collusive and colourable nature. There is no actual transfer but the property is merely put in a false name only for the purpose of hiding as to the true state of title. The present transaction does appear to be a calculated design to defeat the recovery with motive of putting the property out of reach of the authorities.

16. Upon the aforesaid discussion and keeping in view the rule of justice, equity and good conscience and also considering the gravity of charges, we decline to interfere in exercise of our discretion under Article 226 of the Constitution of India.

17. The writ petition is accordingly dismissed.