(2010) 12 JH CK 0029

In the Jharkhand High Court

Case No : Criminal Rev. No. 846 of 2008

Deep Chawla APPELLANT

Vs

State of Jharkhand and Chanchal Kumar Chourasia RESPONDENT

Date of Decision : 21-12-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 239
Penal Code, 1860 (IPC) — Section 120B, 406, 420, 467, 468

Citation : (2011) 8 RCR(Criminal) 375 : (2011) 1 JLJR 385

Hon'ble Judges : Jaya Roy, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Jaya Roy, J.—The Petitioner has filed this revision application against the order dated 23.07 2008 passed by the Judicial Magistrate, Dhanbad in G.R. Case No. 2229 of 2004 whereby he Has rejected the Petitioners application filed u/s 239 of the Code of Criminal Procedure for his discharge.

2. The case of the prosecution, in short, is that the informant is carrying on the business of ready-made garments at Park Market, Hirapur, Dhanbad in the name and style of ''Juno Garments''. The said Juno Garments used to purchase materials from the Petitioner and others on payment of cash and, some limes, on credit. As per the established practice of the aforesaid dealing the Petitioner used'' to leave blank cheque with the whole seller as security and as per said practice the informant handed over a duly signed blank cheque to accused No. 1, Anup Agarwal, partner of A.R. Fashion, Ranchi some times in the year 2000.

3. The informant, who had some business dealings with the present Petitioner (who is accused No. 3 in this case), never left any blank cheque with the petitioner. Accused No. 1 Anup Agarwal, vide his letter dated 07.01.2003, informed the informant that the said cheque had been ''misplaced from his custody and he advised the informant to cake immediate step to slop payment of the aforesaid cheque by the drawee bank (i.e. UCO Bank Hirapur, Dhanbad).

Accordingly the informant instructed his bank to stop payment of the aforesaid cheque but subsequently the informant came to know from his banker that the accused No. 3, the present Petitioner has encashed the aforesaid cheque. Further case of the informant is that when he served legal notice to all the accused persons and the Dank Manager, (UCO Bank, Hirapur Dhanbad), he got a reply whereby the bank admitted that the said cheque had been encashed due to inadvertent error on the part of the staff of the bank.

4. Learned Counsel for the Petitioner submits that the police, after through investigation, has come to the conclusion that no offence has been committed by the Petitioner and exonerated him from the charge and submitted final form. But the police found the other co-accused in the instant case i.e. Anup Agarwal and Rajesh Agarwal, guilty and accordingly submitted charge sheet against them. Thereafter, on the protect petition filed by the informant against the said final form submitted by the police totally exonerating the Petitioner, the Chief Judicial Magistrate, after hearing the matter, found a prima facie case under Sections 406, 420, 467, 468 and 120B of the Indian Penal Code against the Petitioner and other two persons also. He then transfered the case for trial and disposal to the Court of the Judicial Magistrate. Learned Counsel further submits that the other two co-accused namely, Anup Agarwal and Rajesh Agarwal had filed a Cr. Rev. No. 826 of 2008 against the same order i.e. order dated 23.07.2008 passed by Judicial Magistrate in G.R. Case No. 2229 of 2004 before the High Court. This court, after considering their case, set aside the said order in respect of the aforesaid two persons and consequently they have been discharged.

5. It is further submitted that the actual fact of the case is otherwise. The present Petitioner is running a business in Jamshedpur in the name and style of ''M/s Union Fashion'', Jamshedpur and there were business transactions between the present Petitioner and the Informant. The informant often used to visit Jamshedpur and the general practice of their business was to receive materials on credit and to make payment subsequently vide cheque or cash. In case the goods were purchased on credit the informant used to leave a blank cheque with the Petitioner in lieu of goods purchased by him. The Petitioner subsequently used to encash the cheque at pre-arranged as fixed by and between them. Accordingly, as the informant purchased some goods from the Petitioner, he had deposited aforesaid cheque bearing No. 262087 drawn on UCO Bank, Hirapur Dhanbad. The Petitioner subsequently, in the normal course of business deposited the said cheque at jamshedpur for encashement. The Petitioner had no knowledge or idea about the instruction given by the informant for "stop payment" when he encashed the cheque. He came to know about this when he received legal notice from the Advocate of the informant alleging the he in connivance with another accused Anup Agarwal, had committed fraud in this case.

6. The learned Counsel for the Petitioner has further submitted that even the police after through investigation had come to the conclusion that the Petitioner

has not committed any offence and he was exonerated in the final form. Thus, the court below, without considering the materials against the Petitioner and without considering the documents filed by the defence, rejected the petitioner''s, application filed u/s 239 of the Code of Criminal Procedure.

7. Learned Counsel appearing for the O.P. No. 2 (informant) on the other hand, submits that, no doubt, when the other two co-accused Anup Agarwal and Rajesh Agarwal had preferred Cr. Rev. No. 826 of 2008 against the said impugned order, the said order had been set aside by a Bench of this Court and they were discharged by the order dated 29.03.2010. But the case of the present Petitioner stands on different footing. According to the informant the said cheque was encashed by the present Petitioner, Deep Chewla, accused No. 3 which goes to show that he had some connection with the instant case as the cheque was not handed over to him at any point of time. It is further contended that even after giving information to the bank not to encash the cheque, the said cheque has been encashed by the r resent petitioner. Therefore, the petition filed by the present Petitioner for his discharge is fit to be rejected.

8. After considering the submissions made by both the parties, in my opinion, as admittedly the said cheque was encashed by the present Petitioner, at this stage there is strong suspicion against Petitioner regarding his involvement in this case. It is not the stage for weighing the pros and cons of all the implications of the materials presented by the parties, Presumption drawn is always rebuttable by the accused after participation in the trial. As there is sufficient material? before the trial Court for framing the charge, I do not find any reason to interfere with the impugned order. This revision application s accordingly dismissed.

