(2023) 03 JH CK 0010

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 649 Of 2019

Dilip Bang @ Dilip Bag — APPELLANT

Vs

State Of Jharkhand And Others — RESPONDENT

Date of Decision : 15-03-2023

Acts Referred:
Code Of Criminal Procedure, 1973 — Section 205, 482

Citation : (2023) 03 JH CK 0010

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Indrajit Sinha, Ajay Kumar Sah, Fahad Allam, Amit Kumar Das

Final Decision : Dismissed

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Indrajit Sinha assisted by Mr. Ajay Kumar Sah, learned counsel for the petitioner, Mr. Amit Kumar Das, learned counsel for opposite party no.2 and Mr. Fahad Allam, learned counsel for the State.

2. This petition has been filed for quashing the order dated 14.03.2012 passed by the learned Judicial Magistrate, 1st Class, Jamshedpur in C/1 Case No.2327 of 2010, whereby, the petition filed under Section 205 Cr.P.C. has been rejected.

3. The case was registered on the complaint made by the complainant alleging therein that the complainant has run the business of Public Distribution system at Sarjamda, Parsudih, Jamshedpur. In order to have a secured future, the complainant has purchased 2061 number of shares of different companies worth Rs. 1,00,000/- approx. On 16.7.2009 at 9 AM the complainant while was in his shop, the accused no. 3 and 4 came to the complainant and introduced themselves to be the officials of M/s. Nirmal Bang Securities Limited and induced the complainant to invest money in their firm, assuring the complainant that the complainant would got lucrative amount of interest against such investment which is commonly known as port folio Management and the said investment, as

assured by the complainant would without any risk. The accused No. 3 and 4 further induced the complainant that if the complainant having any share of any company, in his possession, to transfer the same in favour of the accused No. 1 against which the complainant as assured by the accused No. 3 and 4 would get lucrative amount of profit and asked the complainant to come to their local office at Sana Complex, Thakur Bari Road, Sakchi, Jamshedpur. After having been induced by the accused No. 3 and 4 the complainant went to the office of the accused No. 1 on 20.07.009 where the accused No. 3 and 4 introduced the accused No. 1 and 2 being the Director and Regional head of M/s Nirmal Bang Securities. All the accused persons made the same inducement what was induced by the accused No. 3 and 4 asking the complainant to invest money with M/s. Nirmal Bang Securities and to transfer his shares in favour of M/s. Nirmal Bang Securities and assured the complainant to get a lucrative amount of profit against such investment. In order to have a secured future and being induced by the accused persons, the complainant sometime in the last week of July, 2009 opened a DMat account with M/s. Nirmal Bang Securities upon depositing a nominal amount of Rs. 550/-and thereafter on 01.08.2009, 29.10.2009, 18.11.2009 and 27.11.2009 the complainant paid the accused persons a total sum of Rs. 1,80,000/- through different cheques drawn on ICICI Bank Limited Jamshedpur. It was further alleged that after 2/3 days of opening DMat account, the complainant also being induced by the accused persons and transferred 2061 number of shares to M/S. Nirmal Bang Securities Limited. When one year have passed, the complainant did not get any amount as assured by the accused persons, against the investments made by the complainant, the complainant visit to the local office of the accused persons number of times but on all occasions he found the local office of the accused persons are closed. Thereafter the complainant met two staff of the accused persons namely Dilip Kumar and Miss Susmita and asked about the accused persons upon which the said witnesses told the complainant that the accused persons upon misappropriating the hard earned money of several poor investors fled away closing the office and even they have not been paid their salaries. Thus all the accused persons by playing deception upon the complainant, induced him to invest the aforesaid amount and to transfer the aforesaid shares in favour of M/s. Nirmal Bang Securities and misappropriated the same inconvenience with each other and have cheated the complainant and others in the manner as aforesaid.

4. Mr. Sinha, learned counsel for the petitioner submits that the petitioner is one of the Director of the company and he is ready to give undertaking before the learned court for appearance on the direction of the learned court. He further submits that there are several judgments whereby the petition under Section 205 Cr.P.C. has been allowed. He also submits that there is no serious allegation against the petitioner and in that view of the matter, the impugned order is bad in law.

5. On the other hand, Mr. Amit Kumar Das, learned counsel for opposite party no.2 submits that there is allegation against the petitioner and not only the

complainant in this case, but other persons have also been cheated. The petitioner is the Director of the chit fund company. He further submits that in pursuance to the order passed in the PIL, chit fund matters have been taken by the CBI and investigation is conducted by the CBI in different matters. He submits that serious allegation is there and on these grounds, he submits that this petition is fit to be dismissed.

6. In view of the above submissions of the learned counsel for the parties, the Court has gone through the materials on the record including the complaint petition as well as the order dated 14.03.2012 by which the petition filed by the petitioner under Section 205 Cr.P.C. has been rejected. There is allegation against the petitioner of cheating sum of Rs.1,80,000/-. Further allegations are there that this petitioner has cheated other persons also and he was operating a company wherein the chit fund nature of transactions are taken place. There are limitation of passing order under Section 482 Cr.P.C. particularly in terms of Section 205 Cr.P.C. and it is ordinarily for the Magistrate to consider the matter and the Magistrate must exercise jurisdiction under Section 205 Cr.P.C. in a fair and judicious manner. In the case in hand, the learned Magistrate has passed the reasoned order. The discretion of the learned Magistrate under Section 205 Cr.P.C. cannot be circumscribed by lay down any general direction. While considering the application under Section 205 Cr.P.C., the learned Magistrate has to bear in mind the nature of the case as also the conduct of the person summoned. He shall examine whether any useful purpose would be served by requiring the personal attendance of the accused or whether the progress of the trial is likely to be hampered on account of his absence. Therefore, the satisfaction whether or not an accused deserves to be exempted from personal attendance has to be of the learned Magistrate, who is the master of the court in so far as the progress of the trial is concerned and none else. In spite of no coercive order passed in favour of the petitioner vide order dated 16.05.2012, the petitioner has not appeared before the learned court and the matter is still pending. The impugned order is a well reasoned order and it is well within the discretion of the learned court who seized with the trial. In that view of the matter, no relief can be extended to the petitioner.

7. Accordingly, this petition is dismissed.

8. Interim order, if any granted by this Court, stands vacated.

