(2005) 02 JH CK 0042

In the Jharkhand High Court

Case No : Criminal Miscellaneous No. 6135 of 1999 (R)

Durga Devi Chhowchharia and Others APPELLANT

Vs

State of Bihar and Another RESPONDENT

Date of Decision : 23-02-2005

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120B, 406, 409, 420

Citation : (2005) 2 JCR 359a

Hon'ble Judges : Hari Shankar Prasad, J

Bench : Single Bench

Advocate : N.K.P. Sinha and Bibhash Sinha, for the Appellant; A. Dutta, Assistant Public Prosecutor, Public ProsecutorN. Roy and Ram Prakash Singh for the O.P. No. 2, for the Respondent

Judgement

Hari Shankar Prasad, J.—This application u/s 482 of the Code of Criminal Procedure (hereinafter to be referred as ''Code'') has been filed for quashing the entire criminal proceeding as well as the First Information Report in connection with Hatia P.S. Case No. 56 of 1999 corresponding to G.R. No. 920 of 1999 registered under Sections 406, 409, 420 and 120-B of the Indian Penal Code.

2. Facts leading to filing of this case are that O.P. No. 2 who is Enforcement Officer. Employees Provident Fund Organization, lodged an FIR stating inter alia therein that the petitioners are the employers of M/s Oriental Electro Steels and this organization is covered under the Provident Fund Scheme and the employers have failed to pay the employers and employees contribution of provident fund for the period from April 1996 to February 1999. On that basis, a case being Hatia P.S. Case No. 56 of 1999 was registered under Sections 406, 409, 420 and 120-B of the Indian Penal Code.

3. The learned counsel appearing for the petitioners submitted that the firm in question was previously a partnership firm of which petitioner Nos. 1 and 2 were partners along with one M/s Vikash Founders Pvt. Ltd., but subsequently from

1.4.1998 the said firm became proprietorship firm with its sole proprietor M/s Vikash Founders Pvt. Ltd. and the remaining partners including the petitioner Nos. 1 and 2 registered after 1.4.1998 and thereafter they had no connection with the firm. It is further pointed out that immediately after resignation from the firm, these two petitioners immediately informed the concerned authorities of the E.P.F. and M.P. Act (Annexure-3). It was further pointed out that surprisingly enough the proprietor of M/s Vikash Founders Pvt. Ltd. has not been made an accused, rather the petitioner Nos. 2 and 3 who were directions have been named as an accused but this is under wrong notion of law that without making the company as an accused, the directors cannot be prosecuted. It was further pointed out that neither the firm has been made an accused nor the proprietor of the firm has been made party nor an opportunity has been given to the petitioners to explain the facts nor the proprietor of the firm M/s Vikash Founders Pvt. Ltd. has been given an opportunity to explain the position and the petitioners have wrongly been made an accused without verifying responsibility about non-compliance of any of the provisions of the said Act or committing any default. It was further pointed out that amount towards contribution of the employers and employees for period from April 1996 to December 1999 has already been paid on 15.4.1997, but inspite of the fact that the amount in question for the aforesaid period has already been paid in the year 1997, the O.P. No. 2 instituted the instant case against the petitioners for nonpayment of the contribution for the aforesaid period (Annexure-4). It is further submitted that the entire amount as stated in the FIR being the employees contribution has been paid, part of which for the period from April 1996 to December 1999 was paid much earlier and part of the remaining amount from January 1999 to February 1999 together with further contribution even for further period, were paid subsequently and there is no dues at all. It is further submitted that some delays in payment of the dues were made but that delay was not intentional or deliberate as the financial position of the firm which is an ancillary Unit of the H.E.C, Ltd. has deteriorated as the industry in question has been declared a sick unit by the Government of Bihar. So far as the provident fund dues/contribution with respect to the period from January 1997 to February 1999 is concerned, as detailed in the statement, it is stated that the dues for the month of June 1997 amounting to Rs. 13, 375/- has already been paid and payment has been made by different challans. It was further pointed out that inspite of payment of the entire sum of money; still the case has been instituted.

4. It was further pointed out that no case u/s 406 and other Sections is made out as petitioners are not responsible for depositing the contribution under the E.P.F. and M.P. Act as petitioners are neither the persons in-charge responsible for the financial affairs of the company nor at any point of time, contribution was deducted from the wages of the workmen by them. It is also submitted that since the entire amount of Rs. 4,66,086.00 has already been paid, hence no case u/s 406 or 420, IPC is made out against the petitioners and in the facts and circumstances of the case, if case is allowed to proceed, it will be an abuse of the

process of the Court.

5. It was also submitted that no case under the aforesaid Section is made out against the petitioners. In this connection, reliance was placed upon Narendra Pratap Narain Singh and another Vs. State of U.P., wherein it has been held that allegation of forging bills, misappropriated amount and thereby committed criminal breach of trust and amount alleged to have been misappropriated, proved to be deposited by the accused before the investigation. In the instant case, it was held that the charge u/s 409 could not be sustained. Reliance was further placed upon Sardar Singh Vs. State of Haryana, wherein it was held that there failure or omission to return the property is not sufficient to constitute offence u/s 409, IPC.

6. Learned counsel further pointed out that there was no entrustment of property or breach of trust towards contribution amount of E.P.F. and M.P. Act and, therefore, no question of criminal breach of trust under Sections 406 and 409, IPC arose.

7. Learned counsel appearing for the O.P. No. 2 submitted that the establishment is covered under the E.P.F. and M.P. Act and the employers have been depositing their contribution amount as well as employees contribution to the E.P.F., but no such amount was deposited and, therefore, petitioners being the persons taking active participation in the management of the company, have been found responsible for not depositing the contribution. In this connection, reliance was placed upon State of Bihar and Another Vs. P.P. Sharma, IAS and Another, wherein, it has been held that High Court treating affidavits filed and documents produced before it by the petitioners-accused as evidence on the basis of which the proceeding is quashed, then High Court committed serious error in putting an end to the prosecution at its inception by going into merit of the pre-trial on consideration of the affidavits and documents which, unless proved to be true and reliable in regular trial, cannot form the basis of any position regarding commission of offence.

8. On consideration of the entire facts and materials on record, it will appear that the amount of contribution of employers and employees has been deposited and no opportunity was given to the petitioners to explain circumstances. Further, since petitioners have already resigned from the partnership of the firm and ingredients of offence registered under Sections 406, 409, 420 and 120-B, IPC are lacking, it will be an abuse of the process of the Court if trial is allowed to continue.

9. In that view of the matter, this application is allowed and the entire criminal proceeding as well as the first information report in connection with Hatia P.S. Case No. 56 of 1999 corresponding to G.R. No. 920 of 1999, is hereby quashed.

