
(2011) 12 PAT CK 0054

In the Patna High Court

Case No : Criminal Miscellaneous No. 19092 of 2011

G.L. Kejriwal

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 01-12-2011

Acts Referred:

Citation : (2011) 12 PAT CK 0054

Judgement

Aditya Kumar Trivedi, J.—Petitioner has filed instant petition under the garb of Section 482 of the Cr.P.C. for quashing of entire criminal proceeding arising out of Mohania P.S. Case No. 155/2011 registered u/s 420, 34 of the Indian Penal Code read with Section 81(3)(C) of the Bihar VAT Act, 2005.

2. Briefly stated, the fact of the case as is visualizing from Annexure-1, written report submitted by Sunil Kumar, Assistant Commissioner, Sales Tax on 10.05.2011 is that on confidential information they have intercepted one vehicle on 16.4.2011 bearing Registration No. MP-17C-2154 over which furniture was being carried to M/s Real System Interior Pvt. Ltd., Lohianagar, Kankarbagh, Patna from Ms/ Eurocastic Product Ltd., Kachigaon, Daman. Accordingly, relevant documents were asked for to verify whether necessary taxes has been paid or not and during said coursepetitioner, G.L. Kajriwal appeared as an Advocate on behalf of driver, Laxman. During verification, certain documents were found to be forged and on account thereof, apart from the tax amount, penalty was also realized side by side criminal prosecution has also been directed to be instituted for filing forged document during the course of proceeding which has resulted institution of present case against the accused including the petitioner, an Advocate.

3. It has been submitted on behalf of the petitioner that he happens to be an Advocate and is accordingly, entitled for practice representing his client before any judicial Court, Tribunal, Commission, at any place unless and until barred by special law.

4. Further submitted that he is required to place the pleading in proper way for

better adjudication, defend the right of his client and place those documents only whatever has been handed over by his client to be placed before the Court/ Authority. The lawyers are not expected to know about authenticity/genuineness of the documents.

5. Also submitted that apart from this, lawyers are also expected to assist the Court by placing relevant law and that happens to be reason behind that lawyers are treated as an officer of the Court.

6. Then it has been submitted that the written report itself speaks that the petitioner had simply defended the case of his client and placed those documents for the perusal of the authority which were made available by his client. Whether the document happens to be genuine or forged, happens to be connected spawn of the client. Not only this, it has also been submitted that in the written report itself the informant had not made the petitioner an accused even then the police shown him as an accused while registering the case in column of the accused of the formal FIR. It has further been submitted that no allegation has been attributed to the petitioner. In sum and substance, submission is that instant criminal prosecution is fit to be quashed.

7. On the other hand, learned Additional Public Prosecutor vehemently opposed the submission and submitted that being an Advocate petitioner cannot feel immunized. After all, the conduct of the petitioner should be taken into consideration for identifying him as an accused or not. Once the character of the petitioner has become dubious, automatically he should stand in the row of accused. So submitted that FIR cannot be quashed.

8. Further, it has been submitted that so far other aspects are concerned, that happens to be factual one which could be traced out during the course of trial.

9. Lawyers are recognized and permitted to defend in accordance with Advocates' Act. Chapter-IV of the said Act prescribes entitlement of an Advocate, a right to practice. Moreover, Act itself contains under Chapter-V the disciplinary provision when the conduct of Advocates are found to be derogatory to their pious profession and for that the State Bar Councils have been entrusted to proceed subject to power of appeal/revision.

10. The inter se relationship in between an Advocate with his client has been bracketed from general parlance and that happens to be reason behind presence of two specific provisions under the Evidence Act. The first happens to be Section 126 which reads as follows:-

S. 126. Professional communications.-No [barrister, attorney, pleader or vakil] shall at any, time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such [barrister, pleader, attorney or vakil,] by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional

employment, or to disclose any advice given by him to his client in the course and for purpose of such employment:

Provided that nothing in this section shall protect from disclosure-

- (1) Any such communication made in furtherance of any [illegal] purpose;
- (2) Any fact observed by any [barrister, pleader, attorney or vakil], in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such [barrister, (pleader,) attorney or vakil] was or was not directed to such fact by or on behalf of his client. Explanation.-The obligation stated in this section continues after the employment has ceased.

11. The second one happens to be 129 which goes like this:-

S. 129. Confidential communications with legal advisers.-No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

12. After having conjoint reading of both the Sections, it is evident that the above said inter se relationship has got a privilege with certain exceptions that the said privilege has not been misused for commission of an offence/criminal act. Therefore, unless and until there happens to be a concrete and positive material on the record pointing out finger towards complicity of a lawyer, he cannot be made responsible for any document whatever has been placed by him before the authority on behalf of his client during presenting his (client) case, which has been made available to him by his client.

13. In a leading decision reported in State of Haryana and others Vs. Ch. Bhajan Lal and others, The Hon''ble Apex Court has identified following categories including others wherein prosecution can be quashed and those are :-

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, on investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient grounds for proceedings against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceedings is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

14. Now, the facts of the case should be taken together with the principles so formulated by the Hon''ble Apex Court and to search out whether any of the criterion is being fulfilled ?

15. After going through the FIR, it is evident that neither any allegation happens to be nor from the conduct of the petitioner any of the provision of penal law either under IPC or under Special law is made out and therefore it fulfils the criterion number one.

16. Consequent thereupon, criminal prosecution of Mohania P.S. Case No. 155/2011 registered under Sections 420, 34 of the IPC read with Section 81(3) (C) of the Bihar VAT Act, 2005 is quashed with regard to petitioner.