(2012) 05 JH CK 0088

In the Jharkhand High Court

Case No : Cr.W.J.C. No. 51 of 2000 (R)

Jagdish Khattar APPELLANT

Vs

The State of Bihar (Now Jharkhand) and Another RESPONDENT

Date of Decision : 15-05-2012

Acts Referred:
Penal Code, 1860 (IPC) — Section 120B, 192, 199, 34, 406

Citation : (2012) 3 JLJR 128

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : Dilip Jerath and Abhinesh Kumar, for the Appellant; S.K. Sahay, Advocate Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

H.C. Mishra

1. Heard learned counsels for both the parties. Petitioner has filed this writ application for issuance of appropriate writ/order/direction for quashing the entire criminal proceeding against the petitioner in Complaint Case No. C1-1103 of 1999, including the order dated 4.1.2000 passed therein, whereby the cognizance has been taken against the petitioner u/s 406, 420 and 120B of the Indian Penal Code.

2. The complaint petition bearing Complaint case No.C1-1103 of 1999 has been brought on record as Annexure-1 to this application, which shows that it was filed by Respondent No. 2 Amit Kumar Murarka against the General Manager of M/s Ashish Automobiles at Ranchi, M.K. Somani of Ashish Automibiles at Kolkata and Managing Director of Maruti Udyog Ltd. at New Delhi. In the said complaint petition, it was stated by the complainant that M/s Ashish Automobiles is an authorised dealer of accused Maruti Udyog Ltd. The complainant booked a Maruti Zen Car on 24.1.1999 with accused No.1, i.e., General Manager of M/s. Ashish Automobiles at Ranchi and gave a demand draft No. 758395 issued by S.B.I.

Jamshedpur dated 23.1.1999 for Rs. 2,90,496.67, in favour of the accused No.3 Maruti Udyog Ltd. It is alleged that on receipt of demand draft by the complainant, the accused No.1, i.e., General Manager of M/s. Ashish Automobiles at Ranchi assured and promised to deliver the car to the complainant within three days at Jamshedpur office, but when the car was not delivered to the complainant, the complainant rushed to Ranchi branch of the accused Nos. 1 and 2, i.e., General Manager of Ashish Automobiles and M.K. Somani of Ashish Automobiles, where he was assured to get the car within the fortnight, but the car was not delivered to the complainant within the stipulated period and the complainant made several correspondences and also met the said accused Nos. 1 and 2 i.e. General Manager of Ashish Automobiles and M.K. Somani of Ashish Automobiles, who assured to make delivery of the car and the same was not delivered to the complainant.

3. So far as this petitioner is concerned, the petitioner is not named in the complaint petition. Accused No. 3 is the Managing Director of Maruti Udyog Ltd. and the petitioner''s case is that on the date of booking of the car, the petitioner was not the Managing Director of Maruti Udyog Ltd. and he took over the charge as Managing Director of the said company in the month of August 1999 i.e., much later than the date of occurrence which is stated to be 24/25.999. However, the fact remains that so far as even the Managing Director of the Maruti Udyog Ltd. is concerned, the only allegation against him is that the bank draft was issued in the name of Maruti Udyog Ltd. and that the intimation of non delivery of the car was also given to Maruti Udyog Ltd. on several occasions but the Managing Director of the said company did not take care to get the car delivered. With these allegations, the complaint petition was filed against the accused persons.

4. It appears from the order sheet of complaint case No. 1113 of 1999, which has been brought on record as Annexure-4, that upon enquiry, the prima facie offence under Sections 406, 420 and 120B of the I.P.C. has been found against the petitioner also by order dated 4.1.2000 passed therein.

5. It is, thus, dear from the above that the payment was made, though in the name of Maruti Udyog Limited, but it was not paid to the petitioner directly, rather it was paid to the authorized dealer of the Maruti Udyog Limited and whatever transaction and dealings were there, they were with the authorized dealer and not with this petitioner directly.

6. Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in this case inasmuch as it is well settled principle of law that the petitioner being only the Managing Director of Maruti Udyog Limited, cannot be held liable for the offence under Sections 4067420/120B of the Indian Penal Code by way of vicarious liability, for an offence which might have been committed by the dealer. Learned counsel has, accordingly, submitted that the initiation of the criminal case against this petitioner is absolutely bad in the eyes of law, apart of causing unnecessary harassment to the petitioner, and has

prayed for quashing the same.

7. In support of his contention, learned counsel for the petitioner has placed reliance upon an unreported Judgment dated 29.02.1996 of this Court in Criminal Miscellaneous No. 2932 of 1995 (R) in the case of B.S Bargava & Anr. Vs The State of Bihar & Anr., wherein in the similar case instituted against Maruti Udyog Limited, it was found that though the draft was issued in the name of Maruti Udyog Limited, but it was deposited with the dealers and not directly to the Maruti Udyog Limited. It was also found that there was no privity of contract between the complainant and the Maruti Udyog Limited. Accordingly, the criminal case instituted against the Company was quashed by this Court, holding that there cannot be any criminal liability on the face of it against the petitioner company though there might be some civil liability of the petitioner for getting the amount encashed.

8. Learned counsel has also drawn the attention of this Court towards the decision of the Supreme Court of India in Maharashtra State Electricity Distribution Co. Ltd. and Another Vs. Datar Switchgear Ltd. and Others, , wherein where, the Chairman of the Maharashtra State Electricity Board was made an accused for the offence under Sections 192 and 199 read with Section 34 of the Indian Penal Code, it was held as follows :-

30. It is trite law that wherever by a legal fiction the principle of vicarious liability is attracted and a person who is otherwise not personally involved in the commission of an offence is made liable for the same, it has to be specifically provided in the statute concerned. In our opinion, neither Section 192 IPC nor Section 199 IPC incorporate the principle of vicarious liability, and therefore, it was incumbent on the complainant to specifically aver the role of each of the accused in the complaint. It would be profitable to extract the following observations made in S.K. Alagh Vs. State of U.P. and Others, (p.667, para 19).

19. As, admittedly, drafts were drawn in the name of the company even if the appellant was its Managing Director. he cannot be said to have committed an offence u/s 406 of the penal Code. If and when a statute contemplates creation of such a legal fiction, it provides specifically therefor. In absence of any provision laid down under the statute, a Director of a company or an employee cannot be held to be vicariously liable for any offence committed by the company itself.

(Emphasis supplied).

9. Placing reliance on this decision, learned counsel submitted that in absence of any specific averment demonstrating the role of petitioner in the commission of the offence in the complaint petition, there can be no criminal liability of the petitioner and as such, the petitioner could not have been made an accused in the complaint petition. Learned counsel has also pointed out that the same view has been taken by this Court in R.S.S. L.N. Bhaskarudu Vs. State of Jharkhand & Anr., reported in 2012 (1) JLJR 171. Learned counsel accordingly, prayed that the

continuation of the criminal proceeding against the petitioner is absolutely illegal and is fit to be quashed.

10. Learned counsels for the respondents, on the other hand have submitted that there is no illegality in the impugned order finding the prima facie case against the petitioner also, as in spite of the fact of receiving the money in favour of Maruti Udyog Limited, the car was not delivered to the complainant and accordingly, the offence is made out against all the accused persons, including the petitioner, being the Managing Director of the said company, having sufficient domain and control over the affairs of the company.

11. After having heard learned counsels for both the Sides and upon going through the record, I find that even if the allegations made in the complaint petition are taken in its entirety against this petitioner, the only allegation against the petitioner is that though the price of the car was deposited in the name of Maruti Udyog Limited, of which, this petitioner is the Managing Director, but neither the car was delivered to the complainant nor the money was returned back, even though correspondences were made with the Maruti Udyog Limited also. Except this allegation, there is no other allegation against the petitioner in the entire complaint petition and whatever allegations are there, they are against the authorized dealer to whom the payment was made and by whom, neither the delivery of the car was made to the complainant nor his money was refunded. It cannot be said that there was any mens rea on part of the petitioner at any stage of the transaction. Thus, I am of the considered view that in the given circumstances whatever liability of the petitioner is there, it may be civil liability, but there cannot be any criminal liability of the petitioner. Similar view has been taken by this Court in B.S Bargava (supra) and in R.S.S.L.N. Bhaskarudu (supra). This apart, in absence of any specific role assigned against the petitioner, in my considered view, no offence can be said to be made out against the petitioner and the petitioner cannot be said to have committed the offence under Sections 406, 420 and 120B of the Indian Penal Code by any legal fiction of the principle of vicarious liability, as it is well settled that if and when a statute contemplates creation of such a legal fiction, it provides specifically therefor. The case of the petitioner is fully covered by the decision of the Apex Court in Maharashtra State Electricity Distribution Company Limited (supra).

12. In view of the aforementioned discussions, I find and hold that though there may be civil liability of the petitioner, being the Managing Director of Maruti Udyog Limited to see that either the car was delivered to the complainant or his money was paid back with due interest, but so far as criminal liability is concerned, I find, there is no criminal liability of the petitioner in view of the fact that there is no specific allegation of any offence committed by the petitioner in the entire complaint petition and as such, the continuance of the criminal proceedings against the petitioner is absolutely illegal and cannot be sustained in the eyes of law. In view of the aforementioned discussions, the entire criminal proceeding in Complaint Case No.C1-1103 of 1999, including the order dated

4.1.2000 passed therein, then pending in the Court of Sri L.P. Choubey, learned Judicial Magistrate, 1st Class Jamshedpur, so far as it relates qua the petitioner only, are, hereby, quashed. This writ application is, accordingly, allowed.

