(2008) 04 JH CK 0079

In the Jharkhand High Court

Jagu Mal @ Jagdish Ray APPELLANT

Vs

State of Bihar (Now Jharkhand) and Others RESPONDENT

Date of Decision : 10-04-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319
Penal Code, 1860 (IPC) — Section 120B, 409, 420

Citation : (2008) 2 JCR 553

Hon'ble Judges : D.P. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.P. Singh, J.—Heard the parties.

2. The present miscellaneous petition has been filed by the petitioner Jagu Mal @ Jagdish Ray against the order dated 31.8.2000 by which the prayer of the petitioner to discharge him has been rejected.

3. The petitioner has preferred this miscellaneous petition on the grounds that in the FIR itself no allegation has been made out that he acted in any manner to induce the complainant-informant to hand over the business to Braj Kumar Madhyan said to be his son- in-law with whom he has been made accused in Pakur (M) P.S. Case No. 104 of 1999. The learned Counsel for the petitioner pointed out that even in the fard beyan the O.P. No. 2 Jagdish Kumar has asserted that the business was handed over to said Braj Kumar Madhyan on certain conditions in which the petitioner has agreed to act as arbitrator vide para 14 of the said agreement whenever a dispute arose between the parties.

4. My attention was drawn towards the facts that even in the fardbeyan it has been stated that the accounts of the business has been cleared till the month of December, 1997 and the dispute arises only for next eight months. Therefore the petitioner may be exonerated of the charges and discharged from the liabilities.

5. The O.P. No. 2 Jagdish Kumar has appeared through learned Counsel Sri Laljee

Sahay. According to him the petitioner was the main person on assurance of whom the said business was handed over to the accused No. 1. As such, he is involved in the alleged offence, have been fully proved during investigation. Therefore the petition may be dismissed.

6. I have gone through the materials on record. The petitioner is one of the accused named in the fardbeyan who is also the father-in-law of accused No. 1. It has also come on record that the agreed amount of payment Rs. 12,500/- per month has been made up to December 1997.

7. However other amounts by way of royalty, sales tax, bonus to labourers, P.F. amounts and gratuity as well as salary of the employees have been claimed to have been misappropriated by the petitioner and his son-in-law. (However the accused No. 1 Braj Kumar Madhyan has not appeared in spite of notice to him. The learned Counsel for the petitioner has relied upon Dilawar Balu Kurane Vs. State of Maharashtra, , 2003 (3) JCR 79 and (2005) 13 SCC 699. The learned Counsel further submitted that dispute, if any, was of civil nature and the trial of the petitioner may be an abuse of the processes of the Court. It is also submitted that the trial Court should not have rejected the petition for discharge mechanically rather to consider the facts available on the records and then to decide whether there were sufficient materials to frame charge or not.

8. My attention was drawn towards the law laid down by the Hon''ble Apex Court in Murari Lal Gupta v. Gopi Singh reported in 2005 (13) SCC 699 that when there was breach of contract or agreement the prosecution of the petitioner in criminal Court is an abuse of the process of the Court. Their Lordships have been pleased to hold in the above cited case that mere breach of the agreement without showing that any fraudulent or dishonest inducement has been made pursuant to which the agreement was entered into or money parted with prosecution of the petitioner was unwarranted.

9. As already discussed above, the allegations made by the informant Sri Jagdish Kumar that he has entrusted the business to accused Braj Kumar Madhyan the son-in-law of the petitioner on the assurance given by this petitioner is the sole basis on which he has been made an accused.

10. The learned trial Court by impugned order dated 31.8.2000 simply mentions that after perusal of the case diary and the materials on records sufficient materials have come on record to frame charge against both the accused under Sections 409 420 and 120B of the Indian Penal Code. However from the facts stated above, I am unable to agree with the view taken by the learned trial Court that material on the record disclosed any such inducement or dishonest intention on part of this petitioner to cheat the informant who has entered into an agreement with his son-in-law to run a business. It is also apparent from para 14 of the agreement that the petitioner has agreed to be an arbitrator along with one Ram Chandra Mal Jan if any dispute arise between the parties of the agreement.

11. Thus it is apparent from the facts available on the records that this petitioner though father-in-law of the accused No. 1 has not entered into any agreement to run the business. As such it is apparent that if any fraud or cheating has been committed by accused No. 1, the petitioner''s prosecution for those offences are not maintainable. Accordingly, I find that there is merit in the present petition. The order dated 31.8.2000 rejecting his prayer for discharge is hereby set aside. However this order shall not affect the prosecution of accused Braj Kumar Madhyan in any manner. It is also made clear that during trial of said Braj Kumar Madhyan if evidences are brought on record that the present petitioner was also involved in the alleged offence, the prosecution is at liberty to move the trial Court u/s 319 of the CrPC which shall be decided on merit without being prejudiced by this order.

12. In the result this criminal miscellaneous application is allowed.

