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(2015) 09 JH CK 0114

In the Jharkhand High Court

Case No : Criminal M.P. No. 1603 of 2006

Jogendra Singh and Others APPELLANT

Vs

The State of Jharkhand and Others RESPONDENT

Date of Decision : 03-09-2015

Acts Referred:

Citation : (2015) 4 JLJR 223

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : Anil Kumar Sinha, Senior Advocate, Sameer Saurabh and Abhishek Sinha, for the Appellant; Ram Prakash Singh, APP, Advocates for the Respondent

Judgement

Harish Chandra Mishra, J—Heard learned counsel for the petitioners and learned counsel for the State.

2. The petitioners have filed this application for quashing the entire criminal proceeding against them in C.O Case No. 19 of 1993, including the order dated 9.2.1993 passed by the learned Special Judge, Economic Offence, Dhanbad, whereby, the cognizance has been taken against the petitioners for the offence under Section 49(1)(a) of the Bihar Finance Act, 1981.

3. The facts of this case lie a short compass. C.O Case No. 19 of 1993 was instituted on the basis of the official complaint filed by the Deputy Commissioner, Sales Tax, Dhanbad, in which, the petitioners have been made accused along-with M/s. Johal''s Sons Pvt. Ltd., Dhanbad. In the said complaint petition, it is alleged that the accused persons had submitted their returns of Sales Tax after the expiry of the fixed date in the years 1988-89 to 1992-93. It is also alleged in the complaint petition that the accused persons had not submitted the returns for the months of October 1988 to March 1989 and the tax had not been paid for the months of July 1988 and October 1988 to March 1989 and they had not submitted the return for the years 1989 to 1990 and thereby, they committed offence under Sections 49(1)(b) and Section 49(3)(d) of the Bihar Finance Act.

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With these allegations, the official complaint was filed, on the basis of which, by the impugned order dated 9.2.1993, the learned Special Judge, Economic Offence, Dhanbad, has taken cognizance for the offence under Section 49(1)(a) of the Bihar Finance Act against the petitioners.

4. Learned counsel for the petitioners has submitted that the impugned order of cognizance clearly shows total non-application of judicial mind, inasmuch as, it is absolutely a non-speaking order and no reason has been disclosed for taking cognizance against the petitioners. It is also pointed out that even though, the complaint was filed for the alleged offence under Sections 49(1)(b) and 49(3)(d) of the Bihar Finance Act, but the cognizance has been taken for the offence under Section 49(1)(a) of the said Act, for which, no offence is made out against the petitioners in the facts of this case.

5. Learned counsel for the petitioners has further pointed out that in Section 49(5) of the Bihar Finance Act, there is a complete bar for taking cognizance, except with the previous sanction of the Commissioner. It is submitted that in the present case, no sanction had been accorded by the Commissioner of the Commercial Taxes and still the cognizance has been taken by the Court below, which is again absolutely illegal and cannot be sustained in the eyes of law. In this connection, learned counsel has pointed out that in paragraph 16 of the petition, the petitioners have specifically taken this point, stating that no cognizance can be taken for the offence under Section 49 of the Bihar Finance Act without the previous sanction of the Commissioner, but in the present case, this statutory provision has not been followed. Opposite party No. 2 has filed counter affidavit, in which, in paragraph 23, it is stated that the statement made in paragraph 16 needs no comment. A supplementary counter affidavit has also been filed, in which, it is stated that the Powers of the Commissioner have been delegated to the Joint Commissioner In-charge of the Division, but it is nowhere stated that any sanction was accorded even by the Joint Commissioner. Learned counsel accordingly, submitted that the impugned order taking cognizance cannot be sustained on this score as well.

6. Learned counsel has taken a further point of law in challenging the order taking cognizance and it is pointed out from the supplementary counter affidavit filed by the Opposite party No. 2, pointing out that the department has also imposed penalty upon the petitioners. It is submitted that Section 50 of the Bihar Finance Act provides that if the penalty has been imposed, no prosecution for the offence under Section 49 can be instituted and accordingly, the impugned order taking cognizance is hit by Section 50 of the said Act as well.

7. Apart from these legal infirmities, learned counsel for the petitioners has pointed out that in the complaint petition, even though the accused No. 1 is Johal''s Sons Pvt. Ltd., Dhanbad, but the said company was not in existence on the date of lodging the prosecution, as the name of the said company had already been changed to Skylark (Hotels) Pvt. Ltd., in the year 1984 itself, and the information to this effect was also given to the Commercial Taxes

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Department. In this connection, the letter dated 5.11.1984 issued by the Ministry of Law, Justice & Company Affairs, Government of India, has been brought on record the Annexure 2, whereby approval of the Central Government for change of name of Johal''s Sons Private Ltd., Dhanbad, as Skylark (Hotels) Pvt. Ltd., was accorded The petitioners have also brought on record as Annexure-2/1, which is the ''Fresh Certificate of Incorporation Consequent on Change of Name'', issued by the Asstt. Registrar of Companies, West Bengal, confirming the change of name of Johalsons Pvt. Ltd. as Skylark (Hotels) Pvt. Ltd. The petitioners have also brought on record the Annexure-3/1, which is the Certificate of Registration under Section 5 of the Bihar Taxation Luxuries in Hotel Act, 1988, whereby, the Registration of the company has been confirmed by the Commercial Taxes Department as M/s. Skylark (Hotels) Pvt. Ltd.

8. Placing reliance on these documents, learned counsel submitted that even the initiation of the complaint case by the opposite party No. 2 was without any application of mind and the complaint case was instituted against the company, which was not at all in existence on the date of lodging the complaint. Learned counsel for the petitioners accordingly, submitted that the order taking cognizance and the continuance of the criminal proceeding against the petitioners, are absolutely illegal and cannot be sustained in the eyes of law.

9. Learned counsel for the State, on the other hand, has opposed the prayer and has submitted that the offence is clearly made out against the petitioners on the basis of the allegation made against them, as the petitioners are also specifically named in the complaint petition, though there may be some mistake in the name of the company. Learned counsel, however, could not produce any sanction order of the Commissioner or the Joint Commissioner of the Commercial Taxes, as required under Section 49(5) of the Bihar Finance Act. It is, however, submitted by the learned counsel that Section 50 of the Bihar Finance Act is not attracted in the present case, as this is a case of delayed payment of tax and filing of returns by the petitioners and accordingly, the authorities were entitled to impose the penalty upon the petitioners, which according to Section 16(11) of the said Act shall be without prejudice to any action under Section 49 of the said Act. Making these submissions, learned counsel submitted that there is no illegality in the impugned order taking cognizance against the petitioners.

10. Having heard the learned counsels for both the sides, I find force in the submission of the learned counsel for the petitioners that the impugned order taking cognizance has been passed without any application of judicial mind. The order, per-se, shows that it is absolutely a non-speaking order and even though, the complaint has been filed for the offence under Sections 49(1)(b) and 49(3)(d) of the Bihar Finance Act, but the cognizance has been taken by the Court below for the offence under Section 49(1)(a) of the said Act, which is not even made out against the petitioners in the facts of this case.

11. I also find from the record that the cognizance is also barred under Section 49(5) of the Bihar Finance Act, which reads as follows :--

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"49. Offences and penalties.--

(5) No court shall take cognizance of any offence under this part or the rules made thereunder, except with the previous sanction of the Commissioner, and no court inferior to that of a Magistrate of the 1st class shall try any such offence."

12. It is specifically stated in paragraph 16 of the petition that this statutory provision has not been followed in the present case. In reply thereto, it is only stated in paragraph 23 of the counter affidavit filed by the opposite party No. 2 that the statement made in paragraph 16 needs no comment, which clearly stipulates that no sanction has been accorded by the Commissioner of the Commercial Taxes for prosecution of the petitioners. Though, in the supplementary counter affidavit, it is stated that the powers of the Commissioner have been conferred upon the Joint Commissioner, but still it is not stated that any sanction was granted even by the Joint Commissioner.

13. In that view of the matter, I am of the considered view that the impugned order taking cognizance is hit by Section 49(5) of the Bihar Finance Act and on this score also, the same cannot be sustained in the eyes of law.

14. Again, Section 50 of the Bihar Finance Act reads as follows :--

"50. Imposition of penalty in lieu of prosecution.--(1) If any person -------------.

(2) If any person ----------.

Provided that no prosecution for an offence under Section 49 shall be instituted in respect of the same facts on which a penalty has been imposed under this Section."

15. It is an admitted position that penalty has also been imposed upon the petitioners. In that view of the matter, it is apparent that the prosecution of the petitioners for the offence under Section 49 is completely barred under the proviso to Section 50 of the Bihar Finance Act. For this reason also, I find that the impugned order taking cognizance and the criminal proceeding against the petitioners cannot be sustained in the eyes of law.

16. For the foregoing reasons, the impugned order dated 9.2.1993 passed by the learned Special Judge, Economic Offence, Dhanbad, in C.O Case No. 19 of 1993, as also the entire criminal proceeding against the petitioners in the said case, are hereby, quashed. This application is, accordingly, allowed.

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