(1995) 12 PAT CK 0015

In the Patna High Court

Case No : Criminal Misc. No. 4364 of 1995

Kashi Nath Tapuriah APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 22-12-1995

Acts Referred:

Citation : (1995) 12 PAT CK 0015

Final Decision : Dismissed

Judgement

S.K. Chattopadhayaya, J.—The petitioner, Kashinath Tapuriah, the Chairman of M/S Incab Industries Ltd. has impugned the order taking congnizance dated 25.2.1995 and also prayed for quashing of the entire proceeding.

2. Before dealing with the grievances made by the petitioner, it would be appropriate to portray the factual backgrounds:

On the basis of a written report lodged by one Uday Kant Sharma (opposite party No. 2) and F.I.R. was lodged on 5.5.1994 giving rise to Golmuri P.S. case No. 88/94 under Sections 406,420 and 34 of the Penal Code

3. Allegation, inter alia, was made that the petitioner being the Chairman of the Incab Industries Ltd (company in short), in connivance with Tulsi Prasad, Vice Chairman of the Cable Cooperative Society Ltd. (Society in short), misappropriated a sum of Rupees 40,15,152.70 paise which amount was the deductions made from the salaries of the employees of the company and interest thereto for the months of June, July and August, 1993

4. After investigation charge sheet was submitted and by the impugned order dated 25.2.1995 the Chief Judicial Magistrate took cognizance of the offence under Sections mentioned hereinabove.

On being noticed the opposite party No. 2 has appeared by filing a counter affidavit.

5. Mr. Prem Shankar Dayal, learned Sr. counsel appearing on behalf of the

petitioner has contended that the petitioner being Chairman/used to preside over the meetings of the Board of Directors of the Company and, as such, was not interested with the business of the Company itself. He was not responsible for the day to day conduct of the business nor he ever looked after the management including the administration and financial matters of the factory at Golmuri, Jamshedpur. Referring to a letter of one N.C. Das, Secretary of the Society, Mr. Dayal has urged that assurance was given by the Company that the amount concerning deductions from the members of the Society will be paid by the Chairman of the Society and, as such, Mr. Das requested the officer incharge of Golmuri police station not to take any action on the report of the opposite party No. 2. It is further contended that the Company had deposited a sum of Rupees seven lacs with the Society and as the Company was facing a cute financial crisis, it had approached different financial institutions including I.C.I.C.I, and other Banks for financial help for its revival. The Company assured that it would pay the dues to the Society after its revival. Referring to the Memorandum and Articles of Association of the Company, Mr. Dayal further submits that since the petitioner is the Chairman of the Company, he cannot be said to be the occupier and, as such, responsible for day-to-day works. The petitioner was never entrusted with the money and if any offence has been committed as alleged, it may be said to have been committed by the Company itself. Referring to various documents attached to the counter affidavit, he has contended that the petitioner is not at all responsible for day-to-day affairs of the Company and, as such, he cannot be held liable for any misappropriation of the amount, as alleged.

6. Mr. Ramesh Kumar Marathia, learned Counsel appearing on behalf of the opposite party No: 2, on the other hand, countering the argument of Mr. Dayal, has urged that when the allegations made in the F.I.R., prima facie, reveal the involvement of the petitioner in misappropriating a huge amount of the workers, this Court in exercise of its inherent powers should not scrutinise the evidences at this stage. With reference to various statements made in the counter affidavit, he submits that initially the Company was known as the Indian Cable Company Ltd. which was established in the year, 1920. Its equity shares were held by the members of the public and the Financial Institutions but M/s. Royal Enfield Company Ltd. initially held the controlling shares. Subsequently this was transferred to the British Insulated Calendars Cables. PLC (known as BICC). Part of its equity shares were sold to Life Insurance Company of India and Unit Trust of India sometimes in the year 1973 by the said BICC. The BICC transferred its major shares to its wholly owned subsidiary TICC in 1983. Later on the BICC and ITCC sold a major part of its shares to K.N. Tapuriah, the present petitioner who has been associated with the Company since 1985. The petitioner was nominated as Director by the major share holders and after acquiring substantial percentage of shares, the petitioner managed to get himself elected as the Chairman of the Indian Cable Company. Subsequently the name of the Company was changed to M/s. Incab Industries Ltd.

7. Mr. Marathia further contends that the employees of the Company had formed

a Co-Operative Society since long time which is known as Cable Company Co-operative Society and is registered under the Societies Registration Act, 1935. More than 90% of the employees of this Industry are the members of this Society and contribute every month to the society. From the salaries of the employees deductions are being made by the Management and the amount is credited to the account of the Society. The Society is working for the benefits of the employees and its members and gives financial assistance to them as and when required. Elaborating the allegations made against the petitioner in the F.I.R. Mr. Maratria submits that after becoming the Chairman of the Company, the petitioner started diverting the funds of the Company from its working capital to various individuals and companies for his own personal interest and against the interest of the Company. Referring to a list of companies, it is submitted that a huge amount of money was diverted to such companies at a very low interest and even at no interest. It is contended that the petitioner, by various manipulation, has caused great loss to the Company and in the year 1994 the loss exceeded to the extent of Rs. 36 crores and odd as a result of which the Factory has suffered a great hardship for nonavailability of sufficient quantity of essential raw materials and the workmen have been forced to sit idle most of the time. Mr. Marathia has drawn my attention to the fact that the petitioner''s modus operandi was to take over industries with money power and to make them sick by diverting its fund for his own personal interest and one of the companies, namely, M/s. Tuner Morison Company Ltd. of which the petitioner was the Director at one point of time, had instituted a criminal case against the petitioner for the same offence and by its judgment dated 10.2.1993 the Bombay High Court had convicted the petitioner. Further, in a writ petition filed before the Calcutta High Court by the Incab Industries Staff Association, the counsel representing the Company law Board, submitted before the said High Court that on inquiry being made u/s 209A of the Companies Act, various irregularities on the part of the Management were found. It was further averred that the Central Govt. and the Company law Board were contemplating for further action against the petitioner.

8. A rejoinder to the said counter affidavit has been filed in which, inter alia, it has been stated that against the judgment of the Bombay High Court the petitioner moved the Supreme Court and by the order dated 25.4.1995 the Supreme Court has allowed the appeal. Though the petitioner has stated in the petition that the aforesaid order of the Supreme Court in Cr. Appeal No. 395/93 will be produced at the time of hearing of this application but no such order was produced before me by Mr. Dayal at the time of hearing.

9. It is now well settled that for the purpose of exercising its power u/s 482 Cr. P.C. to quash F.I.R. or a complaint the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same, per se. It has no jurisdiction to examine the correctness or otherwise of the allegation. See Pratibha Rani Vs. Suraj Kumar and Another, .

10. Similarly in the case of Anil Sharan v. State of Bihar and Ors. reported in 1995 (2) BLJR 1383, the Apex court while affirming the judgment of the Patna High Court has, inter alia, held as follows : --

Whether offence has been made out, whether he is liable and what are the defences open to him, are not the matters at this stage for consideration, It is for the learned Magistrate to proceed with the trial and to deal with according to law.

11. Relying on the decision of the Supreme Court in the case of Ghanshyam Das Kuppepar Vs. State of Bihar and Others . this Court has held that the High Court will not convert itself into a trial court for going into the questions which are to be decided by the trial court on the basis of the evidences. It is settled law that the power u/s 482 of the Code has to be exercised for the ends of justice and should not be exercised to cut-short the normal process of criminal trial.

12. On the backdrops of the legal position, in my considered opinion, the proceeding against the petitioner cannot be quashed at the threshold inasmuch as the learned court below has taken cognizance of the offence after perusing the allegations made in the complaint petition as well as the investigation report. The court below, while taking cognizance persued the F.I.R., charge sheet and the case diary and being prima facie satisfied about the allegation, has taken cognizance of the offence and the High Court at this stage cannot interfere with the order taking cognizance by evaluating the evidences which is the function the trial court.

13. Having considered the facts and circumstances of the case and the well settled principles of law 1 am of the view that no ground has been made out for interfering with the impugned order as well as the proceeding initiated against the petitioner.

14. In the result, I find no merit in this application which is, accordingly, dismissed. The interim order dated 28.9.1995 is vacated. Let a copy of this order be communicated to the court below forthwith.

