
(2007) 03 JH CK 0004
In the Jharkhand High Court
Case No : Criminal M.P. No. 1029 of 2004

Killo D' Kamani

APPELLANT

Vs

State of Jharkhand and Raju Kumar Pandey

RESPONDENT

Date of Decision : 30-03-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 323, 504

Citation : (2007) 2 BLJR 1569 : (2007) 3 JCR 557

Hon'ble Judges : D.G.R. Patnaik, J

Bench : Single Bench

Advocate : T.R. Bajaj and Randhir Singh, for the Appellant; Assistant Public Prosecutor and Dilip Kumar Prasad, for O.P. No. 2, for the Respondent

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—Petitioner has filed this application u/s 482 of the Code of Criminal Procedure for quashing the criminal proceeding initiated against him vide C/1 case No. 921 of 2001 and for setting aside the orders dated 26.9.2001 and 20.7.2004 whereby summons were ordered to be issued directing him to appear and face trial in the proceeding which is pending in the court of Sri Prafulla Kumar, Judicial Magistrate, 1st Class, Jamshedpur.

2. The main ground of challenge is that the case has been instituted against the petitioner by the opposite party No. 2 by way of a revenge and with mala fide intentions and is an abuse of the process of the court and further, that even on the basis of the entire allegation in the complaint, no offence whatsoever is made out against the petitioner and since the dispute relates to breach of an agreement of employment, a civil liability at best can be raised and the alleged breach of terms of agreement does not call for criminal liability whatsoever.

3. Facts of the case briefly stated is that the opposite party No. 2 filed a complaint before the learned Chief Judicial Magistrate, Jamshedpur on 27.8.2001 which was registered as C/1 Case No. 921 of 2001 against two persons as

accused namely the present petitioner and another. The allegation of the complainant inter alia is that under an agreement dated 30.12.1999 by and between the present petitioner and the opposite party No. 2 / complainant, the complainant was appointed as an Officer (Administration) and Chief Personal Advisor, of which the petitioner is one of the Director. The terms of the employment being that the employer would pay a sum of Rs. 20,000/- per month as salary besides a sum of Rs. 4.00 lakh per annum as retainer-ship fee to the employee and the employer would have no right to terminate the services of the employee till the later attains the age of 55 years. It is alleged that after having joined the company and having rendered his services to the company, the complainant was not paid the stipulated amount of salary, nor was he paid the amount of annual retainer fee. Instead, he used to be paid a sum of Rs. 4,000/- per month only towards monthly salary. After having served for 18 months, the complainant-opposite party No. 2 received only Rs. 66,500/- towards his salary from M/s Xevion which is a sister concern of the company of which the petitioner is the Director and neither was the full amount of salary, nor the amount of annual retainer fee paid to him despite repeated demands and requests. In response to his demands, the petitioner is alleged to have postponed the payment on one pretext or the other. On 16.7.2001 the opposite party No. 2 approached the petitioner again with his request for release of his payments. On being asked to come later when on 19.7.2001 at about 10.30 AM the opposite party No. 2 went to the office of the petitioner, he was prevented by the petitioner from entering into his office and was also assaulted by the persons accompanying the petitioner and the petitioner refused to pay a single farthing to him. Thereafter, opposite party No. 2 lodged a written complaint at the police station, but no action was taken. On the next day i.e. 20.7.2001 the opposite party No. 2 again went to his office, but he was again prevented from entering his office by the some persons at the behest of the petitioner. The opposite party No. 2 thereafter lodged complaint before the Labour Superintendent, Jamshedpur against the petitioner for the payment of his salary but no satisfactory action was taken on his complaint. Finally, after more than three months, the instant complaint was filed before the learned court below.

4. Assailing the order dated 26.9.2001 whereby summons were ordered to be issued against the petitioner and also the subsequent order dated 20.7.2004 whereby petitioner's prayer for his discharge from the case was refused by the learned court below, Shri T.R. Bajaj, learned Counsel for the petitioner submits that the entire proceeding is bad and is based entirely on false allegations, which, even on its face value, do not make out any offence whatsoever against the petitioner. Learned counsel explains that even according to the complainant's own version, he was appointed under a purported agreement dated 30.12.1999, a copy of which has been annexed as annexure-3 to this application. Learned counsel points out that on bare perusal of the agreement, it would indicate that it is a forged and fabricated document, since though it contains two pages, but the letters and print on the first page is totally different from the second page and

furthermore, while a clause mentioned in paragraph-1 of the first page claims that the services of the opposite party No. 2 cannot be terminated till he attains the age of 58 years, whereas on the second page, the age of termination have been mentioned as 60 years. It is further pointed out that even as admitted by the opposite party No. 2, he used to receive salary at the rate of Rs. 4,000/- per month not from the petitioner or from the petitioner's company namely M/s Sparx Technologies (P) Ltd. Rather, he used to receive salary from another company namely, M/s Xevion which is claims to be the sister concern of M/s Sparks Technologies (P) Ltd. Learned counsel explains further that apparently, the opposite party No. 2 was not employed under the petitioner or the petitioner's company and, therefore, the opposite party No. 2 not being an employee of the petitioner, there was no occasion for the petitioner to invite the opposite party No. 2 to his office either on 16.7.2001 or 19.7.2001 for payment of money to him. It is further submitted that from the complain submitted by the opposite party No. 2 at the police station, it would appear that the grievance was only in respect of prevention of the opposite party No. 2 from entering into the office of the petitioner and there is no allegation that the petitioner had indulged in any act of violence against the opposite party No. 2. Yet, in his instant complaint petition, the opposite party No. 2 maintains that he was prevented by the petitioner at the main door of his office along with others and was assaulted. Learned counsel points out that additional allegation of assault is apparently an improvement only to make out a case and as regards the allegation of preventing the complainant from entering into the office, the petitioner had every right to prevent any outsider from entering into his office, since the opposite party No. 2 was not his employee.

5. Opposite party No. 2 has appeared through his lawyer and has filed his counter-affidavit. Denying and refuting the entire grounds advanced by the petitioner, Shri Dilip Kumar Prasad, learned Counsel appearing for the opposite party No. 2 submits that the grounds, as advanced by the petitioner, are misconceived and misleading. Learned counsel explains that the agreement (annexure-3) which constitute the terms of employment of the opposite party No. 2, was in fact drawn up by the petitioner in his capacity as the Director of M/s Sparks Technologies (P) Ltd and, therefore, the question of any manipulation by the opposite party No. 2 in the document does not arise at all. It is further submitted that in his earliest complaint made to the police on 16.7.2001, the opposite party No. 2 had categorically stated that the petitioner along with his associates had not only prevented him from entering into his office without any prior intimation of termination of employment, but had also assaulted him and the same allegation has been stated also in the complaint petition. Learned counsel adds further that once the learned court below had taken cognizance of the offences and also ordered for issuance of summon against the petitioner directing him to face trial, the same court had no power under the procedural law for recalling its own order. According to the learned Counsel, the earlier order of cognizance as also the impugned order whereby summons were ordered to be

issued against the petitioner, does not suffer from infirmity and likewise, the impugned order whereby the petitioner's prayer for his discharge was refused, also does not suffer from any illegality or infirmity. Learned counsel sums up claiming that on the basis of the allegations in the complaint petition, a prima facie case is definitely made out against the petitioner for the offences u/s 323 and 504 IPC.

6. The point, which calls for determination is, whether on the basis of the facts and circumstances of the case, institution of the complaint case against the petitioner by the opposite party No. 2 could be considered as an act of revenge with mala fide intentions against the petitioner and as an abuse of the process of the court, making out thereby a case for invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure for quashing the entire criminal proceeding against the petitioner?

7. Section 482 Cr. PC which saves inherent powers of the High Court, is intended necessarily to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The inherent power of the Court is undefined and is in fact, undefinable and, therefore, it has to be exercised sparingly with circumspection and with caution only where such exercise is justified by the test laid down in the section itself.

8. In the instant case, the petitioner has sought to invoke the inherent powers of this Court basically on the ground that the criminal proceedings initiated against him, amounts to abuse of the process of the court. Abusing the process of the court is the term generally applied to a proceeding which is wanting in bona fides and is frivolous, vexatious and / or oppressive. Ordinarily, the high court will not interfere at the interlocutory stage of the proceeding, but at the same time, the court is under imperative obligation to interfere when the proceedings are groundless or illegal or intended only for harassment. It depends upon the facts of the particular case to assess as to whether prosecution is intended only for harassment and has been instituted with mala fide and revengeful motives.

9. In the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, the Supreme Court has summarized some of the categories where inherent power can and should be exercised to quash the proceeding.

Amongst the categories summarized are (1) where the allegation 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 any case against the accused. (2) Where a criminal proceeding is manifestly attended with mala fide 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.

In order to assess as to whether continuance of the proceedings would be an abuse of the process of the court and is likely to perpetrate injustice to the party proceeded against, the court while exercising its inherent powers can look into

and rely upon materials besides those on which process was issued by the trial court.

10. Applying the tests to the facts of the present case, it appears that the complainant / opposite party No. 2 has sought to make out a case that he is employed under the petitioner and under the terms and conditions of the contract of employment, he is entitled to receive certain amounts of money towards his salary and towards his retainer fee. The written agreement which he has produced and relied upon, does not bear signatures of either of the parties. Admittedly, he used to accept and receive a sum of Rs. 4,000/- per month from M/s Xevion by way of monthly salary and also continued to accept the same for a period of 18 months of his service, though stipulation in the purported agreement was for much larger amounts. Admittedly, he has claimed that the petitioner had committed breach of conditions of employment by failing to pay him the amount stipulated in the agreement for employment and for realization of which, he has approached the Labour Superintendent for mediation and necessary action. It also appears from the admitted case of the complainant / opposite party No. 2 that he used to receive his salary not from the petitioner or from the petitioner's concern. Rather, the salary was paid to him by another concern, albeit a sister concern of the company of which the petitioner is the director. It is apparent that the complainant had attempted to persuade the Labour Superintendent but having not gained any positive response from him, the complainant had obviously felt frustrated. From the complaint lodged with the police by the complainant on 16.7.2001 and 19.7.2001, it appears that primary grievance of the complainant was that he was prevented from entering into his office, though he adds that such prevention was visited by force, but there is no specific allegation that it was the petitioner who had applied force against him while preventing him from entering his office. From the entire facts and circumstances of the case, it is apparent that the present criminal proceeding is manifestly initiated with mala fides and has been instituted with ulterior motive for wreaking vengeance on the accused petitioner due to complainant's personal grudge. From bare perusal of the averments in the complaint petition, it appears that the allegations are frivolous and vexatious and has been levelled only to make out a case against the petitioner for the purpose of applying pressure on him to yield to the demands of the complainant. The allegation in the complaint petition even taken on its entirety, do not constitute any offence specifically against the petitioner. The dispute between the complainant and the petitioner relates to breach of agreement of employment and may attract at best a civil liability. Criminal proceeding on the dispute is certainly an abuse of the process of the court.

11. I find merit in this application. Accordingly, it is allowed. The entire criminal proceeding vide C/1 Case No. 921 of 2001 which is pending in the court of Sri Prafulla Kumar, Judicial Magistrate, 1st Class, Jamshedpur including order dated 26.9.2001 and the subsequent order dated 20.7.2004 passed by the court below is hereby quashed.