(2016) 10 OHC CK 0004

In the Orissa High Court

Case No : BLAPL No.701 of 2016

Lt. Col. (Retd.) Rakesh Rana, KC — APPELLANT

Vs

State of Orissa — RESPONDENT

Date of Decision : 06-10-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439
Odisha Protection of Interests of Depositors (in Financial Establishments) Act, 2011 — Section 6
Penal Code, 1860 (IPC) — Section 120B, Section 406, Section 420, Section 467, Section 4

Citation : (2017) 123 CutLT 303

Hon'ble Judges : Dr. D.P. Choudhury, J.

Bench : Single Bench

Advocate : M/s. D. Nayak, U.R. Jena, S. Kudalwal, B.K. Das and S.K. Das, Additional Standing Counsel, for the Petitioner; M/s. V. Narasingh, S. Das and S. Devi, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Dr. D.P. Choudhury, J. - This is an application under Section 439 of Cr.P.C. moved by the petitioner for allegedly implicated in the offence punishable under Sections 406, 420, 467, 468, 471, 120-B of I.P.C. and Section 6 of the Odisha Protection of Interests of Depositors (in Financial Establishments) Act, 2011.

FACTS :

2. The factual matrix leading to the case of the prosecution is that the petitioner is a retired Lt. Colonel. He formed one Non-Government Organisation (NGO) namely, Sainik Welfare Organisation-India (for short ''SWO-India'') with the purpose to look after the welfare of the sitting and retired servicemen. The petitioner is the Chairman of said SWO and the main object of this SWO is to allot plots for the members of the ex-serviceman and serviceman at the cost to be paid by the members. It is further case of the prosecution that SWO prepared

a scheme for allotment of plots in the name and style of "Defence Intercity Vatika, Bhubaneswar" for Rs.35 crores in to approximately. The petitioner''s SWO-India made agreement with M/s. Brookson Infrastructure Pvt. Ltd., Bhubaneswar of which co-accused Purna Chandra Panda is the Managing Director to arrange plots at mouza Giringaput, P.S. Chandaka, Bhubaneswar, District-Khurda and develop same for their allotment to the ex-serviceman and serviceman. The petitioner through website made advertisement about details of the application for plots and allotment procedure including necessary money to be deposited for allotment of such plots for residential purpose. The informant along with 541 ex-servicemen and servicemen being lured by the advertisement applied for plots and accordingly SWO collected Rs.29 crores from the applicants.

3. It is the further case of the prosecution that the petitioner being the Chairman of the SWO paid Rs.19 crores to the co-accused Purna Chandra Panda. Then accordingly the applicants were asked to keep in contact with co-accused Purna Chandra Panda and co-accused P.K. Barik, who is said to be an employee of SWO-India for execution of sale deeds of allotted lands and their development including preparation of Records-of- Right etc. It is alleged, inter alia, that the informant and many other applicants in spite of repeated approach could not get sale deed executed of allotted land and also delivery of possession of same was not made. So, the informant and some investors informed the Economic Offence Wing of criminal branch to take cognizance of the matter. Although it is stated that 490 investors out of 542 have been supplied with registered sale deeds but on field no such plots exist, the barren land is available without having any boundary and also no delivery of possession has also been made following such sale. So, after investigation charge-sheet was submitted against the present petitioner along with other co-accused persons for the offence committed under Sections 406, 420, 467, 468, 471, 120-B of I.P.C. and Section 6 of the Odisha Protection of Interests of Depositors (in Financial Establishments) Act, 2011.

SUBMISSIONS :

4. Mr. D. Nayak, learned Senior Advocate for the petitioner submitted that the petitioner has bona fidely formed the NGO SWO-India for welfare of the ex-serviceman and serviceman and he has no intention of cheating or misappropriation or committing criminal breach of trust as alleged against him, but police has falsely implicated him in this case. The petitioner having made such NGO has openly made advertisement by website inviting the members of the serviceman to join the NGO for their welfare towards allotment of plots for residential purpose. Had there been any mala fide intention, he would not have made any declaration by website and the advertisement is very clear to show the active participation of the SWO-India but not of petitioner.

5. Mr. Nayak, learned Senior Advocate further submitted that the petitioner admittedly has handed over Rs.19 crores to the co-accused Purna Chandra Panda, CMD of M/s. Brookson Infrastructure Pvt. Ltd. to arrange plots but Purna Chandra Panda failed to perform his duty for which the petitioner''s organization

had to knock the door of the National Consumer Forum. He submitted that co-accused Purna Chandra Panda being the prime accused has already been released on bail but the petitioner having no any criminal intent or criminal misconduct has been illegally detained in custody. When the principal co-accused Purna Chandra Panda has been released on bail, the case of the present petitioner being kept at par, should be also released on bail. According to him the entire case of prosecution if analysed properly would only bring about civil liability but not the criminal liability. The prosecution has not been able to show any conspiracy between the present petitioner and the co-accused Purna Chandra Panda who failed to provide the plots to the investors. He further submitted since charge-sheet has been submitted, there is no reason to detain the petitioner in custody. Finally, he submitted that the petitioner has already paid Rs.19 crores to Purna Chandra Panda and further amount would be paid by him if he is released on bail. In support of his contention he cited the decisions, reported in (2016) 1 SCC 348, International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) and Ors. v. Nimra Cerglass Technics (P) Ltd. And Ors.; (2000) 4 SCC 168, Hridaya Ranjan Prasad Verma and others v. State of Bihar and another; (2012) 1 SCC 40 Sanjay Chandra v. Central Bureau of Investigation; (2009) 14 SCC 696, Dalip Kaur and others v. Jagnar Singh and another.

6. Learned Counsel for the petitioner submitted to release the petitioner on bail with any conditions as deemed fit and proper.

7. Learned Additional Standing Counsel submitted that the petitioner has committed white colour crime in a very planned manner. He formed SWO-India and being the Chairman floated the Scheme for allotment of plots to the members of the services in the name of welfare of these people. The innocent investors being lured by the promise made in the website by the petitioner invested money but due to conspiracy between the petitioner and co-accused Purna Chandra Panda, the petitioner engaged the co-accused Purna Chandra Panda''s organization for allotment of lands. The website never discloses about the engagement of co-accused Purna Chandra Panda as developer. He submitted that when the plots applied for are not allotted and some allotted plots are not in existence, they all amount to criminal intent of petitioner. On the other hand, the petitioner has got intention to cheat the investors from beginning for which the website was opened alluring the investors to make investment for crores of rupees. Even if the petitioner has paid Rs.19 crores to the co-accused Purna Chandra Panda for allotment of land but he has not taken any action under criminal law against the co-accused Purna Chandra Panda for not supplying the plots and has remained silent to the grievances of the people who neither got plots nor got the money refunded. According to him, the rest amount of Rs.10 crores out of 29 crores retained by petitioner is clear proof of criminal intent of the petitioner. He, therefore, submitted to reject the bail application of the petitioner who is the principal accused in this case and land scam is a bigger scam in the State.

8. Mr. V. Narasingh, learned counsel for the informant submitted that the informant is an ex-serviceman and he has also invested good amount of money for the plot. The sale deed was executed in his favour but the plot disclosed therein has no any boundary shown in the map annexed to the sale deed. He further submitted that the area of the plots sold to him and other persons are not actually available on field and no delivery of possession was made to him and other applicants. Similar allegations have also been made against the present petitioner in criminal cases filed in the State of Jharkhand and Bihar. He submitted that in the economic offence the Court should take serious view while dealing with the bail of the accused. He further submitted that every allegation although seems to be civil in nature but has got also criminal liability if it is unveiled. According to him in the instant case the nature of the case clearly shows the criminal intent of the petitioner to cheat, to commit criminal breach of trust and conspiracy along with other offences. In support of his submissions he cited the decision reported in (2013) 7 SCC 439, Y.S. Jagan Mohan Reddy v. Central Bureau of Investigation; (2013) 7 SCC 452, CBI v. V. Vijay Sai Reddy; (2013) 7 SCC 466, Nimmagadda Prasad v. CBI; (2013) 2 SCC 801, Arun Bhandari v. State of U.P.; 2013 (II) OLR 519, Dr. Tirupati Panigrahi v. State of Orissa; (2015) 61 OCR 131, Preeti Bhatia v. ROI.

DISCUSSIONS :

9. From the copy of website it appears that SWO-India had floated the plotted Scheme for dwelling units/flats/plots for the members of the ex-serviceman/ serviceman. There are general rules, terms and conditions, allotment procedure, loan facility, refund/withdrawal, the consequence of delay in taking over possession, ownership, termination and allocation and additional terms and conditions. There is one News Letter issued from the Desk of the present petitioner who claims to be the Chairman & Managing Soldier of said NGO had made declaration in the said News Letter that more than 5000 sainiks benefited in the last five years.

10. The statement of the informant shows that he is a retired Air Force employee and in 2011 being lured by the plotted scheme in the name of "Defence Intercity Vatika" at Bhubaneswar launched by the present petitioner in the website, paid Rs.4,50,000/- through Demand Draft of State Bank of India, Chandrasekharpur to SWO-India to purchase 1500 sq.ft. of land. He also stated that the petitioner had promised through his organization to hand over the plots by June, 2012 with valid documents including Registration, Mutation and conversion after payment of full cost of the plot and the cost of the plot also includes for development of the Colony, main road including road, compound wall, drainage, water and electricity facility. The informant stated to have also deposited Rs.1,06,000/- for registration of plot. The statement of the informant also shows that after the payment, SWO-India issued No Due Certificate to M/s. Brookson Infrastructure Pvt. Ltd. represented by co-accused Purna Chandra Panda, the CMD of said Infrastructure Pvt. Ltd. to go for registration of the land and develop the plot.

After production of the No Due Certificate co-accused Purna Chandra Panda of M/s. Brookson Infrastructure Pvt. Ltd. executed sale deed on 23.8.2012 in respect of the sub-plot No.566, measuring area Ac.0.34 decimals under Revenue Khata No.71, Plot No.55, Mouza Giringaput and Shri Panda has also received Rs.20,610/- towards registration fees, Mutation and Conversion charges of the aforesaid plot. The informant alleged that Sri Panda had not handed over physical possession, patta and conversion of land in spite of repeated approach made by him. The informant has also alleged, inter alia, that from the Encumbrance Certificate it appears that the sold area is in excess of the purchase area of co-accused Purna Chandra Panda.

11. Similarly statements of other investors, namely, Priyabrata Rath, Pradip Kumar Nayak, Debasish Samantray, Bipin Bihari Tripathy, Manoranjan Swain, Dillip Kumar Tarari and many other persons whose statements are available on record show that they being retired and serving employees invested money with SWO-India for purchasing plots but neither the present petitioner nor its organization gave delivery of possession and co-accused Purna Chandra Panda who has been entrusted to execute the sale deed on behalf of the SWO-India and develop plots has not performed his duty. On the other hand, all these investors have clearly stated that no delivery of possession has been made and some lands have been sold without having any specific demarcation of the plots. 3666.75 decimals of land was purchased by co-accused Purna Chandra Panda for the project but he sold 5502.25 decimals to the investors in excess of 1835.5 decimals of land.

12. The statement of Amin of BDA as revealed from Case Diary shows that in most of the cases the revenue plots purchased by co-accused Purna Chandra Panda and this SWO India led by present petitioner are not contiguous as per revenue map whereas plotted schemes prepared for the project is shown to be contiguous and some roads are also shown over non-recorded areas. The sale deeds seized do not disclose as to boundary of land sold and the map annexed also does not disclose boundary of sub-plot numbers.

13. From the foregoing material, it appears that after the money has been invested by the investors neither the present petitioner nor the co-accused have least bothered for the investors and the sub-plots having no definite corresponding revenue plots on field have been sold away under registered sale deed. It is true that the matter is appearing to be of civil in nature in outside but the conduct of the petitioner who stayed in Delhi and received the money from 542 investors in the name of SWO-India is a question mark to show his criminal intent from the beginning when the plotted scheme is floated.

14. It is submitted by the learned counsel for the petitioner that out of 542 investors, 490 investors have got their sale deeds. The sale deeds have also been seized in this case. It is not necessary to go through the details of the sale deeds. But the facts remain that the sale deeds if do not tally on field in question, where the investors would go ? Is it not the duty of the petitioner who

floated the scheme or the developer who took the job of arranging the plots and registering the documents to see that the vendees have been delivered the possession of land as per the record ? So, the criminal intent is very much judged from this angle even if it seems outside to be civil liability.

15. It is reported in (2013) 2 SCC 801, Arun Bhandari v. State of U.P. and others where Their Lordships observed the following :

"26. At this stage, we may usefully note that sometimes a case may apparently look to be of civil nature or may involve a commercial transaction but such civil disputes or commercial disputes in certain circumstances may also contain ingredients of criminal offences and such disputes have to be entertained notwithstanding they are also civil disputes. In this context, we may reproduce a passage from Mohd. Ibrahim and others v. State of Bihar and another, (2009) 8 SCC 751.

"8. This Court has time and again drawn attention to the growing tendency of the complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurize parties to settle civil disputes. But at the same time, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes. (See G. Sagar Suri v. State of U.P., (2000) 2 SCC 636 and Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736.

xxx xxx xxx

29. We have referred to the aforesaid decisions in the field to highlight about the role of the Court while dealing with such issues. In our considered opinion the present case falls in the category which cannot be stated at this stage to be purely civil in nature on the basis of the admitted documents or the allegations made in the FIR or what has come out in the investigation or for that matter what has been stated in the protest petition. We are disposed to think that prima facie there is allegation that there was a guilty intention to induce the complainant to part with money. We may hasten to clarify that it is not a case where a promise initially made could not lived up to subsequently. It is not a case where it could be said that even if the allegations in entirety are accepted, no case is made out. Needless to emphasise, the High Court, while exercising power under Article 226 of the Constitution or Section 482 of the CrPC, has to adopt a very cautious approach".

With due regard to the decision, it is clear that every wrong although seems to be a civil liability but the criminal intent behind the civil liability cannot be overlooked.

16. Now applying the ratio of said decision to the present facts and circumstances, the criminal intent of the petitioner prima facie cannot be ruled out.

17. It is also reported in (2013) 7 SCC 466, Nimmagadda Prasad v. Central Bureau of Investigation where Their Lordships observed at paragraphs-24 and 25 :

"24. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the Court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.

25. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country".

18. With due respect to the aforesaid decision, it appears that in the economic offences the Court should unveil the truth or must separate the grain from the chaff because of rampant economic offences polluting the society. Applying the said principle to the present case, it appears that handing over of money of Rs.19 crores to co-accused Purna Chandra Panda by the present petitioner does not absolve his responsibility. It also appears from the Case Diary that Purna Chandra Panda has refused to take up the responsibility because he has not got further sum of Rs.6 crores from the present petitioner. Of course Purna Chandra Panda is on conditional bail but the Case Diary shows that he has also failed to perform his part of contract. Since the present petitioner is the person to have floated the plotted scheme and received the money, he cannot be taken at par with Purna Chandra Panda who has allegedly executed the agreement with SWO-India. Also petitioner has taken plea that he has filed consumer complaint against co-accused Purna Chandra Panda before the National Commission which has nothing to do with offences for which petitioner is prosecuted. Be that as it may, the case of the present petitioner cannot be at par with the case of co-accused Purna Chandra Panda.

19. It is reported in (2000) 4 SCC 168, Hridaya Ranjan Prasad Verma and others v. State of Bihar and another where Their Lordships observed the following :

"15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed".

20. Mr. D. Nayak, learned Senior Advocate for the petitioner submitted that the aforesaid decision clearly shows that in a criminal breach of trust the case under Sections 468, 471 and 420 of IPC should not be prima facie found. The facts and circumstances of the aforesaid case do not apply to the facts and circumstances of the present case as the intention of the present petitioner is clearly available from the beginning when the Scheme is floated as per aforesaid discussion. Learned Senior Advocate for the petitioner submitted that when charge-sheet in this case has been submitted, the detention of the present petitioner is not necessary. It is submitted by the learned Additional Standing Counsel that the investigation is still left open even if the preliminary charge-sheet has been submitted. According to recent trend by the investigating agency the charge-sheet is being filed keeping the further investigation open because of the provisions under Section 173 (8) of Cr.P.C. Even if further investigation is open, the submission of charge-sheet in the present case against the present petitioner can be considered provided there is no prima face case against him. When there are materials available against present petitioner as discussed, it is too early to take a view that the submission of charge-sheet pares away for granting bail to the present petitioner.

21. Moreover, as appears from material, the petitioner used to stay in Delhi, thus his availability for trial of the case is remote one. The materials also show that petitioner is allegedly involved in similar nature of offences in the State of Jharkhand and Bihar. In such scenario, it is not safe to take lenient view to grant bail although he is a retired Army Officer.

CONCLUSION :

22. Considering the submissions of learned Counsels for both the parties and in view of aforesaid discussion, for the larger interest of people of the services at large, public and society, I am loath to grant bail to the petitioner. Thus, the bail application being devoid of merit stands rejected.

