(1999) 03 PAT CK 0009

In the Patna High Court

Case No : Criminal Miscellaneous No. 24215/98

Mahesh Prasad Manjhi and Another APPELLANT

Vs

State of Bihar and Another RESPONDENT

Date of Decision : 23-03-1999

Acts Referred:

Contract Act, 1872 — Section 172
Penal Code, 1860 (IPC) — Section 406
State Financial Corporations Act, 1951 — Section 29, 30
Transfer of Property Act, 1882 — Section 58

Citation : (1999) 3 PLJR 90

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Advocate : Farooque Ahmad Khan and Nadim Seraj, for the Appellant; Shola Sandhwar and Asit Kumar Jha for Opp. Party No. 2, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Jha, J.—The Petitioners seek quashing of the order of the Chief Judicial Magistrate, Darbhanga dated 29.8.98 taking cognizance of the offence u/s 406, IPC against them in Laheriasarai P.S. Case No. 25/90.

2. The prosecution case instituted, on the complaint of the Branch Manager of the Bihar State Financial Corporation, Mithila Branch (in short, ''the Corporation) is as follows:

The Corporation, a statutory body created under the State Financial Corporations Act, 1951, advanced loan of Rs. 8.83 lacks out of sanctioned loan of 10.01 lacs to M/s. Hotel Anupam, Bakarganj, Laheria Sarai through its partners Mahesh Manjhi and Vijay Kumar Manjhi (Petitioners herein) after completing the necessary legal formalities. The assets in question were hypothecated in favour of the Corporation. As the loan was not liquidated, the Unit including the entire mortgaged assets were put on sale under Sections 29 and 30 of the State Financial Corporation Act, and ultimately sold to one Shri Shankar Prasad Gupta.

At the stage of making over possession of the unit to the said purchaser, in course of preparation of the inventory in presence of an Executive Magistrate, it transpired that the mortgaged assets like wooden furniture and fixtures, Ceiling, fans, 10 K.V.A. Kirloskar make D.S. Set and various other items of sanitary wares, electric fittings, mirors etc. had been removed by the said partners without the knowledge of the Corporation and/or its officials. In fact even the window fittings had been removed and walls raised in their place.

3. The police submitted final report opining the loss of the Corporation could be recovered through civil suit and the liability of the accused was therefore, civil in nature. The Chief Judicial Magistrate disagreeing with the report took cognizance by the impugned order. He held that the fact that dues could be recovered through civil suit does not mean that the accused cannot be criminally liable.

4. Mr. Farooque Ahmad Khan, learned Counsel for the Petitioners submitted that the facts stated in the complaint, even on their face value do not constitute the offence of criminal breach of trust u/s 406 IPC or any other offence. He submitted that mortgage of the property does not amount to transfer of ownership and therefore, since the ownership in the assets remained with the Petitioners, there was no entrustment of property so as to constitute the offence of criminal breach of trust. He relied on a decision of this Court in Ranjeet Prasad Singh Vs. The State of Bihar and Others, .

5. Mr. Shola Sandwar, appearing for the complainant-opposite party, submitted that since the properties in question had been hypothecated in favour of the Corporation, removal of such properties without the consent and in violation of the terms of agreement constitute the offence of breach of trust. He relied on an unreported decision of this Court in Mostt. Shyam Kuer and Anr. v. State of Bihar and Ors. Cr. Misc. No. 3432/96 disposed of on 13.2.98.

6. In Indra two types of hypothecation have been statutory recognised. One is pledge as defined in Section 172 of the Contract Act and the other is mortgage of immovable property as defined u/s 58 of the Transfer of Property Act. Apart from that, mortgage of moveables--whether accompanied by delivery of possession or not--is also a recognised mode of hypothecation in India. For the purpose of this case, however, it is not necessary to notice, in depth, the legal incidents of these modes of transfer within the framework of the Contract Act or the Transfer of Property Act. As the Supreme Court has observed in the very case of Central Bureau of Investigation v. Duncans Agro Industries Ltd. (relied upon by this Court in the above mentioned case of Ranjeet prasad Singh v. State of Bihar).

the expression "entrusted with property" or "with any dominion over property" has been used in a wide sense in Section 405 IPC. Such expression includes all cases in which goods are entrusted, that is, voluntarily

handed over for a specific purpose and dishonestly disposed of in violation of law or in violation of contract. The expression "entrusted" appearing in Section 405 IPC is not necessarily a term of law. It has wide and different implications in different contexts

... ...

The expression ''trust'' in Section 405 IPC is a comprehensive expression and has been used to denote various kinds of relationships like the relationship of trustee and beneficiary, bailor and bailee, master and servant, pledger and pledgee.

It is however, necessary that the ownership or beneficial interest in the ownership of the property entrusted with respect to which offence is alleged to have been committed must be some person other than the accused and the later must hold it on account of some person or in some way for his benefit.

(Emphasis added)

7. Section 405 IPC which defines ''criminal breach of trust'' lays down that whoever being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law or any legal contract, express or implied which he has made touching the discharge of such trust, commits criminal breach of trust.

8. It is clear from the above mentioned decision of the Supreme Corut that the word ''entrusted'' has to be understood in a wider sense. All that is necessary is that the ownership or beneficial interest in the property, which is subject matter of the offence should be in some persons other than the accused. In the case of mortgage or hypothecation the ownership does not pass to the person in whose favour the mortgage on hypothecation is created, but it does create ''a beneficial interest'' in his favour. If the property is removed without his consent and in violation of the terms of the agreement in that regard, prima facie, the offence of criminal breach of trust can be said to be made out, I am not going into the question if any other offence is also made out or not. The Petitioners admittedly had borrowed a huge amount but failed to repay the same. And when the Corporation took steps to recover the dues by selling the assets under Sections 29 and 30 of the State Financial Corporations Act, it transpired the they had stealthily removed the same what could be a more glaring case of criminal offence on the part of a debtor? In my considered opinion, it would not be in the interest of justice to interfere with the prosecution.

9. This application is accordingly, dismissed.

