(2016) 04 JH CK 0009

In the Jharkhand High Court

Case No : Cr.M.P. No. 420 of 2016

Managing Director, UCO Bank	APPELLANT
Vs	
State of Jharkhand	RESPONDENT

Date of Decision : 20-04-2016

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2016) 4 AIRJharR 783 : (2016) 3 JLJR 115

Hon'ble Judges : Mr. Rongon Mukhopadhyay, J.

Bench : Single Bench

Advocate : Mr. P.A.S. Pati, Advocate, for the Petitioners; Mr. A.K. Sahani, Advocate, for the Opposite Party No. 2

Final Decision : Allowed

Judgement

Mr. Rongon Mukhopadhyay, J. - In this application the petitioners have prayed for quashing the entire criminal proceedings in connection with C.P. Case No. 1084 of 2015 including the order dated 12.01.2016 whereby and where under cognizance has been taken for the offences punishable under Sections 406, 420, 477A, 120B of the Indian Penal Code.

2. A complaint case was instituted in which it was stated that the complainant is the owner of a property situated at Jharia which was leased out to UCO Bank through a registered deed dated 19.03.2002 for a period of five years effective from 01.07.2001 to 30.06.2006 at a monthly rent of Rs. 18,746.55. The lease deed was subsequently renewed till 30.06.2006 at a enhanced rate of rent of Rs. 23,095.70/- per month. It is alleged that after the lease deed expired on 01.07.2011 the same was never renewed by the accused persons. Since the lease was not renewed, an eviction suit was filed by the complainant on 31.08.2013 for eviction of the Bank from his premises and for realisation of arrears of rent. It is alleged that the accused no. 5 assured the complainant of executing a new lease agreement and persuaded him not to pursue the suit at which the complainant stopped taking step in the suit. It is further alleged that in

spite of assurance the lease deed was never renewed for which a legal notice was served upon the accused persons by the complainant. However, in order to defeat the purpose of the suit an amount of Rs. 6,23,583.90/- was deposited in the account of the complainant and had also deducted 10% of the same under TDS. It has further been alleged that accused nos. 4 and 5 had demanded Rs.50,000/- as illegal gratification for renewal of the tenancy lease and on protest the complainant was pushed which resulted in his suffering injuries.

3. Based on the aforesaid allegation C.P. Case No. 1084 of 2015 was registered.

4. Upon conducting an enquiry by examining the complainant on solemn affirmation as well as his witnesses cognizance was taken by the learned Judicial Magistrate, 1st Class, Dhanbad on 12.01.2016 for the offences punishable under Sections 406, 420, 477A, 120B of the Indian Penal Code.

5. Heard Mr. P.A.S. Pati, learned counsel appearing for the petitioners and Mr. A. K. Sahani, learned counsel appearing for the opposite party no. 2.

6. It has been submitted by the learned counsel for the petitioners that the petitioner no. 1 is the Managing Director and Chief Executive Officer of UCO, Bank whereas the petitioner no. 2 is the Zonal Manager of UCO, Bank. It has been submitted that the entire dispute arises out of non renewal of the lease agreement for which the petitioners cannot be fastened with a criminal liability. It has been submitted that so far as the petitioners are concerned, there is no allegation against the petitioners of not taking steps for renewal of the lease. Learned counsel further submits that the arrears of rent as per the own saying of the complainant was deposited in his account and in fact the complainant had already chosen a forum for evicting the Bank from his premises. It has been submitted that the entire allegation on the face of it prima facie discloses a civil liability for which no criminal prosecution can lie against the petitioners. In support of his contention, learned counsel has referred to the judgment in the case of Ghcl Employees Stock Option Trust v. India Infoline Limited reported in (2013) 4 SCC 505, Rashmi Jain v. State of Uttar Pradesh And Another reported in (2014) 13 SCC 553, International Advanced Research Centre For Powder Metallurgy And New Materials (ARCI) And Others v. Nimra Cerglass Technics Private Limited And Another reported in (2016) 1 SCC 348 and Thermax Limited And Others v. K.M. Johny And Others reported in (2011) 13 SCC 412.

7. Mr. A.K. Sahani, learned counsel appearing for the opposite party no.2, has submitted that on assurance of the accused persons the complainant did not take any steps in the eviction suit filed by him which resulted in dismissal of the suit. It has been submitted that since an element of criminality exists in the complaint petition the proceedings cannot be quashed on the ground of existence of a civil dispute as it is settled proposition of law that an act may constitute civil wrong as well as a criminal offence. It has been submitted that an offence of cheating and criminal breach of trust is clearly made out as the complainant was induced not to persue the eviction suit and the accused persons surreptitiously had deposited

the arrears of rent in the account of the complainant. Learned counsel, therefore, submits that prima facie there being existence of a criminal offence against the petitioners the present application is liable to be dismissed.

8. The complaint case emanated from the dispute with respect to non-execution of the lease deed renewing the lease for a further period. Without executing a fresh lease the Bank continued to occupy the premises of the complainant constraining the complainant to file an eviction suit. It is the case of the complainant that deposit of arrears of rent in the account of the complainant by the Bank was a bid to foil the eviction suit which was preferred by the complainant. The petitioners being high ranking officials of the UCO Bank have not been attributed with any act which can be termed as a criminal offence. Even otherwise the dispute with respect to non-execution of tenancy agreement can invite civil remedies as a bare perusal of the complaint petition does not indicate an iota of any criminal act on the part of the petitioners. In the case of Ghcl Employees Stock Option Trust v. India Infoline Limited (Supra) it was held as follows:-

12. From a bare perusal of the complaint and the allegations made therein, we do not find in any of the paragraphs that the complainant has made specific allegations against Respondents 2 to 7. In Para 2 of the complaint, it is alleged that Respondents 2 to 6 are looking after the day-to-day affairs of the Company. With whom the complainant or its authorised representative interacted has also not been specified. Although in Para 11 of the complaint it is alleged that the complainant on numerous occasions met Accused 2 to 7 and requested to refund the amount, but again the complainant has not made specific allegation about the date of meeting and whether it was an individual meeting or collective meeting. Similarly, in Para 17 of the complaint, there is no allegation that a particular Director or Managing Director fabricated the debit note. In the entire complaint there are bald and vague allegations against Respondents 2 to 7.

13. There is no dispute with regard to the legal proposition that the case of breach of trust or cheating are both a civil wrong and a criminal offence, but under certain situations where the act alleged would predominantly be a civil wrong, such an act does not constitute a criminal offence.

18. From a bare perusal of the order passed by the Magistrate, it reveals that two witnesses including one of the trustees were examined by the complainant but none of them specifically stated as to which of the accused committed breach of trust or cheated the complainant except general and bald allegations made therein. While ordering issuance of summons, the learned Magistrate concluded as under:

"The complainant has submitted that Accused 2 to 6 are the Directors of the Company and Accused 7 is the Secretary of the Company and were looking after the day-to-day affairs of the Company and were also responsible for conduct and business of Accused 1 and sometime or the other have interacted with the complainant.

I have heard arguments on behalf of the complainant and perused the record. From the allegations raised, documents placed on record and the evidence led by the witnesses, prima facie an offence under Sections 415, 409/34/120-B is made out. Let all the accused hence be summoned to face trial under the aforesaid sections on PF/RC/Speed Post/courier for 2-12-2008."

9. In the case of Rashmi Jain v. State of Uttar Pradesh And Another (Supra) reliance was placed in the case of Hridaya Ranjan Prasad Verma And Others v. State of Bihar And Another reported in (2004) 4 SCC 168 in which it was held that 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.

10. In the case of International Advanced Research Centre For Powder Metallurgy And New Materials (ARCI) And Others v. Nimra Cerglass Technics Private Limited And Another (Supra) while considering when a breach of contract would constitute cheating it was held as follows:-

"16. The distinction between mere breach of contract and the cheating would depend upon the intention of the accused at the time of alleged inducement. If it is established that the intention of the accused was dishonest at the very time when he made a promise and entered into a transaction with the complainant to part with his property or money, then the liability is criminal and the accused is guilty of the offence of cheating. On the other hand, if all that is established is that a representation made by the accused has subsequently not been kept, criminal liability cannot be foisted on the accused and the only right which the complainant acquires is the remedy for breach of contract in a civil court. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown at the beginning of the transaction. In S.W. Palanitkar v. State of Bihar, this Court held as under: (SCC p. 250, para 21)

"21. ? In order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating."

The above view in Palanitkar case was referred to and followed in Rashmi Jain v. State of U.P."

11. The concept of vicarious liability has been considered in the case of Thermax Limited And Others v. K. M. Johny And Others (Supra) wherein it was held as follows:-

"38. Though Respondent 1 has roped all the appellants in a criminal case without their specific role or participation in the alleged offence with the sole purpose of settling his dispute with the appellant Company by initiating the criminal prosecution, it is pointed out that Appellants 2 to 8 are the ex-Chairperson, ex-Directors and senior managerial personnel of Appellant 1 Company, who do not have any personal role in the allegations and claims of Respondent 1. There is also no specific allegation with regard to their role.

39. Apart from the fact that the complaint lacks necessary ingredients of Sections 405, 406, 420 read with Section 34 IPC, it is to be noted that the concept of "vicarious liability" is unknown to criminal law. As observed earlier, there is no specific allegation made against any person but the members of the Board and senior executives are joined as the persons looking after the management and business of the appellant Company."

12. In the case of Lalmuni Devi (SMT) v. State of Bihar And Others reported in (2001) 2 SCC 17 upon which much reliance has been placed by the learned counsel for the opposite party no. 2 the relevant paragraph is quoted herein below:-

"8. There could be no dispute to the proposition that if the complaint does not make out an offence it can be quashed. However, it is also settled law that facts may give rise to a civil claim and also amount to an offence. Merely because a civil claim is maintainable does not mean that the criminal complaint cannot be maintained. In this case, on the facts, it cannot be stated, at this prima facie stage, that this is a frivolous complaint. The High Court does not state that on facts no offence is made out. If that be so, then merely on the ground that it was a civil wrong the criminal prosecution could not have been quashed."

13. It is settled principal of law that an act may lead to a civil wrong as well as a criminal prosecution but at the same time is to be seen by lifting the veil as to whether the act inviting civil consequence has been clothed with a colour of criminality. As has been enumerated above, the institution of the complaint petition against the petitioners appears to be an act of creating pressure upon the top most officials of the Company. There is no specific allegation against the petitioners and even otherwise the complaint petition does not reveal any criminal act so as to constitute an offence of criminal breach of trust and cheating as against the petitioners.

14. Adverting to the judgment passed in the case of International Advanced Research Centre For Powder Metallurgy And New Materials (ARCI) And Others v. Nimra Cerglass Technics Private Limited And Another (Supra) the Hon''ble Supreme Court while considering the powers under Section 482 of the Cr.P.C. has held as follows:-

"25. The above decisions reiterate the well-settled principles that while exercising inherent jurisdiction under Section 482 Cr.P.C., it is not for the High Court to appreciate the evidence and its truthfulness or sufficiency inasmuch as it is the function of the trial court. The High Court''s inherent powers, be it, civil or criminal matters, is designed to achieve a salutary public purpose and that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. If the averments in the complaint do not constitute an offence, the Court would be justified in quashing the proceedings in the interest of justice."

15. It is abundantly clear that the institution of the complaint case against the petitioners seems to be a mechanism being used by the complainant to create pressure and cause undue harassment to the petitioners. In such circumstance, therefore, continuation of the criminal proceedings against the petitioners would be an abuse of the process of Court and would lead to a mis-carriage of justice.

16. Consequent to the discussions made herein above, this application is allowed and the entire criminal proceedings in connection with C. P. Case No. 1084 of 2015 including the order dated 12.01.2016 is hereby quashed and set aside so far as the petitioners are concerned.

