(2011) 11 PAT CK 0043

In the Patna High Court

Case No : Criminal Writ No.225 of 2011

Nand Kishore Pandey APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 16-11-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 409

Citation : (2011) 11 PAT CK 0043

Hon'ble Judges : Aditya Kumar Trivedi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Aditya Kumar Trivedi

1. Petitioner, who has been summoned to face trial vide order dated 26.3.2009 passed by learned CJM in Muzaffarpur (Town) P.S. Case No.346 of 1994 for an offence punishable u/s 409 of the IPC has prayed for quashing thereof including the whole prosecution.

2. It has been submitted on behalf of the petitioner that order passed by the learned lower court is mechanical one as the same did not speak with regard to application of judicial mind to the facts collected during investigation which no way connect the petitioner with the crime, so alleged. Then it has been submitted that there happens to be non-compliance of Section 47 of Bihar Co-operative Societies Act. It has further been submitted that petitioner was made administrator for only two months of the Central Bank of India Staff Cooperative Credit Society Limited, Muzaffarpur, vide memo no.1834 dated 24.12.1992 and he superannuated on 28.2.1993 and during intervening period, he simply disbursed the salary to the employees as per direction of the Additional Registrar, Co-operative Society. It has further been submitted that Assistant Registrar, Co-operative Society, namely, Kamla Prasad was also dragged who filed Cr.W.J.C. No.90 of 2009 and vide order dated 7th July, 2010, the same was allowed. So

submitted that in the aforesaid facts and circumstances of the case, the order impugned happens to be bad in law as well as on facts and is accordingly fit to be set aside.

3. At the other hand the, learned G.P.-IV submitted that the present petition has got no merit as after thorough investigation on each and every point, lastly involvement of petitioner including others was found and who were charge sheeted along with other FIR named accused and the order of cognizance shows that there has been proper application of judicial mind. Also submitted that for the present purpose, the roaming inquiry is forbidden so submitted that the order impugned is fit to be confirmed.

4. As the Central Bank of India, Staff Cooperative Credit Society Limited, Muzaffarpur was superseded accordingly petitioner who was Senior Co-operative Officer was appointed administrator of the aforesaid institution vide memo no.1834 dated 24.12.1992. He was superannuated on 28.2.1993. From the FIR, Annexure-5, it is evident that there was an audit of the institution by the auditor who had submitted his report on 27.6.1994 indicating and pointing out illegality, misappropriation on the basis of forged and fabricated documents and that happens to be the basis of institution of instant case. The audit report, which happens to the basis of FIR does not contained name of petitioner. Subsequently, during course of investigation, petitioner has been arrayed as an accused and further on the basis thereof charge sheet has also been submitted against him and accordingly cognizance has been taken.

5. Petitioner had filed Annexure-9, order of Criminal Writ Jurisdiction 90 of 2009 by which the prosecution against petitioner Kamla Prasad, one of the accused, was quashed. It was observed therein that:

Petitioner was, no doubt, a public servant. But the act alleged to have been committed by him was only to the extent of having granted approval to an illegal appointment and to have allowed payment to illegal appointees. By any stretch of imagination, these acts cannot be termed as entrustment of property to petitioner or his having dominion over the property or having committed criminal breach of trust in respect of that property. The acts of the petitioner may be termed as misconduct, of having exceeded his powers or having deliberately caused undue advantage to the beneficiaries for which petitioner could be prosecuted separately or proceeded with departmentally. But by no stretch of imagination the charge of having committed an offence u/s 409 of the I.P.C. can be said to be prima facie made out in any way against the petitioner on account of those acts. The submission of the accusation application and the charge sheet against the petitioner after almost 13 years of his retirement and 14 years of institution of the case clearly shows that the respondents have taken this measure against the petitioner without any application of mind at all and just by way of face saving device for the prosecution.

6. Now it has to be seen whether petitioner''s case stand on similar footing. It is

own assertion of petitioner that he took charge in light of order communicated vide memo no.2834 dated 24.12.1992 and superannuated on 28.2.1993. From the audit report (Annexure-5) annexed with the FIR Annexure-7 it is evident from page 4 item no.18, Rs.1,12,569/- was spent against purchase of stationery on 23.11.1992 / 20.02.1993 which has been found surreptitious by the Auditor so this expenditure was during his tenure. Therefore, it is crystal clear from the audit report that there were expenses of aforesaid amount during his tenure as administrator. The case of the Kamla Prasad is distinguishable from the case of petitioner as Kamla Prasad was no way entrusted while the petitioner being an administrator will be deemed to be entrusted with the properties and any expense made by him or under his authority contrary thereto, will certainly also bring the petitioner within the category of accused. Moreover these happen to be no explanation of the petitioner''s end.

7. It is true that investigation of the case lingered for a quite long time, it is also an admitted fact that petitioner is not FIR named accused. It is also an admitted fact that petitioner has been dragged in the proceeding during continuance of investigation but the will not give a privilege to the petitioner to go scot-free. That too in the background that above referred expenses has not been explained on behalf of petitioner.

8. For the purpose of attracting 409 of the IPC, the amount is immaterial. The crux is there should be criminal breach of trust. When the audit has put a mark of interrogation over the aforesaid expenses made during tenure of petitioner being an administrator, then in that event, it happens to be a bounded duty of the petitioner to have a proper explanation which could be dealt with only during course of trial as it happens to be a factual one. At the present moment the disputed question of fact cannot be the subject matter of criminal writ. Therefore, in sum substance I find no merit in this petition. Consequent thereupon petition is dismissed.

