
(1998) 08 PAT CK 0073

In the Patna High Court

Case No : Criminal Miscellaneous No. 5316 of 1998

Paras Nath Singh

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 12-08-1998

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 406

Citation : (1998) 3 PLJR 334

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In this application the Petitioner has prayed for quashing the order dated 11.12.1997 passed by the Chief Judicial Magistrate, Samastipur whereby cognizance has been taken of the offence u/s 406/34 of the Indian Penal Code against the Petitioner in Waris Nagar P. S. Case No. 58 of 1995, Tr. 755/98.

2. It appears that on the basis of the written report of the informant, the Branch Manager of Bihar State Financial Corporation, Bela, Darbhanga, lodged before Officer Incharge, Mithurapur Bazar Samitee O.P. a criminal case has been registered being Waris Nagar P.S. Case No. 58/95.

In the said report it was alleged inter alia, that M/s Hindustan Nail Industries Muktapur is a firm of which the Petitioner is a partner along with one Bipin Kumar Singh. The Petitioner applied for loan on 28.10.75 and a sum of Rs. 1,44,000/- was sanctioned by the Corporation. It is alleged that on 15.2.94 the informant, Branch Manager inspected the premises of the firm and found that the machines and tools of the said firm worth Rs. 83,000/- have been removed from the premises of the said firm. It appears that the matter was investigated by the police and the record of the complaint case was then placed before the learned Chief Judicial Magistrate, Samastipur alongwith the case diary. The learned Chief

Judicial Magistrate, Samastipur, after perusal of the case diary found that the Petitioner was sought to be prosecuted u/s 406/34 of the Indian Penal Code. Accordingly, the learned Chief Judicial Magistrate took cognizance of the offence against the Petitioner by the impugned order. The Petitioner's contention is that the impugned order was passed without ascertaining the fact that the Petitioner retired from the said partnership long back in the year 1980 and all the shares, liabilities and assets of the Petitioner was accepted by the other partner namely Bipin Kumar Singh who has given declaration to the Branch Manager, Bihar State Financial Corporation to that effect.

3. A counter affidavit has been filed by the Corporation stating inter alia, that the Petitioner and other partners were allowed a sum of Rs. 1,44,000/- after execution of mortgage deed by both the partners. It is stated that the balance amount due against the firm and the partners is about Rs. 18,26,838,48/-. The further case of the Corporation is that the partnership firm removed the machines without the permission of the Corporation and thereby they are responsible for committing criminal breach of trust and misappropriation of the assets mortgaged.

4. Learned Counsel for the Petitioner submitted that even on the face of the allegations made in the first information report no case of criminal liability is made out rather it is a pure civil dispute.

5. Having heard learned Counsel for the parties and also perused the application and the counter affidavit, it appears that the case of the Corporation is that the loan was sanctioned to the firm on execution of mortgage deed by the partners of the firm and therefore, removal of machines and tools come within the purview of criminal breach of trust. On the other hand, the case of the Petitioner is that it has no liability inasmuch as he retired in the year 1980. The Petitioner's further case is that there was no mortgage deed and even if the machines were hypothecated by the Corporation, a case of civil liability is made out and the prosecution is unwarranted in law.

6. From perusal of the impugned order it appears to me that the learned Chief Judicial Magistrate in fact, has passed a very mechanical order and it is a case of non-application of mind. The order of the Chief Judicial Magistrate simply says that the record of the case along with case diary has been produced. On perusal of the case diary a case u/s 406/34 of the Indian Penal Code is made out against the Petitioner. Accordingly, cognizance is taken. In fact a routine type order has been passed by the Chief Judicial Magistrate which is not the spirit of the provision contained in the Code. The impugned order, therefore, cannot be sustained in law on this ground alone which requires reconsideration by the Chief Judicial Magistrate.

7. For the reasons aforesaid, this application is allowed. The impugned order is quashed and the matter is remitted back to the Chief Judicial Magistrate, Samastipur to pass fresh order after recording his satisfaction that a prima facie

case is made out for taking cognizance.