(2014) 05 JH CK 0031

In the Jharkhand High Court

Case No : Cr. Revision No. 138 of 2001

Raj Kumar Prasad and Ashim Kumar Dey — APPELLANT

Vs

The State of Jharkhand and Ram Pratap Singh — RESPONDENT

Date of Decision : 09-05-2014

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 34, 384, 392, 406, 420

Citation : (2014) 05 JH CK 0031

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : P.K. Mukhopadhayay and Mr. Tejo Mistri, Advocate for the Appellant; Manoj Kumar, A.P.P. for State, Advocate for the Respondent

Final Decision : Allowed

Judgement

Harish Chandra Mishra, J.—Heard learned counsel for the petitioner and learned counsel for the State. The complainant-opposite party No. 2 has not appeared in spite of valid service of notice upon him.

2. Petitioner is aggrieved by the order dated 1.3.2001 passed by Sri I.D. Singh, learned Judicial Magistrate, Dhanbad, in C.P. Case No. 35 of 1987, whereby following the direction of the Sessions Judge, Dhanbad, in Cr. Revision No. 242 of 1994, learned Court below has found prima facie offence against the petitioners under Sections 392/34 of the IPC.

3. From perusal of the record, it appears that the complainant-opposite party No. 2 had filed the complaint case in the Court below stating that the complainant as well as the accused petitioners were partners in 30 unit NHS at Sudamdih and there was partnership deed executed between them on 14.6.1985, according to which, the partnership business was being carried out in the name of the petitioner Raj Kumar Prasad. Shorn of unnecessary details, so far as this case is concerned, it is alleged that a cheque was issued for Rs. 26,745.75 by Sudamdih Colliery office, which the complainant requested for depositing in their joint

account, but it is alleged that the said cheque was extorted by the petitioners from the complainant and the same was deposited in the current account in State Bank of India, Bank More, Dhanbad, and the amount was also misappropriated by the accused petitioners. According to the complaint petition, this occurrence had taken place on 18.2.1987, but the complaint petition was filed on 24.4.1987.

4. It appears that the statement of the complainant was recorded on solemn affirmation and the statements of some witnesses were recorded in the enquiry stage, on the basis of which, the Court below found the prima facie offence under Sections 406, 420 and 384 of the Indian Penal Code against the petitioners. The petitioners challenged the said order before the Sessions Judge, Dhanbad, in Cr. Revision No. 242 of 1994, which was disposed of by order dated 22.8.1995 finding that in fact the offence was made out against the petitioners for the offence under Sections 392/34 of the IPC, and the learned Judicial Magistrate was directed to proceed in accordance with the directions made in the said order. Subsequently, the impugned order was passed by the learned Judicial Magistrate finding prima facie offence against the petitioners under Sections 392/34 IPC.

5. From perusal of the order dated 22.8.1995 passed by the learned Sessions Judge, Dhanbad, in Cr. Revision No. 242 of 1994, it is apparent that the cheque in question was issued in the name of the petitioner Raj Kumar Prasad and there is allegation against the petitioners to have deposited the said amount in their own account and to have misappropriated the amount. However, in view of the allegation and the materials on record against the petitioners to have extorted the cheque, putting the complainant in threat, learned Sessions Judge held that the offence was actually made out under Sections 392/34 of the IPC and the same has been followed by the Court below also.

6. Learned counsel for the petitioners has submitted that the petitioners have been falsely implicated in this case, as this is actually a civil dispute arising out of partnership matter, in which the petitioners have been falsely implicated. The cheque was admittedly issued in the name of petitioner Raj Kumar Prasad, which has been deposited in the account of this petitioner. It has been submitted that there can be no misappropriation of cheque amount, which was issued in the name of the petitioner, by the petitioner himself. Learned counsel also submitted that the Courts below have also failed to take into consideration the fact that the complaint petition was filed after inordinate delay, and as such the impugned order cannot be sustained in the eyes of law.

7. Learned counsel for the State on the other hand has opposed the prayer and has submitted that there is no illegality in the impugned order.

8. After having heard learned counsels for both the sides and upon going through the impugned order passed by the Courts below, I find that admittedly there was a partnership agreement between the parties and both the complainant and the accused petitioners were carrying out the business of partnership. Admittedly,

the cheque was issued in the name of petitioner No. 1, which is alleged to be deposited in the account of these petitioners. Even if there is allegation that the said cheque was extorted by the petitioners from the complainant, the Court below ought to have taken into consideration the fact that the alleged occurrence according to the complaint petition had taken place on 18.2.1987 itself, but the complaint petition has been filed after inordinate delay of more than two months, i.e., on 24.4.1987 and explanation given in the complaint petition for this delay is not at all sufficient. This apart, though initially on the basis of the materials on record, prima facie offence was found against the petitioners for the offences u/s 406, 420 and 384 of the IPC only, but following the order passed by the learned Sessions Judge in Cr. Revision No. 242 of 1994, the Court below has found prima facie offences against the petitioners under Sections 392/34 IPC.

9. Upon going through the record, I am of the considered view that the entire complaint petition has been filed with the malicious intention and the dispute, if any between the parties, arises out of the partnership business between them. This clearly shows that the complaint petition was filed against the petitioners in order to wreak vengeance against them by the complainant due to partnership dispute between them, by filing the complaint petition after inordinate delay, which also vitiates the entire proceeding. I am of the considered view that this is a fit case for exercise of the inherent power u/s 482 of the Cr. P.C., for quashing the entire proceeding against the petitioners.

10. Accordingly, the entire proceeding against the petitioners in C.P. Case No. 35 of 1987, then pending in the Court of Sri I.D. Singh, learned Judicial Magistrate, Dhanbad, is hereby, quashed. This application is accordingly allowed. Let the Lower Court Records be sent back forthwith.

