(2007) 02 PAT CK 0059

In the Patna High Court

Case No : Criminal Miscellaneous No. 19083 of 2006

Ram Bahadur Saxena APPELLANT

Vs

The State of Bihar and Another RESPONDENT

Date of Decision : 15-02-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 34, 406, 420

Citation : (2007) 02 PAT CK 0059

Hon'ble Judges : Ghanshyam Prasad, J

Bench : Single Bench

Advocate : Akhouri Vipin Bihari Shrivastava, for the Appellant; Gopesh Kumar for the State and Mr. L.B. Singh for O.P. 2, for the Respondent

Final Decision : Allowed

Judgement

Ghanshyam Prasad, J.—Heard. This application u/s 482 Cr.P.C. has been filed to quash the order of cognizance dated 3.8.1999 passed by Judicial Magistrate 1st Class, Bettiah in Complaint Case No. 1680C of 1998 thereby and thereunder cognizance under Sections 420, 406 and 34 of I.P.C. has been taken against the petitioner and others.

2. On perusal of the complaint petition, it appears that the complainant-opposite party no. 2 was Sectional Manager at Bettiah of a Non-Banking Company named and styled as Raushni Mutual Fund whereas this petitioner is alleged to be one of the Directors of the Raushni Group Company. The opposite party no. 2 joined Bettiah Branch on 24.5.1996. It has been alleged that the opposite party no. 2 during his tenure collected money from the different subscribers and deposited the same in the Non-Banking Company. However, the Non-Banking Company later on misappropriated the entire amount and refused to repay the same to the depositors.

3. The submission of the learned counsel for the petitioner is that, of course, this petitioner was one of the Directors of the said Company but he resigned from his

post as back as in the year 1993 and same was communicated to the Registrar of the Company on 11.1.1993. It is further submitted that there was a title suit for declaration of the status of this petitioner which was filed before a competent court of Dehradun bearing Suit No. 300 of 1998, which was ultimately decided on 17.12.1998 through which decree was passed that the petitioner ceased to be Director with effect from 11.1.1993. Thereafter, the public notice was also issued through newspaper on 25.4.1998. It is further submitted that on the date, the opposite party no. 2 joined the Branch office at Bettiah, this petitioner was not a Director of Non-Banking Company. He had already resigned and ceased. Therefore, no criminal liability can be fastened against this petitioner for any misappropriation or irregularities committed after the date of his resignation. It is further submitted that the similar matter came up for consideration before a bench of this Court vide Cr. Misc. No. 34943 of 2003 which was ultimately decided on 25.11.2005. Through that very decision, the criminal prosecution launched against this petitioner has been quashed.

4. On the other hand, the learned counsel for the opposite party no. 2 submitted that on the date of the alleged occurrence, this petitioner was Director of the Company and the decree from Civil Court has been obtained fraudulently and balabala just to save his skin from the irregularities and misappropriation committed by this petitioner also.

5. Considered the submission of the learned counsel for the petitioner as well as opposite party as also the order passed in aforesaid Cr. Misc. No. 34943 of 2003. The case of this petitioner stands on similar footing. This petitioner had resigned from the Non-Banking in question much before the date of the alleged occurrence. Apparently, he has been implicated in this case with mala fide and oblique motive. He cannot be fastened with any criminal liability which was committed after his resignation from the company. Thus, having regard to the facts and circumstances, this application is allowed. The impugned order of cognizance is hereby quashed but in respect of this petitioner only.

