
(2006) 05 PAT CK 0058

In the Patna High Court

Case No : Criminal Misc. Nos. 26515 and 32048 of 2005

Ram Kishore Singh and Braj Kishore Prasad Sandilya

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 18-05-2006

Acts Referred:

Citation : (2006) 05 PAT CK 0058

Final Decision : Dismissed

Judgement

Chandramauli Kr. Prasad, J.—In both the applications, common questions of law with little variation on facts arise and as such, they were heard together and are being disposed of by this common judgment.

2. Prayer of the petitioner in Cr. Misc. No. 26515 of 2005 is to quash the order dated 15.9.1998 passed by the Chief Judicial Magistrate, Aurangabad in Aurangabad Mufassil P.S. Case No. 341 of 1995 (G.R.No. 1673 of 1995 whereby it had taken cognizance of the offence u/s 406 and 420/34 of the Indian Penal Code and directed for issuance of process against the petitioner. In Cr. Misc. No. 32048 of 2005, prayer of the petitioner is to quash the first information report bearing Lakhisarai P.S. Case No. 255 of 2004 registered u/s 406, 409, and 420 of the Indian Penal Code.

3. Allegations against the petitioners in both the cases are that they had taken loan from the Bihar State Financial Corporation, hereinafter referred to as the Corporation, hypothecated the articles and removed the hypothecated articles fraudulently without any information to the Corporation in breach of its terms and conditions.

4. Mr. Birju Prasad who appears on behalf of the petitioner in Cr. Misc. No. 26515 of 2005 has adopted the submission made by Mrs. Soni Srivastava appearing on behalf of the petitioner in Cr. Misc. No. 32048 of 2005, she contends that even if the entire allegations made against the petitioners are accepted as true, same do not constitute any offence and therefore, the order taking cognizance and

registration of the first information report, are fit to be quashed. It is further contended that although the articles were hypothecated to the Corporation but by that itself interest did not pass on to the latter. She emphasises that in the absence of entrustment of the property to or dominion over the property by the Corporation, there is no question of criminal breach of trust or cheating and as such, the allegations do not constitute any offence. She also points out that the property in respect of which criminal breach of trust can be committed, must necessarily be the property of some person other than the accused and the offender must hold such property in trust for such other person. She submits that the hypothecated goods, in fact, belong to the petitioners and as such, there is no question of any criminal breach of trust. In support of the submission, reliance has been placed on a decision of the Supreme Court in the case of Central Bureau of Investigation, SPE, SIU (X), New Delhi Vs. Duncans Agro Industries Ltd., Calcutta, and my attention has been drawn to following passage from paragraph 27 of the judgment which reads as follows:

27. xxx The expression "trust" in Section 405 I.P.C. is a comprehensive expression and has been used to denote various kinds of relationship like the relationship of trustee and beneficiary, bailor and bailee, master and servant, pledger and pledgee. When some goods are hypothecated by a person to another person, the ownership of the goods still remains with the person who has hypothecated such goods. The property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused or the beneficial interest in or ownership of its must be in other person and the offender must hold such property in trust for such other person or for his benefit. In a case of pledge, the pledged article belongs to some other person but the same is kept in trust by the pledgee. In the instant case, a floating charge was made on the goods by way of security to cover up credit facility. In our view, in such case for disposing of the goods covering the security against credit facility the offence of criminal breach of trust is not committed.

5. Reliance has also been placed on a decision of this Court in the case of Ranjeet Prasad Singh Vs. The State of Bihar and Others, in which relying on the decision of the Supreme Court in the case of C.B.I (supra), this Court held that no criminal offence is made out, when hypothecated goods are disposed of. Paragraph No. 7 of the judgment which is relevant for the purpose reads as follows:

7.-In the facts and circumstances of the case and in view of the aforesaid decision of the Supreme Court in Duncans Agro Industries case, no criminal offence is made out for disposing of hypothecated goods covering the security against the credit facility and in absence of any allegation of inducement, no case u/s 420 of the I.P.C. is also made out. So far as non-payment of loan and its interest is concerned, it was purely a case of civil nature for which a civil remedy is available, specially, when there is no case that from the out set the intention of the petitioner was to cheat the Corporation and misappropriate the amount. In

the circumstances allegations in the written report do not make out any prima facie case of criminal nature against the petitioner, and as such, I find it a fit case in which the impugned order dated 28.8.96 and the entire criminal proceeding of Jasidih P.S. Case No. 105 off 1995 (G.R. No. 504 (Sic) of 1995) pending in the court of Sr. B.B. Lal, Judicial Magistrate, Deoghar be quashed as it is an abuse of the process of the court.

6. Mr. Y.V. Giri. Senior Advocate, appearing on behalf of the Corporation, however, submits that the allegation made against the petitioners do constitute an offence and therefore, neither the first information report nor the order taking cognizance is fit to be quashed. In support of his submission, reliance has been placed on the decision of a learned Single Judge of this Court in the case of Badamo Devi and Others Vs. Sagar Sharma, and my attention has been drawn to paragraph No. 8 of the judgment which reads as follows:

8.- It is clear from the above mentioned decision of the Supreme Court that the word "entrusted" has to be understood in a wider sense. All that is necessary is that the ownership or beneficial interest in the property, which is subject matter of the offence should be in some persons other than the accused. In the case of mortgage or hypothecation the ownership does not pass to the person in whose favour the mortgage or hypothecation is created, but it does create "a beneficial interest" without his consent and in violation of the terms of the agreement in that regard, prima facie, the offence of criminal breach of trust can be said to be made out. I am not going into the question if any other offence is also made out or not. The petitioners admittedly had borrowed a huge amount but failed to repay the same. And when the Corporation took steps to recover the dues by selling the assets u/s 29 and 30 of the State Financial Corporation Act, it transpired that they had stealthily removed the same what could be a more glaring case of criminal offence on the part of a debtor? In my considered opinion, it would not be in the interest of justice to interfere with the prosecution.

7. Reliance has also been placed on two unreported decisions of the Supreme Court dated 5th of April, 1999 passed in Cr. Appeal No. 379 of 1999 (Branch Manager BSFC v. Rajniti Prasad Singh and Ors. and order dated 25th of July, 2005 passed in Cr. Appeal No. 921 of 2005 (Bihar State Financial Corporation v. Birendra Kumar Jha and Anr.

8. Having appreciated the rival submission, I do not find any substance in the submission of learned Counsel for the petitioners. It is relevant here to state that relying on the decision of the Supreme Court in the case of Central Bureau of Investigation (supra), this Court in the case of Ranjit Prasad Singh (supra), held that no criminal offence is made out in case in which the allegation is of disposing of the hypothecated property as the ownership of the property remains with the person who had hypothecated the property but in the case of Mahesh Prasad Manjhi (supra), this Court held that in a case of hypothecation, a beneficial interest passes and if the property is removed without the consent of the person having beneficial interest, the offence of criminal breach of trust is

made out. The judgments of this Court in the cases of Ranjit Prasad Singh (supra) and Mahesh Prasad Manjhi (supra) have been rendered by a learned Single Judge of this Court and propriety demands that I should refer the matter to the Division Bench. But the Judgment of this Court in the case of Mahesh Prasad Manjhi (supra) has been rendered on consideration of the earlier Judgment in the case of Ranjit Prasad Singh (supra), the necessity to refer the matter to the Division Bench, does not arise. On principle also, I respectfully agree with the enunciation of law and the conclusion arrived at by S.N. Jha, J. as he then was in the case of Mahesh Prasad Manjhi (supra).

9. It is relevant here to state that in case of Central Bureau of Investigation (supra), while interpreting the expression "entrusted", appearing in Section 405 of the Indian Penal Code, it has been observed that it has wide and different implications in different context and for offence of criminal breach of trust, it is necessary that the ownership or beneficial interest of the ownership of the property entrusted in respect of which offence is alleged to have been committed, must be in some person other than the accused. This would be evident from the following passage of the said decision. Paragraph No. 27 which is relevant for the purpose reads as follow:

27.- In the instant case, a serious dispute has been raised by the learned Counsel appearing for the respective party as to whether on the face of the allegations, an offence of criminal breach of trust is constituted or not. In our view, the expression "entrusted with property" or "with any dominion over property" has been used in a wide sense in Section 405 I.P.C. Such expression includes all cases in which goods are entrusted, that is, voluntarily handed over for a specific purpose and dishonestly disposed of in violation of law or in violation of contract. The expression "entrusted" appearing in Section 405, I.P.C. is not necessary a term of law. It has wide and different implications in different context. It is, however, necessary that the ownership or beneficial interest in the ownership of the property entrusted in respect of which offence is alleged to have been committed must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit.

(Underlining mine)

10. In the cases in hand, although ownership of the property had not changed from the hand of the petitioners but on account of hypothecation of the goods with further stipulation that it shall not be removed without seeking prior permission of the Corporation, same creates beneficial interest in the Corporation and the breach thereof constitutes offence.

11. It is worthwhile mentioning here that the decision of this Court in the case of Ranjit Prasad Singh (supra), relied on by the petitioners, has been set aside by the Supreme Court by order dated 5th of April, 1999 passed in Cr. Appeal No. 379 of 1999 (supra) in the following words:

Having heard learned Counsel for the parties we are of the opinion that the High

Court wrongly exercised its jurisdiction u/s 482 of the Criminal Procedure Code and quashed the order dated 28th August, 1996 passed by the Chief Judicial Magistrate, Deoghar in G.R. Case No. 405 of 1995 whereby it had taken cognizance u/s 420, 406 and 403 of the Indian Penal Code. We, set aside the impugned judgment of the High Court and direct the trial court to proceed further after having taken cognizance of the offence.

12. It is relevant here to state that the Supreme Court had considered this question in Cr. Appeal No. 921 of 2005 (Bihar State Financial Corporation v. Birendra Kumar Jha and Anr.) and by order rendered on 25th of July, 2005, clearly held that the allegations as made in the present cases constitute offence. Relevant portion of the order reads as follows:

xxx By the impugned order, the High Court in exercise of its power u/s 482 Cr.P.C. has quashed the criminal proceedings instituted by the appellant-Corporation against the respondent for charges under Sections 406, 408 and 420 of the Indian Penal Code.

The short facts necessary to be stated for deciding the appeal are that the respondent has raised a loan from the appellant-Corporation for industrial purpose. Under the terms and conditions of the loan agreement, he agreed in writing not to remove the hypothecated assets from the site without seeking prior permission of the Corporation.

Without going into further facts, in our view, on these allegations, clearly as case under Sections 406, 408 and 420 of the Indian Penal Code is made out.

13. In view of aforesaid. I am of the considered opinion that in case of removal of the hypothecated assets, the ownership did not pass on to the Corporation but surely, beneficial interest passes on to it and the breach thereof, brings the act within the mischief of criminal breach of trust.

14. It is made clear that the observations made by me in the present cases are for the purpose of their disposal and shall have no bearing at latter stage.

15. I do not find any merit in both the applications and as such, they are dismissed accordingly.