
(2020) 09 JH CK 0072

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 851 Of 2019

Sangita Dey And Ors

APPELLANT

Vs

State of Jharkhand And Ors

RESPONDENT

Date of Decision : 08-09-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 82, 482

Indian Penal Code, 1860 — Section 406, 409, 420, 467, 468, 471

Citation : (2020) 09 JH CK 0072

Hon'ble Judges : Ananda Sen, J

Bench : Single Bench

Advocate : Ashok Kumar Yadav, Birendra Burman, P.A.S. Pati

Final Decision : Disposed Of

Judgement

1. The lawyers have no objection with regard to the proceeding, which has been held through video conferencing today at 10.30 A.M. They have no complaint in respect to the audio and video clarity and quality.

2. Heard learned counsel for the parties.

3. The petitioners, in this application, filed under Section 482 Cr.P.C., have prayed for quashing the order taking cognizance dated 15.06.2015, passed by the Judicial Magistrate, 1st Class, Jamshedpur in G.R. No. 950 of 2014. By virtue of the aforesaid order, cognizance has been taken for the offence punishable under Sections 406, 409, 420, 467, 468 & 471 of the Indian Penal Code. Further the order dated 27.04.2018, passed in the aforesaid case has also been challenged. By virtue of the aforesaid order, process under Section 82 Cr.P.C. has been issued against the petitioners in connection with the aforementioned case.

4. This case arises out of a FIR. The FIR was registered for allegedly committing an offence punishable under Sections 420, 467, 468 & 471 of the Indian Penal Code, wherein these two petitioners are the accused.

5. FIR was registered as Bishtupur P.S. Case No. 113 of 2014. The informant is the Branch Manager of the Central Bank of India, TISCO Gate Branch, Bishtupur, Jamshedpur, (herein after referred to as "the Bank"). In the FIR, it has been alleged that a sum of Rs. 5 lakh was sanctioned as loan to these petitioners, who happens to be owners of a shop. Later, the amount of loan was enhanced from Rs. 5 lakhs to Rs. 10 lakhs. By way of security, a sale deed bearing deed no. 5721 dated 27.10.2006 was deposited by the petitioners in the Branch of the bank. The Bank later on obtained a certified copy of the sale deed and it was found that the said [2] sale deed, which was deposited with the Bank, was a forged document. Thus, it was concluded that the petitioners obtained the loan of Rs. 10 lakhs by depositing a forged document. The loan ultimately became bad and an amount of Rs. 9,11,501/- became due, which the petitioners did not pay. On the aforesaid background, the FIR being Bishtupur P.S. Case No. 113 of 2014, was registered.

6. The petitioners, thereafter, approached this Court by filing an application under Section 482 Cr.P.C. being Cr. M.P. No. 909 of 2014, wherein they challenged the FIR. The said application was withdrawn by the petitioners on 23.04.2015, wherein a liberty was given to these petitioners to raise all the points at an appropriate stage. In the meantime, the investigation proceeded and police ultimately filed a charge sheet against these petitioners.

7. On the facts narrated in the charge sheet, and on finding a prima facie case, the Court took cognizance of the offence punishable under Sections 406, 409, 420, 467, 468, 471 of the Indian Penal Code, vide order dated 15.06.2015. Notice was issued to these petitioners, but it is the case of the petitioners that they had not received any notice as such they could not appear before the court. It is further case of the petitioners that since they could not appear before the Court, coercive steps were taken against them and ultimately vide order dated 27.04.2018 process under Section 82 Cr.P.C. was issued. It has been mentioned that prior to issuance of process under Sections 82 Cr.P.C., bailable and non-bailable warrant of arrest was also issued.

8. Learned counsel appearing for the petitioners, in support of their contention submits that no criminal offence is made out in the instant case. He submits that this is a case of non-payment of loan, which the petitioners had taken from the Bank and for not repaying the loan amount, a criminal case cannot be instituted. He submits that the Central Bank of India had also filed a certificate case bearing No. 50/BL/2014- 2015, before the Certificate Officer at Jamshedpur, claiming recovery of the loan amount. It is the case of the petitioners that they appeared in the said certificate proceeding and they offered to return the amount and ultimately, they settled the dispute with the Bank and an amount of Rs. 2, 66,000/- was paid to the Bank by way of full and final settlement. It is the case of the petitioner that it was their understanding that both, i.e. the certificate case and the instant criminal case would be withdrawn on the basis of the compromise. He submits that since the Bank has taken the money as per the

settlement, the criminal case cannot be allowed to [3] continue and the petitioners cannot be subjected to harassment and be forced to face the rigor of the criminal trial. The petitioner also states that the loan account has been closed by the Bank as the Bank has received the entire money as full and final settlement. He submits that once the Bank has settled the dispute, which is primary, civil in nature, this criminal case cannot be allowed to continue, thus according to him the order taking cognizance is bad.

9. Counsel for the petitioner further submits that the order issuing process under Section 82 Cr.P.C. is absolutely bad, which does not reflect subjective satisfaction of the court. He submits that it is a mandate that the Court should record subjective satisfaction before issuing process under Section 82 Cr.P.C. He submits that in absence of recording of such subjective satisfaction to the effect that the petitioners are evading their arrest or are absconding and it is not possible to execute the warrant, issuance of process under Section 82 Cr.P.C. is bad. He lastly submits that since the matter has been compromised in one time settlement, in view of the judgment of the Hon'ble Supreme Court passed in the case of "Central Bureau of Investigation- versus- Sadhu Ram Singla and Others reported in (2017) 5 SCC 350", the entire criminal proceeding is liable to be quashed. He submits that this offence cannot be said to be heinous in nature so there is no impediment to quash the entire proceedings.

10. To counter the submission of the petitioner, counsel appearing on behalf of the Bank submits that what has been settled is the civil dispute. He submits that there was no settlement nor any assurance was ever given to withdraw the criminal case. He submits that the compromise was solely in respect of non-payment of the loan amount and thus the certificate case was compromised on the basis of one-time settlement. He submits that there is an allegation that the loan was taken on the basis of a forged document, i.e. the sale deed and when there is an allegation of forgery, a criminal case cannot be allowed to be withdrawn or quashed as the offences are non-compoundable. By referring to Annexure- B, counsel for the Bank submits that a decision, of a Committee of the Bank, was taken wherein the Committee observed that the case, which has been filed with the Enforcement Agency, will continue even after approval of the present settlement (OTS) proposal. He submits that this clearly suggests that the criminal case which was pending before the Court will continue and the same was not compounded by the Bank. He relied upon a judgment passed by the Hon'ble Supreme Court in the case of "Gopakumar B Nair-versus- Central Bureau of Investigation & Anr, reported in [4] (2014) 5 SCC 800". He submits that a case which attracts forgery, cannot be withdrawn as the Bank has got no authority to compound cases of forgery.

11. I have heard the counsel for the parties and have gone through the entire petition and the pleadings. The major facts are admitted in this case. The petitioners had obtained loan from the Bank and defaulted in repaying the same. The loan was obtained by producing a sale deed as a security. The Bank later on

found that the sale deed, which was produced and kept with them, by way of security, was allegedly a forged document. It is an admitted case of the Bank that the dues were settled with the Bank by virtue of a scheme, i.e. One Time Settlement Scheme and the Bank had issued 'No Dues Certificate'. The account, i.e. the loan account of the petitioners was closed by the Bank as settlement had already taken place.

10. Now, the question, which falls for consideration before this Court is whether a criminal case can be compounded/quashed on the basis of the settlement arrived at, which is for recovery of a loan account.

12. A business or a commercial transaction may have different aspect. A transaction may be pure civil in nature without any criminal aspect or it may be a transaction which is prima-facie civil in nature alongwith some criminal aspect involved. In this case, we have to see as to whether the transaction which has been entered with the Bank by the petitioner was purely civil in nature without any element of criminality or there was a criminal aspect to it.

13. Two main facts, which are necessary to arrive at a conclusion as to whether the transaction was purely civil in nature or had any criminal intent, are as follows:-

(i) The petitioners took a loan from the bank but, thereafter, failed to repay the same.

(ii) The loan was obtained by depositing a sale deed which is alleged to be forged.

14. The part of the transaction, i.e. taking of loan and thereafter, failing to repay the same, without any criminal intention can purely be civil in nature, for which there is a civil remedy.

15. The second part of the allegation, i.e. that the loan was obtained by depositing a forged document, cannot be said to a pure civil transaction, without any criminal intent. The allegation that the document deposited with the bank is forged, attracts an offence under the Penal Code. Forgery is an offence under the Indian Penal Code. The allegation is that a forged deed was produced in the bank and the loan was obtained. This allegation prima-facie attracts Sections 467 & 468 of [5] the Indian Penal Code. Thus, the allegation definitely makes out criminal offence, which needs to be tried.

16. The Hon'ble Supreme Court in the case of "Indian Oil Corporation - versus- NEPC India Limited and Others, reported in (2006) 6 SCC 736" has held that if allegation in the complaint, taken at their face value, disclosed a criminal offence, the complaint cannot be quashed merely because it relates to a commercial transaction or breach of contract for which civil remedy is available or has been availed.

17. In view of the aforesaid judgment, we have to see as to whether the instant case is purely civil in nature or has a criminal aspect. As discussed earlier, I find

that there is an allegation of forging a deed and thereafter, producing the same in the bank. The loan was obtained on the basis of the said forged deed. This allegation of forgery definitely makes out a criminal offence. The bank may have compromised their dispute so far as the civil liability is concerned, but so far as criminal aspect, the same has not been compromised, rather it could not have been so, as the same is not compoundable. Further, when I see the entire documents and the counter affidavit also and the annexure appended thereto, I find that Annexure-B is a decision of the Committee, which took a decision and observed that the dues would be compounded in terms of the 'OTS' Scheme, but even after accepting the said amount, the criminal case, which is pending, will continue. This clearly suggests that the bank did not compromise the part of the dispute which is criminal in nature.

18. The Hon'ble Supreme Court in the case of "Sushil Suri- versus- Central Bureau of Investigation and Another, reported in (2011) 5 SCC 708" has held that the loan obtained on forged documents and the person who obtains the loan on a forged documents, needs to be punished as per criminal law and the FIR cannot be quashed. The Hon'ble Supreme Court went on to hold that the defense of the accused that they have fully repaid the loan to the concerned bank and no loss was caused to the bank, cannot be a ground to quash the FIR.

19. When a fraud is played with a bank and a loan is obtained by playing fraud, it is not the bank only, which is an aggrieved and suffers a loss. It is the society and the investors at a large who is aggrieved. The money of the depositors and the investors is given as loan to the loanee. If a fraud is committed and the loan amount is not repaid and is swindled it is ultimately the money of the investors and the depositors, which is misappropriated. The bank is a mere custodian of the money of the depositors and the investors. Thus, the ultimate aggrieved person is the [6] depositors, who deposit their money in the bank having faith on the bank. The depositors and the investors lose their faith upon the bank if these types of fraud take place. Another aspect cannot be lost sight of is the possibility of connivance of the bank officials in the transactions.

20. In the instant case, I find that the loan was to the tune of Rs. 10 lakhs and alongwith the interest on the principal the amount fell dues is Rs. 9,11,501/-. This amount, which was due, was settled in terms of One Time Settlement Scheme and a paltry sum of Rs. 2,66,000/- only was paid as a full and final settlement. If the contention of the petitioner is accepted that since the one-time settlement was accepted, the criminal case has also to be dropped, then it will have a very bad impact on the banking system and on the financial sectors. This will set a very bad precedent. Then in future every person and unscrupulous businessmen will obtain loan by playing fraud and by submitting fake documents will take huge amount from the bank as a loan and will ultimately settle their dispute by paying a nominal amount, say 10% or 15% of the amount and will be scot- free. This will not only damage and dent the faith of the depositors and the investors upon bank, but will also crumbled the entire edifice of the banking

sector and the economy of the country. Further where there is involvement of public money, the banking institutions must be very cautious. Thus, settlement of dues under one-time settlement scheme cannot and should not be a ground to quash the criminal proceeding if there are elements, which attract the Indian Penal Code or the other penal laws. More over where by committing forgery a loan has been obtained from a bank, and there after the loanee fails to liquidate the outstanding loan amount, settlement thereafter on payment of a paltry amount, i.e. 30% to 35 % of the entire outstanding amount, is nothing but giving a premium to the offenders.

21. The Counsel appearing on behalf of the petitioners relied upon the judgment of the Hon'ble Supreme Court in the case of Central Bureau of Investigation-versus- Sadhu Ram Singla and Others (supra), whereas the opposite party relies upon the judgment of "Gopakumar B Nair" (supra). I have gone through both the judgments. In the judgment reported in Central Bureau of Investigation- versus- Sadhu Ram Singla and Others (supra)", the Hon'ble Supreme Court quashed the criminal proceeding on the ground that the civil proceeding was compromised and nothing remains to be decided in the criminal case as there would be no evidence. The Hon'ble Supreme Court in the case of "Gopakumar B Nair" (supra), refused to quash the criminal proceeding in spite of the fact that the civil proceeding was compromised.

The judgment reported in "Gopakumar B Nair-versus- Central Bureau of Investigation & Anr, (2014) 5 SCC 800' is a Three Judges' Bench judgment of the Hon'ble Supreme Court, whereas the earlier judgment is of Two Judges Bench judgment of the Hon'ble Supreme Court.

22. In view of the judgment of the Hon'ble Supreme Court in the case of "Subhash Chandra & Anr- versus- Delhi Subordinate Services Selection Board & Others" reported in (2009) 15 SCC 458, para-96", a Three Judges Bench of the Hon'ble Supreme Court will get precedence over a two Judges Bench judgment. Further, the fact of the case reported in "Gopakumar B Nair" (supra) is more or less the same to that of this case. In the aforesaid case, which was dealt with by the Hon'ble Supreme Court, there was no compromise in respect of the criminal aspect of the transaction. In this case also, in view of Annexure-B to the counter affidavit, I find that there was no compromise so far as the criminality is concerned. Thus, on this aspect of fact, this instant case is similar to that of the judgment of "Gopakumar B Nair" (supra).

23. Thus, on the facts of this case and also in view of the law, as discussed above, the judgment in "Gopakumar B Nair" (supra), will fit in the facts of this case.

24. Considering what has been held above, I find that one-time settlement which has been arrived at between the bank and the petitioners cannot be a ground to quash the entire criminal proceeding. Since, prima- facie an offence under Sections 467, 468 & 471 of the Indian Penal Code is made out, the cognizance

order cannot be quashed.

25. So far as the order dated 27.04.2018, by which process under Section 82 Cr.P.C. has been issued, is concerned, I find that the order dated 27.04.2018, issuing process under Section 82 Cr.P.C. is absolutely cryptic. No reason has been assigned as to why it is necessary to issue process under Section 82 Cr.P.C. The mandatory requirement, i.e. noting down and giving a finding that the petitioners are evading warrant of arrest and are not appearing in the court, is missing. The subjective satisfaction, which the court was duty bound to mention in the order, is missing. Thus, I find that the aforesaid order is cryptic and is not sustainable in the eyes of law. Thus, I am inclined to quash the order dated 27.04.2018, by which process under Section 82 Cr.P.C. has been issued against the petitioners.

26. Thus, in this application I am only interfering with the order dated 27.04.2018, by which process under Section 82 Cr.P.C. has been issued against the petitioners. So far as prayer in relation to quash the order taking cognizance and the entire criminal proceeding is concerned, the same is rejected. The proceeding will continue in view of the observations and findings made above.

27. This criminal miscellaneous petition stands disposed of in terms of the observation made above.