

(2024) 12 JH CK 0068
In the Jharkhand High Court
Case No : Cr.M.P. No. 951 Of 2023

Sheoli Hati @ Siuli Hati

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 17-12-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 406, 418

Citation : (2024) 12 JH CK 0068

Hon'ble Judges : Anil Kumar Choudhary, J

Bench : Single Bench

Advocate : Sakaldeo Singh, Abhay Kr. Tiwari, Prashant Pallav, Shivani Jaluka

Final Decision : Allowed

Judgement

Anil Kumar Choudhary, J

1. Heard the parties.

2. This criminal miscellaneous petition has been filed invoking the jurisdiction of this Court under Section 482 Cr.P.C. with a prayer to quash the entire criminal proceeding including the F.I.R. of Bistupur P.S. Case No. 229 of 2019 corresponding to G.R. Case No. 698 of 2020 as well as the order taking cognizance dated 14.02.2020, passed by the learned Chief Judicial Magistrate, Jamshedpur in connection with the said Bistupur P.S. Case No. 229 of 2019 whereby and where under the learned Chief Judicial Magistrate, Jamshedpur has taken cognizance of the offences punishable under Section 406/418 of the Indian Penal Code.

3. The allegation against the petitioner is that the petitioner is the mother of Aditi Bishakha Das and the informant-opposite party no.2 is the former husband of the petitioner. It is next alleged that as per the terms of compromise, the informant deposited Rs.5,00,000/- in the name of their daughter Aditi Bishakha Das with the petitioner as the guardian and the money was to be kept in fixed

deposit, with the condition that the money will remain in fixed deposit till Aditi Bishakha Das attains the age of majority but the petitioner has withdrawn the said amount from Bank of Baroda.

4. It is submitted by the learned counsel for the petitioner that the uncontroverted fact as stated in para-8 of this criminal miscellaneous petition is that the petitioner being the mother of Aditi Bishakha Das in the interest of Aditi Bishakha Das has deposited the amount of Rs.5,00,000/- in different banks as and where the rate of interest was maximum and still that amount at the time of filing of the petition was in fixed deposit with Bank of Baroda which will mature on 21st December, 2024. It is next submitted that there is absolutely no allegation against the petitioner of dishonest misappropriation of the entrusted property, hence the offence punishable under Section 406 of the Indian Penal Code is not made out. It is next submitted that in the absence of any allegation of any wrongful loss or any deception or fraudulent act on the part of the petitioner, the offence punishable under Section 418 of the Indian Penal Code is also not made out. Hence, it is submitted that the prayer as prayed for by this petitioner in this criminal miscellaneous petition be allowed.

5. The learned Addl. P.P. and the learned counsel for the opposite party no.2 on the other hand vehemently opposes the prayer as made in this criminal miscellaneous petition and submits that since the fixed deposit was made on the undertaking that the petitioner will not withdraw the same, so both the offences in respect of which cognizance has been taken by the learned Chief Judicial Magistrate is made out. Hence, it is submitted that this criminal miscellaneous petition being without any merit be dismissed.

6. Having heard the submissions made at the Bar and after going through the materials available in the record, it is pertinent to mention here that it is a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of Binod Kumar & Ors. Vs. State of Bihar & Anr. reported in (2014) 10 SCC 663, paragraph-18 of which reads as under :-

"18. In the present case, looking at the allegations in the complaint on the face of it, we find that no allegations are made attracting the ingredients of Section 405 IPC. Likewise, there are no allegations as to cheating or the dishonest intention of the appellants in retaining the money in order to have wrongful gain to themselves or causing wrongful loss to the complainant. Excepting the bald allegations that the appellants did not make payment to the second respondent and that the appellants utilised the amounts either by themselves or for some other work, there is no iota of allegation as to the dishonest intention in misappropriating the property. To make out a case of criminal breach of trust, it is not sufficient to show that money has been retained by the appellants. It must also be shown that the appellants dishonestly disposed of the same in some way or dishonestly retained the same. The mere fact that the appellants did not pay the money to the complainant does not amount to criminal breach of trust." (Emphasis supplied)

that to make out a case of criminal breach of trust, it is not sufficient to show that property has been retained by the accused persons but must also be shown that the accused persons dishonestly disposed of the same in some way or dishonestly retained the same.

7. Now coming to the facts of the case, there is absolutely no allegation against the petitioner of dishonest misappropriation of the entrusted property. The undisputed fact remains that still the said Rs.5,00,000/- stands deposited in Bank of Baroda which will mature on 21.12.2024. Under such circumstances, this Court is of the considered view that even if the entire allegations made against the petitioner are considered to be true in their entirety, still the offence punishable under Section 406 of the Indian Penal Code is not made out against the petitioner.

8. So far as the offence punishable under Section 418 of the Indian Penal Code is concerned, deception and fraudulent act are the two essential ingredients besides wrongful loss. Now coming to the facts of the case, there is absolutely no allegation of any wrongful loss caused to anybody nor there is any allegation of deception, rather the petitioner being the mother of the minor daughter Aditi Bishakha Das has ensured shifting of the fixed deposit amount to different banks to get the maximum interest out of the deposited money. Under such circumstances, this Court is of the considered view that even if the entire allegation made against the petitioner are considered to be true in their entirety, still the offence punishable under Section 418 of the Indian Penal Code is not made out.

9. In view of the discussions made above, as none of the offences for which cognizance has been taken by the learned Chief Judicial Magistrate, Jamshedpur is made out, the continuation of this criminal proceeding will amount to abuse of process of law. Therefore this is a fit case where the entire criminal proceeding including the F.I.R. of Bistupur P.S. Case No. 229 of 2019 corresponding to G.R. Case No. 698 of 2020 as well as the order taking cognizance dated 14.02.2020, passed by the learned Chief Judicial Magistrate, Jamshedpur in connection with the said Bistupur P.S. Case No. 229 of 2019 whereby and where under the learned Chief Judicial Magistrate, Jamshedpur has taken cognizance of the offences punishable under Section 406/418 of the Indian Penal Code against the petitioner be quashed and set aside.

10. Accordingly, the entire criminal proceeding including the F.I.R. of Bistupur P.S. Case No. 229 of 2019 corresponding to G.R. Case No. 698 of 2020 as well as the order taking cognizance dated 14.02.2020, passed by the learned Chief Judicial Magistrate, Jamshedpur in connection with the said Bistupur P.S. Case No.229 of 2019 whereby and where under the learned Chief Judicial Magistrate, Jamshedpur has taken cognizance of the offences punishable under Section 406/418 of the Indian Penal Code against the petitioner, is quashed and set aside.

11. In the result, this criminal miscellaneous petition is allowed.

12. This criminal miscellaneous petition is disposed of accordingly.