

(2015) 02 JH CK 0091

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 282 of 2002

Shiv Kumar Shah and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 06-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Negotiable Instruments Act, 1881 (NI) — Section 138

Penal Code, 1860 (IPC) — Section 120(B), 406, 420, 467, 468

Citation : (2015) 02 JH CK 0091

Hon'ble Judges : Rongon Mukhopadhyay, J.

Bench : Single Bench

Advocate : J. Mazumdar, for the Appellant; Vikash Kishore, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Rongon Mukhopadhyay, J.—Heard Smt. J. Mazumdar, learned counsel on behalf of the petitioners, Sri. Vikash Kishore, learned counsel for the State as well as Sri. Navneet Sahay, learned counsel appearing on behalf of the opposite party No. 2.

2. In this application, the petitioners have prayed for quashing the entire criminal proceeding in connection with Bistupur P.S. Case No. 192 of 2001 corresponding to G.R. No. 1636 of 2001 including the order dated 13.03.2002 passed by the learned Chief Judicial Magistrate, Jamshedpur by which cognizance has been taken for the offence under Sections 467, 468, 406, 420 and 120(B) of the Indian Penal Code.

3. The prosecution story as would appear from the written report submitted by the opposite party No. 2 is that, the petitioner No. 1 does business in the name and style of M/s. Prakash Steels, Adityapur Industries, Dhananjay Credit Commercial (P) Ltd. and OSS Steelux (P) Ltd. and his brothers - petitioner Nos. 2 and 3 are also involved in the business of the said firm. It was alleged that the

firm of the complainant namely, A.S.L. Enterprises Ltd. is a marketing agent for TISCO Ltd. and the petitioner No. 1 and his brothers approached the said firm and gave 4 cheques totalling Rs. 27.50 lacs on various dates between 23.03.2001 to 23.07.2001 and on the basis of the aforesaid cheques induced the firm to instruct TISCO Ltd., Sales Office, Jamshedpur to supply HR Coils, Slabs, Bar Plates amongst other products for a total sum amounting to Rs. 200/- lacs approximately. It was also alleged therein that since the cheques were kept by TISCO as a security, the same were handed over to TISCO which were deposited and all the cheques bounced and TISCO has proceeded for recovery of money from the firm of the complainant. It has been alleged further that the petitioner No. 1 and his brothers evaded contact and it was roughly estimated by the complainant that more than Rs. 4 crores has been misappropriated by them.

4. After investigation, charge-sheet was submitted against the petitioners and thereafter vide order dated 13.03.2002 passed by the learned Chief Judicial Magistrate, Jamshedpur cognizance was taken for the offences under Sections 467, 468, 406, 420 and 120(B) of the Indian Penal Code.

5. The learned counsel for the petitioners has submitted that even assuming that the cheques given by the petitioner No. 1 were dishonoured, the remedy available to the informant was to have filed a complaint under the provisions of Section 138 of the Negotiable Instrument Act. She has further submitted that the written report does not disclose about any offence under the provisions of the Indian Penal Code. Alternatively, it is argued by the learned counsel for the petitioners that even if the allegations are taken to be true, at best the same are made out against the petitioner No. 1 who is said to have given the cheques and which had subsequently been dishonoured, but so far as the other petitioners are concerned, there is no whisper made by the informant about any role having being played by them so as to attract the provisions of the Indian Penal Code. In this context she has referred to the case of Shakti Travel and Tours Vs. State of Bihar and Another, and the case of G. Sagar Suri and Another Vs. State of U.P. and Others, .

6. The learned counsel for the opposite party No. 2, on the other hand, has submitted that even if a cheque is dishonoured, the same does not preclude the informant from instituting a case under the provisions of the Indian Penal Code. He has further submitted that in course of investigation, in paragraph 193 of the Case Diary it has transpired that one of the witnesses namely Pankaj Jain who is the proprietor of the M/s. Jain Industries has also instituted a case against the opposite party No. 2 for the offences under Sections 406 and 420 of I.P.C. He therefore, submits that since the allegations are apparent from the face of the record as against the petitioners as such the present application is liable to be dismissed.

7. After hearing the learned counsel for the parties and after going through the records, I find that 4 cheques totalling Rs. 27.50 lacs were given to the firm of the complainant on various dates between 23.03.2001 to 23.07.2001 and

pursuant to the same supplies were made by the TISCO Ltd. The informant being the marketing agent for TISCO Ltd. had been proceeded against for recovery of the amount for which materials had been taken by the petitioners.

8. In the case of "M/s. Shakti Travel and Tours" (supra), the same was with respect to offence committed under Section 138 of the Negotiable Instruments Act in which the Hon''ble Supreme Court had held that in a complaint regarding dishonour of cheque, factum of service of notice should be mentioned and unless service of notice is not asserted in the complaint, it is not maintainable. The said case is not applicable in the present case since this case does not arise out of a complaint instituted under Section 138 of the Negotiable Instruments Act, rather the informant has focused on the allegation of cheating and criminal breach of trust so as to attract the provisions of the Indian Penal Code. In the case of "G. Sagar Suri" (supra), the Hon''ble Supreme Court while considering the attempt of the complainant to rope in all the members of the family in a case under Section 138 of the Negotiable Instruments Act had held as follows:

14. "We agree with the submission of the appellants that the whole attempt of the complainant is evidently to rope in all the members of the family particularly those who are the parents of the Managing Director of Ganga Automobiles Ltd. in the instant criminal case without regard to their role or participation in the alleged offences with the sole purpose of getting the loan due to the Finance Company by browbeating and tyrannising the appellants with criminal prosecution. A criminal complaint under Section 138 of the Negotiable Instruments Act is already pending against the appellants and other accused. They would suffer the consequences if offence under Section 138 is proved against them. In any case there is no occasion for the complainant to prosecute the appellants under Sections 406/420 IPC and in his doing so it is clearly an abuse of the process of law and prosecution against the appellants for those offences is liable to be quashed, which we do." 9. In the case under reference, parallal proceedings were going on inasmuch as a case under Section 138 of the Negotiable Instruments Act as well as a case under the provision of Indian Penal Code was instituted and no role or participation in the alleged offence by some of the family members were alleged leading to the quashing of the criminal case. In the case at hand, there is a specific mention in the First Information Report that the petitioner No. 1 as well as his brothers who have been arrayed as accused were involved in the business of the said firm and it was the brothers who had approached A.S.L. Enterprises Ltd. and had induced them to instruct the TISCO Ltd. to supply the materials which they ultimately did. Therefore, the participation of the petitioner Nos. 1, 2 and 3 is apparent from the face of the record and it cannot be said that merely because the cheques were issued by the petitioner No. 1, the petitioner Nos. 2 and 3 cannot be held liable for being prosecuted in the present case. Moreover, the cheques were dishonoured after the same being deposited by TISCO Ltd. and the informant could not and did not have any legal remedy to institute a case against the petitioner No. 1 for the offences punishable under Section 138 of the Negotiable Instruments Act. The

role of the petitioner No. 4, although has not been specifically mentioned in the written report, but in the counter affidavit filed by the opposite party No. 2, an averment has been made based on paragraph 9 of the Case Diary that the petitioner No. 4 was detained in police custody in Alipur Kolkata in respect of other offences and it has come to light that it was the petitioner No. 4 who was the master mind of all the illegal activities committed by the other petitioners.

10. In the case of Rajiv Thapar and Others Vs. Madan Lal Kapoor, , the Hon''ble Supreme Court has delineated the steps for determination of the veracity of the power for quashment raised by an accused which are as follows:

30.1. "Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that is cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused."

11. Considering the allegations made against the petitioners which on investigation were found to be true and charge-sheet was submitted against the petitioners to which cognizance was taken, I find that the allegations do not come within the parameters delineated by the Hon''ble Supreme Court in the case of Rajiv Thapar and ors. (supra). Moreover, the inherent powers under Section 482 of the Cr.P.C. has to be exercised sparingly and with circumspection. The court will refuse to entertain an application for quashing the criminal proceedings if the factual aspects suggest that there is a criminal intent on the part of the accused. Moreover, the assertions made by the counsel for the petitioners that at best the case is made out only against petitioner No. 1 is devoid of merit as the said assertion with respect to the complicity of the other accused persons in view of the facts and circumstances of the case can best be appreciated in course of the trial and not at this stage by invoking the inherent

powers under Section 482 of Cr.P.C.

12. In view of what has been stated above, I do not find any merit in this application to warrant interference by this Court.

13. Accordingly, this application is hereby rejected.