

(2000) 04 PAT CK 0009

In the Patna High Court

Case No : Criminal Miscellaneous No. 8040 of 1996

Shyam Nandan Singh and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 21-04-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 244, 245, 482
Penal Code, 1860 (IPC) — Section 120B, 406, 420, 467, 468

Citation : (2001) 3 PLJR 278

Hon'ble Judges : P.K. Sinha, J

Bench : Single Bench

Advocate : Surya Bhushan Prasad Singh and Nand Bansh Narain Singh, for the Appellant; S.K.P. Sinha, for State and Jay Nandan Singh, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Sinha, J.—Petitioner Shyam Nandan Singh and four others have filed this application u/s 482 of the Code of Criminal Procedure praying therein to quash the criminal prosecution against them in Complaint Case No. 156(C) of 1996 appertaining to Tr. No. 824 of 1996 pending in the court of the Judicial Magistrate, 1st Class, Patna and order dated 12.2.1996 whereby and where under the Petitioners and others were ordered to be summoned to face trial for offences punishable under Sections 120 B, 467, 468, 471, 420, 406 and 477A of the Indian Penal Code.

2. The case of the complainant M/s Motel Sayonara through its proprietor Abhirama Devi, who is Opposite Party No. 2, in short, is that complainant Motel Sayonara was a partnership firm since 28.3.1985 of which, besides Abhirama Devi, her husband Nawal Kishore Singh and one Rajiv Kumar were partners. On 30.7.1987 the Bihar State Financial Corporation ("Corporation" in short) sanctioned loan of Rs. 19.25 lacs for which equitable mortgage was created by deposit of the title deed and an agreement was executed on 21.11.1987. The land upon which the Motel existed was acquired by Abhirama Devi as her

Stridhan property.

3. Upon death of her husband on 13.6.1990, and also on retirement of the 3rd partner Rajiv Kumar w.e.f. 22.9.90 the complainant became absolute share holder of the firm.

4. Out of the sanctioned loan, the Corporation had disbursed only an amount of Rs. 10.87 lacs. It is claimed that the Petitioner Shyam Nandan Singh induced the complainant to constituted fresh partnership firm and for that a private deed of agreement dated 17.9.1990 was created in between Abhirama Devi and the Petitioners who became partners, with Abhirama Devi retaining 20% of share, with the condition that the Petitioners would pay Rs. 8 lacs to the complainant as well that new partners would repay the loan already advanced from Corporation of which about Rs. 3 lacs were due. Shyam Nandan Singh was to work as Managing Partner.

5. Subsequently a deed of partnership was made on 22.9.1990 amongst the complainant and Petitioners which also stipulated contributions on behalf of the Petitioners, and if the financial arrangements were not adhered to within three years, the new partners were to be deemed to have been compulsorily retired.

6. It has further been claimed that Petitioner Nos. 1 to 4 did not comply the terms of partnership deed, hence they were deemed to have been automatically retired as partners of the firm and, as such, they ceased to have any concern as partners of the firm. Thereafter, they were not entitled to execute deed on behalf of the Firm or to receive money on its behalf, or to operate any account of the firm.

7. It has been contended that the procedure for sanctioning of loan from the Corporation is that the partners had to apply for the same whose photographs were to be retained in the office of the Corporation and all the partners had to sign before the Branch Manager of the Corporation who was to identify the partners with the help of their photographs.

8. It is further alleged that though the Petitioners had retired from the firm but in conspiracy in between themselves they created a forged deed of agreement by forging signature of Abhirama Devi on the deed and Petitioner Nos. 1 to 4, in collusion with the Branch Manager of me Corporation at Begusarai created a letter of acceptance also purported to have been signed by Abhirama Devi as a partner including two affidavits, guarantee bond and supplementary agreement dated 18.10.1985, all also purported to have been signed by Abhirama Devi which was forwarded by the Branch Manager to the Manager of the Corporation at Patna, fully knowing that the Petitioners (Nos. 1 to 4) had retired from the firm and that document was fabricated. The Branch Manager admitted that Petitioner Nos. 1 to 4 and Abhirama Devi had signed in his presence which agreement was registered in his presence on 21.10.1995. The complainant has claimed that she had never gone there nor had signed any document and that all the signatures are forged and fabricated.

9. It is claimed that the official of the Corporation, accused R. Haque, sent a Bank draft of Rs. 3,80,298/- which was received by Shyam Nandan Singh and the Petitioner Nos. 2 to 4, instead of depositing the same in original account of the firm, deposited the same in the newly opened account in the name of the firm which was opened on the, basis of an affidavit also bearing forged signature of Abhirama Devi. Thereafter, accused Shyam Nandan Singh withdrew Rs. 28,000/- and Rs. 10,000/- by two different cheques from that account, and further withdrew Rs. 3 lacs from that account and transferred that three lac to his personal pre-existing account.

10. The learned Magistrate recorded the statement of the complainant on solemn affirmation, and during enquiry, two more witnesses were examined and some documents were also filed and on perusal of materials on record, the learned Magistrate found that a prima facie case was made out and, accordingly, by the impugned order summoned the accused persons.

11. At the outset it may be stated that insofar as Petitioner No. 5 Madhaw Kumar @ Pappu Kumar is concerned, it does not appear that the complaint petition contains any such allegation which would prima facie make out commission of any offence by him.

12. Learned; counsel for the Petitioners has argued that Annexure 3 to the petition is a partnership deed in between Abhirama Devi and Petitioner Nos. 1 to 4 dated 4.3.1932 constituting a new partnership firm fully knowing that parties to the agreement were partners since 13.6.1990 and all the five partners including Abhirama Devi had 20% share each with Petitioner Shyam Nandan Singh functioning as Managing partner of the firm authorised to carry on business of the firm, who was also entitled to open accounts in the Bank jointly and severally, operate the accounts and to receive cheques etc. It was also stipulated in the aforesaid deed that in case of any difference, the dispute was to be decided by Arbitrator appointed by the majority of the partners.

13. learned Counsel for the Petitioners has argued that the Arbitration clause clearly shows that any dispute arising between the parties would be decided by the Arbitrator, hence the dispute should be treated as of civil nature for which a criminal case could not be allowed. It has been submitted that this agreement has been withheld by the complainant while filing complaint petition and full facts were not placed before the court.

14. Second point urged by the learned Counsel is that the impugned order was a cryptic one which clearly showed non-application of judicial mind, hence that order is liable to be quashed, on this ground alone. The next point is that the allegations are motivated and vexatious in nature hence the prosecution is fit to be quashed. To establish these points learned Counsel has relied upon the following decisions:

Hari Prasad Chamaria Vs. Bishun Kumar Surekha and Others, , Ram Prakash Mathur @ Ladlay Mathur Vs. State of Bihar and Another, , Ch. Veeraraghavaiah

Vs. State of Bihar and Another, , Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, and Bunni Lal Das and Others Vs. The State of Bihar and Another, .

15. Learned Counsel further argued that whatever was done, was done by the Petitioner Shyam Nandan Singh in. the capacity of Managing Partner hence he was not criminally liable. It has been denied that any of the signatures on the document was forged.

16. On the other hand, learned Counsel for opposite party No. 2 has argued that this is not a case in which action of Shyam Nandan Singh as a Managing Partner has been challenged, but the clear allegation is that from the various allegations as mentioned in the complaint petition, it was made out that forgery was committed insofar as the signature of Abhirama Devi was concerned and thus, malafide liability was created against Abhirama Devi though her clear allegation was that she was not a party to the execution of any of those documents. learned Counsel has pointed out that there was not only allegation of forgery but the allegation also was that accused persons had withdrawn amount of low, and had deposited the same in personal account of Petitioner No. 1 and had misappropriate the same, in conspiracy with each other.

17. On careful perusal of the complaint petition, which is supported by the evidence in course of enquiry and in the statement of the complainant on S.A. prima facie offence is made out against Petitioner Nos. 1 to 4. Therefore, it cannot be said that no offence whatsoever was made out against those Petitioners or that so far they are concerned, allegations at this stage could be said to be motivated.

18. Insofar as the Form of the impugned order dated 12.2.1996 is concerned, it is desirable that order should Indicate that the Magistrate while considering issuance of summons against accused, has applied his judicial mind to the materials on record. However, this does not mean that the learned Magistrate is required to evaluate the evidence on record minutely or to write out an exhaustive order. It will be sufficient if the order shows that the learned Magistrate had considered the materials on record and had applied his judicial mind to the facts of the case.

19. The impugned order would show that after recording the statement of the complainant as well the evidence of two witnesses the learned Magistrate stated that from a bare perusal of the complaint petition she found sufficient material in Support of the complaint case and also and that against the accused mentioned in the complaint petition, a prima facie case was made out. Cognizance of offence thereafter was taken and the complainant was directed to file requisites (for summoning the accused). From Annexure 2 which is copy of the order sheet it will appear that the statement of the the complaint was recorded on 7.2.1996 and witness was examined on 8.2.1996 on which date the complainant was heard on the point of taking of cognizance and the case was placed for orders on

12.2.1996 on which date order was passed. However the wording of the order would show that on that day the complainant was examined and evidence of two witnesses was recorded. This would indicate that the learned Magistrate had not fully applied his mind to the sequence of events.

20. The question is as to whether on this point alone the entire prosecution should be quashed. In my opinion the answer has to be in negative because the learned Magistrate, though appears to have committed error in the sequence of events, but has found that from the materials on record prima facie case was made out.

21. Now this matter has been heard by me and on application of mind to the materials on record I find that insofar as Petitioner Nos. 1 to 4 are concerned, the complaint petition had prima facie made out commission offence against them, hence they can be said to have rightly summoned to face the trial. In that event on this technical point, if the entire prosecution is quashed, that may not serve the ends of justice.

22. Arguments have also been made not only on Annexure 3 of the petition but the documents annexed in the counter affidavit. I need not go through those documents to evaluate, on their basis as to whether the allegation of the complainant on one hand, or the defence of the Petitioners on the other, is mad out. It can be done in course of the trial. Evidence recorded u/s 244 of the Code of Criminal Procedure can also be evaluated for the purpose of Section 245 of the Code.

23. In the result, the prosecution against the Petitioner Madhav Kumar @ Pappu Kumar in the complaint case is hereby quashed. However, insofar as the Petitioners, Shyam Nandan Singh, Narsingh Prasad Singh, Smt. Gayatri Devi and Ram Nandan Singh are concerned, in the light of observations made above, their application is dismissed.

24. In so far as the other accused are concerned, they are not parties to this petition, hence their case has not been considered.