
(2012) 02 JH CK 0136

In the Jharkhand High Court

Case No : Writ Petition (Cr.) No. 115 of 2010

Shyam Sundar Agarwalla, Banwari Lal Agarwalla, Surendra
Kumar @ Surendra Kumar Agarwalla and Ramesh Kumar
Agarwalla

APPELLANT

Vs

The State of JHARKHAND and The Branch Manager, Punjab
National Bank, Jharia Branch, Jharia

RESPONDENT

Date of Decision : 09-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320(3), 321
Penal Code, 1860 (IPC) — Section 109, 120B, 149, 34, 406

Citation : (2012) 2 JCR 497 : (2012) 2 JLJR 94

Hon'ble Judges : Dhruv Narayan Upadhyay, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.N. Upadhyay

1. This criminal writ application has been preferred against the Order dated 01.08.2008, passed by learned Judicial Magistrate, Ist Class, Dhanbad in G.R. Case No. 3260/1993 corresponding to Baliapur P.S. Case No. 85/1993 whereby the learned Judicial Magistrate, Dhanbad has refused to give consent to the State to withdraw the case as prayed through learned APP under the provisions contained u/s 321 of Cr.P.C. and the Order dated 08.04.2009, passed by Sessions Judge, Dhanbad in Criminal Revision No. 43/2009 whereby and whereunder, the revision application preferred by the petitioner against the order dated 01.08.2008 passed by the learned Judicial Magistrate, Ist Class, Dhanbad has been dismissed and the order dated 01.08.2008 passed by learned Magistrate has been affirmed.

2. The brief facts appearing from the written report, lodged by the Senior Branch Manager, Punjab National Bank, Jharia Branch is that the petitioners who are partners of M/s. Mittal Briquette Factory, Amjhora, Baliapur (Dhanbad), had

taken a loan from the said Bank after pledging raw materials as well as products. In due course, the aforesaid Factory stood closed which was detected in the inspection done by the Bank authority and it was also found that the petitioners were not particular in sending the stock statement in time and they had also misappropriated the stock of raw materials and products pledged with the Bank.

3. On the basis of written report, Dhanbad Baliapur P.S. Case No. 85/1993 corresponding to G.R. No. 3260/1993 for the offence under Sections 418, 420, 406, 120B and 109 of the Indian Penal Code was registered and after due investigation, chargesheet was submitted and after securing appearance of the petitioners, they were put on trial.

4. It is submitted that during pendency of the trial, the dues lying on the Firm of the petitioners, was cleared with interest to the satisfaction of the Bank whereafter, the Bank has filed an application to withdraw the case but it was not entertained because the petition was not under the required condition of Section 321 Cr.P.C.. The authorised agent of the Bank has filed application before the Deputy Commissioner for filing an application u/s 321 Cr.P.C. through A.P.P. before the Court concerned and that petition was registered as Misc. Case No. 03/2006. It is further pointed out that the said petition was kept pending before the Court of Deputy Commissioner. Therefore, the petitioners have filed a Writ Petition (Criminal) No. 119 of 2006 before this Court with a prayer that the appropriate direction may be given to the Deputy Commissioner, Dhanbad to dispose of the petition filed by the Bank within a reasonable time. Accordingly, vide order dated 11.08.2006, passed in said W.P.(Cr.) No. 119 of 2006, a direction was given to the Deputy Commissioner, Dhanbad to dispose of the said petition within six weeks from the date of receipt/ production of a copy of the order and in pursuance to the direction given by this Court, said Misc. Petition filed by the Bank was disposed of by the Deputy Commissioner, Dhanbad on 25.04.2008. Thereafter, the concerned APP filed a petition u/s 321 Cr.P.C. before the learned Magistrate for giving consent to withdraw the prosecution of the petitioners from G.R. Case No. 3260 of 1993. But the learned Magistrate has refused the same vide order dated 01.08.2008. Consequently, the revision was preferred by the petitioners before the learned Sessions Judge vide Criminal Revision No. 43/2009 but they did not get favourable order and the revision stood dismissed vide order dated 08.04.2009.

5. Learned counsel has submitted that the informant - Bank was satisfied after receiving all dues from the Firm of the petitioners and, therefore, they do not want to proceed with the case against these petitioners. The learned Magistrate as well as the learned Sessions Judge should not have refused to give consent to withdraw the case and the Court, in such situation, is not expected to go into the merits of the case or to consider the other interest. In this context, learned counsel has relied upon the Judgment reported in Vijaykumar Baldev Mishra @ Sharma Vs. State of Maharashtra, [Para-17].

6. It is further pointed out that the recent amendment in Cr.P.C. also indicates

that the offence committed against the property can be compounded and the restriction with regard to value of property, as it was earlier, has been lifted. That means, if the parties have settled the dispute and the offence is compoundable, the value of property should not come in the way and the case may be disposed of on the basis of compromise. The object behind such amendment is to allow the parties to settle the dispute, if possible, in such cases, irrespective of the value of property involved.

7. Learned counsel for the State has raised no objection and he is also of the view that compounding of the offences, if permissible under the law, the Court while giving consent should not stop them from doing so by going into the merit of the case.

8. I have gone through the documents on record as referred by the learned counsel and also perused the impugned orders and the Judgment cited by the learned counsel appearing for the petitioners. The admitted position of law is that the offence u/s 420 and 406 of the Indian Penal Code are compoundable by the persons cheated or by the owner of property in respect of which breach of trust has been committed respectively. In this case, the petitioners have been prosecuted for the offence punishable under Sections 420 and 406 read with Sections 109 and 120B of the Indian Penal Code. Certainly the main offence is Sections 406 and 420 of the Indian Penal Code and the rests i.e. 109 of the Indian Penal Code is for abetment and Section 120B of the Indian Penal Code is entering into a conspiracy for committing a particular offence. If the parties have settled the dispute and the main offence is compoundable and some persons have been arraigned as accused with the aid of Section 109 of 120B of the Indian Penal Code, that should not come in the way of compounding the offence and the compromise may be accepted by passing an order in accordance with law.

9. Section 320(3) of the Code of Criminal Procedure, 1973 reads as under:

320(3) When an offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) or where the accused is liable u/s 34 or 149 of the Indian Penal Code (45 of 1860) may be compounded in like manner.

10. Be that as it may, the facts appearing in the case at hand is that the parties have settled their dispute and the informant has no grievance against the petitioners and he has filed a petition to withdraw the case. Not only that, the informant - Bank has also taken pain to knock the door of the Deputy Commissioner for filing application u/s 321 Cr.P.C. through the APP, as required by law. The Deputy Commissioner, Dhanbad has also given consent following which, the learned APP has filed the petition before the learned Magistrate, seeking withdrawal of prosecution against the petitioners. But it was refused which do not appear to be legal considering the verdict given by the Apex Court in Vijaykumar Baldev Mishra @ Sharma Vs. State of Maharashtra, [Para-17].

11. In that view of the matter, the order dated 01.08.2008, passed by learned

Judicial Magistrate, Ist Class, Dhanbad in G.R. Case No. 3260/1993 corresponding to Baliapur P.S. Case No. 85/1993 and the Order dated 08.04.2009, passed by Sessions Judge, Dhanbad in Criminal Revision No. 43/2009 stand set aside and the criminal prosecution lodged against the petitioners stands withdrawn in view of provisions of Section 321 Cr.P.C. and the petitioners are discharged from liability of their bail bonds and are set at liberty.

12. With the aforesaid observations and direction, this writ petition is allowed.