(2009) 04 PAT CK 0111

In the Patna High Court

Case No : Cr. Misc. No. 399 of 2007

S.N.R. Kesri APPELLANT

Vs

State of Bihar and Jai Shankar Jha RESPONDENT

Date of Decision : 01-04-2009

Acts Referred:

Citation : (2009) 04 PAT CK 0111

Final Decision : Allowed

Judgement

Ajay Kumar Tripathi, J.—Petitioner was the Chief Manager of Punjab National Bank and was posted at the relevant time at New Market Branch, Fraser Road, Patna. He is seeking quashing of the order dated 31.1.2006 passed by the learned Judicial Magistrate, Ist Class, Patna in Complaint Case No. 2080 (C) of 2005. Cognizance has been taken against the petitioner u/s 166 of the Indian Penal Code.

2. Section 166 of the Indian Penal Code is quoted hereunder:

166. Public servant disobeying law, with intent to cause injury to any person. - Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

3. In short the allegation in the complaint petition is that the complainant who is opposite party No. 2, Jai Shankar Jha claims himself to a Director of Rock Gas India Ltd. It is alleged that the company is duly registered with the Registrar of Companies and it has its Memorandum of Articles and Association with certain objects indicated thereunder. Though the details of the business has not been explained in the complaint petition but it is stated in the complaint petition that the complainant had opened Current Account No. 1879 with Punjab National Bank in New Market Branch, Patna in the year 2000. At that point of time the

account was in the name of Zink Nite Coal and Gas (India) Ltd. He alleges that at one point of time which is on 20.5.2005 he went to deposit a sum of Rs. 50,000/- which contained 50 notes of Rs. 1000/-. On counting the said notes by the cashier it was pointed that five notes out of those fifty notes were counterfeit notes. It is alleged that the complainant sought cancellation of those notes or return but nothing of the kind was done. It is further alleged that the officials of the bank abused him, humiliated him and also assaulted him. The complainant was also asked to submit certain documents with regard to account in question which the complainant states that he submitted in original. No explanation was given to the complainant on the issue but subsequently the operation of the current account was stopped which has caused loss to his business and reputation. This was provocation for him to file the complaint in question in which cognizance has taken u/s 166 of the Indian Penal Code.

4. Learned Counsel representing the petitioner submits that it is a vexatious kind of complaint which has been filed for a bonafide act of the petitioner who happened to be the Chief Manager of the Branch in question. He alleges that when the fact of counterfeit notes having been discovered in deposit was pointed out to him he had to take certain steps laid down in this regard. He also had doubt about the way account was being operated in the name of the said company and in terms of certain direction which has been issued to all the branches a drill was carried out. In this regard petitioner has brought on record the circular dated 19th March, 2005 issued by the Inspection and Audit Division of Punjab National Bank under the head of "No Your Customer" (KYC) and "Anti-Money Laundering" (AML) Standards. When certain incongruity came to the knowledge of the Branch with regard to the said account, the account was temporarily freezed. This was the immediate provocation for filing this complaint against the petitioner.

5. Petitioner submits that after he received summons in the matter when cognizance was taken, he was compelled to do some further exercise and enquiry into the account as well as the complainant namely, opposite party No. 2. He has brought many documents to show that the company in question as well as opposite party No. 2 does not have a very respectable reputation in matter of creation of this company and its running. Large number of cases have been instituted against opposite party No. 2 which need not be gone into in detail so far as the present case is concerned but one thing which does emerge on going through those records is that all is not well with the way the complainant has been running the companies which are quite a few and the various deposits which have been made from time to time without proper explanation. If the petitioner as a Chief Manager had taken certain steps to defend the interest of the branch and banking norms he has committed no wrong or offence as pointed out by the complainant.

6. Looking at the totality of the material which has been brought on record and in absence of any bonafide explanation having been offered on behalf of the

complainant and series of reports with regard to fraudulent activities of the complainant, the Court comes to an opinion that it is a case which has been filed to deter the petitioner from performing his official duties fairly and efficiently. Cognizance taken against the petitioner is by way of abuse of the process of the court and the complainant has not been able to satisfy this Court that the action taken against him by the petitioner falls foul of Section 166 of the Indian Penal Code.

7. Learned Counsel representing opposite party No. 2 relies upon a few decisions with the sole object that there ought not to be interfered with against the order of cognizance and in this regard he relies in the case of P.K. Pradhan Vs. The State of Sikkim represented by the Central Bureau of Investigation, . The decision is an authority with regard to question of sanction u/s 197 of the Code of Criminal Procedure and power of taking cognizance against the civil servants. Though the reliance has been placed on para 7, 8, 15 and 16 of the said decision, the Court is of the opinion that the same is not applicable to the present case because the petitioner is not seriously urging the question of prior grant of sanction with regard to cognizance taken against him.

8. The other decision relied by opposite party No. 2 is the case of K. Ch. Prasad Vs. Smt. J. Vanalatha Devi and Others, . This decision has been relied upon by the opposite party No. 2 on the ground that an employee of Nationalized Bank may be a public servant but still no sanction u/s 197 as such is required. This decision again has no bearing to the present case. Yet another decision on which reliance has been placed is the case of Usha Ahuja Vs. State of Haryana and Others, . With regard to the said decision the Court would like to notice of paragraph 5 and state that though power u/s 482 of the Code of Criminal Procedure in principle is expansive but in practice the power is exercised in exceptional circumstances but the Hon''ble Supreme Court also slates that no prosecution of a criminal kind ought to be maintained if it is of the vexatious kind and it is for securing the ends of justice in favour of the petitioner.

9. Taking the entirety of the situation the Court comes to a considered opinion that the cognizance taken against the petitioner deserves to be interfered with as it is vexatious in nature and more out of pique rather than any substantive offence having been committed by the petitioner.

10. The quashing application is allowed. The order taking cognizance dated 31.1.2006 passed in Complaint Case No. 2080 (C) of 2005 by the Judicial Magistrate, Ist Class, Patna is hereby quashed.