(2024) 02 PAT CK 0006

In the Patna High Court

Case No : Criminal Revision No. 318 Of 2019

Sunil Bharti Mittal APPELLANT

Vs

State Of Bihar RESPONDENT

Date of Decision : 02-02-2024

Acts Referred:
Indian Penal Code, 1860 — Section 120B, 468, 471

Citation : (2024) 02 PAT CK 0006

Hon'ble Judges : Bibek Chaudhuri, J

Bench : Single Bench

Advocate : Chitranjan Sinha, Rajesh Ranjan, Kanika, Jai Narain Thakur, Rajesh Kr. Verma, Shashank Chandra

Final Decision : Allowed

Judgement

1. An order, dated 25th of January, 2019, passed in Complaint Case No. 1974 C of 2018, by the learned Additional Chief Judicial Magistrate-III, Patna, taking cognizance of offence under Sections 468/471/120B of the Indian Penal Code, is challenged by the petitioner, who happens to be Accused No. 1 of the aforesaid Complaint Case.

2. This is the case of the complainant / Opposite Party No. 2, herein, that he was employed as Manager, Band-I in the CSD Department of Bharti Airtel Limited since 12th of September, 2006. As part of work of employment, the complainant had to send samples of Customer Acquisition Forms (hereinafter referred to as the (‘CAFs’) for verification to the TERM Cell for auditing and compliance. While working as such, the complainant found that huge malpractices were going on by the concerned officers in course of manufacturing such samples. It is alleged that the complainant was forced to do such activities on being directed by the Accused Nos. 1 to 4. When he resisted fabrication and forgery of documents in relation to the CAFs, the accused persons started to put illegal pressure on him to do such malpractices and on his refusal, he was terminated from his service. It is alleged that the Opposite Party No. 2 deliberately suppressed relevant

Circulars issued by the Department of Telecommunication, Government of India and suppressing the said circulars, misguided the Trial Court to take cognizance of offence against the accused persons.

3. It is the case of the petitioner, who happens to be the Chairman of M/s Bharti Airtel Ltd., a private limited company, engaged in Cellular Telecommunication business in India that the said company has been granted license by the Department of Telecommunication, Government of India to provide telecommunication services throughout the country. The services provided by the company is regulated under the Indian Telegraph Act. More particularly, the company has been issued license to Private Telecommunication Services for the entire country. The Department of Telecommunication, Government of India provided license to the company for telecommunication services in Bihar Telecom Circle comprising the States of Bihar and Jharkhand. As the Chairman of the company, the petitioner is responsible for determining corporate strategy and development, leadership and governance and policy developments on a global scale. Day to day work of the company are looked after by the Directors, including the Managing Directors and CEOs. The complainant/ Opposite Party No. 2 was employed with the company in Customer Service Department. Due to change in the Government's circular, business strategy and the market, the post held by the complainant became redundant and he was terminated from his service on due process of law. He applied to the company for retention, but his prayer was rejected by the company. Then only, he started to make false and frivolous allegations against the company. The witnesses on behalf of the complainant, whose initial statement was recorded by the learned Magistrate on solemn affirmation, were also terminated and voluntarily resigned.

4. It is submitted on behalf of the petitioner that the CAFs are verified by an expert body, i.e., TERM Cells.

5. The Hon'ble Supreme Court in Avishek Goneka vs. Union of India & Anr., Writ Petition (Civil) No. 285 of 2010, by its judgment dated 27th of April, 2012, clearly delineated regulatory norms to be followed by the Telephone Regulatory of India (TRI).

6. The Hon'ble Supreme issued detailed guidelines regarding verification of CAFs, issuance of Sim Cards etc., on the basis of which the company has been working. It is also directed by the Hon'ble Supreme Court that, if any irregularity or illegality is detected by way of fabrication and forgery of CAFs and issuance of Sim Cards, the TERM Cell shall lodge complaint/FIR against licencee and imposed penalty in case any forgery is found in CAFs.

7. Thus, it is contended on behalf of the petitioner that TERM Cell is the competent authority to lodge any complaint with regard to the forgery in respect of the CAFs.

8. The complainant has no authority to make any such complaint in view of the aforesaid decision of the Hon'ble Supreme Court. The petitioner has also

mentioned series of decisions in his petition of complaint which shall be taken into consideration at an appropriate stage, if necessary.

9. At the stage of admission of the instant Revision, the following issues are raised for determination:-

(i) Whether the impugned order, dated 25th of January, 2019 is sustainable in the light of the decision of the Hon'ble Supreme Court in Avishek Goneka (supra);

(ii) Whether the petitioner can be arraigned as an accused in his capacity as a Chairman without impleading Bharti Airtel Ltd; and

(iii) Whether there was sufficient material before the learned Magistrate to take cognizance of offence and issuance of process against the petitioner under Sections 468/471/120B of the IPC.

10. It is submitted by the learned Senior Advocate for the petitioner, at the outset, that the Accused No. 1/petitioner has been implicated as an accused in the above-mentioned complaint case as Chairman of Bharti Airtel Ltd. However, the complainant did not implead Bharti Airtel Ltd., the company, as an accused in the said complaint case. A Chairman of the company in his official capacity cannot be impleaded without company being made an accused. The company is the principal accused and if, at all, it is seen that the Chairman of company looks after day to day works of the company, he may be held vicariously liable. It cannot be held that as the petitioner represents directing mind and will of the company, as state of mind, was state of mind of the company and, therefore, acts of the company, could be attributed and imputed to the petitioner. Such proposition would run contrary to the principle of vicariously liability, detaining circumstances under which Directors of the company can be held liable.

11. In support of his contention, he refers to a decision of the Hon'ble Supreme Court in the case of Sunil Bharti Mittal vs. Central Bureau of Investigation, reported in AIR 2015 SC 923. On the same point, he also refers to another decision of the Hon'ble Supreme Court in the case of Maharashtra State Electricity Distribution Co. Lt. Vs. Datar Switchgear Ltd. & Ors., reported in (2010) 10 SCC 479.

12. Referring to the decision of the Hon'ble Supreme Court in the case of R. Kalyani Vs. Janak C. Mehta & Ors., reported in (2009) 1 SCC 516, learned Senior Advocate for the petitioner submits that allegation of preparation of CAFs by forging some documents cannot be attributed to the accused. On the contrary, specific case of the complainant is that as local Manager it was his duty to send CAFs to TERM Cell. If any forgery or manufacturing of false document happened, it took place at the end of the local office at Patna. The Chairman of the company did not manufacture those documents. The complainant is absolutely silent as to how the sample CAFs were prepared and by whom. In the absence of such prima facie evidence, it is not proper for the Trial Court to take cognizance of offence against the petitioner.

13. The learned Advocate for the Opposite Party No. 2, on the other hand, submits that the allegation made by the complainant should be viewed in a bigger prospective by way of creating forged CAFs license and lacks of SIM Cards issued in the names of fictitious persons are available in the market. Those SIM Cards may be a source of various criminal activities including terrorist activities or offence like waging war against the State. The Opposite Party No. 2 tried to stop the said malpractices and when he raised the issue, he was terminated. The matter requires to be thoroughly inquired and tried. It may also be a fact that highest authority of Bharti Airtel Ltd. is involved in such forgery and manufacturing of false documents.

14. Having heard the learned Senior Advocate for the petitioner and the learned Advocate for the opposite parties and on careful perusal of the revisional application as well as the decisions made by the Hon'ble Supreme Court, it is ascertained that forgery in relation to the CAFs is directed to be looked into by TERM Cell and TERM Cell is the only authority who can inspect and file complaint if false documents are created and forgery is done in connection with CAFs. The complainant is not the authorized person to make such complaint. Moreover, this Court is not unmindful to note that in case of commission of any offence, done by a company, the company is the principal accused. Other persons, who are responsible for the day to day affairs of the company, are in the second category. Without prosecuting the company, the person in second category, i.e., the Chairman, cannot be prosecuted.

15. In support of my submission, the decisions of the Hon'ble Supreme Court in Raghu Lakshminarayanan vs. Fine Tubes, reported in (2007) 5 SCC 103 and Aneeta Hada vs. Godfather Travels & Tours (P) Ltd., reported in (2012) 5 SCC 661, may be taken into consideration.

16. For the reasons stated above, I have no other alternative but to hold that the learned Magistrate committed gross illegality in taking cognizance of offence under Sections 468/461/120B of the IPC against the petitioner and the order of taking cognizance against the petitioner is quashed and set aside.

17. The instant Revision is accordingly allowed on contest.