(2005) 04 CHH CK 0003

In the Chhattisgarh High Court

Case No : Criminal Revision No. 539 of 2001

Yogendra Singh Badoria APPELLANT

Vs

State of Chhattisgarh and Others RESPONDENT

Date of Decision : 06-04-2005

Acts Referred:

Constitution of India, 1950 — Article 356
Criminal Procedure Code, 1973 (CrPC) — Section 197(1), 227, 228, 239, 240
Penal Code, 1860 (IPC) — Section 120A, 120B, 34, 406, 409

Citation : (2005) 3 MPHT 81 : (2006) 2 MPJR 127

Hon'ble Judges : V.K. Shrivastava, J

Bench : Division Bench

Advocate : P.K.C. Tiwari and Avinash Kumar Mishra, for the Appellant; Arun Sao, Dy. Govt. Advocate and A.S. Kachwaha, Panel Lawyer for Respondent No. 1 and Subhash Yadav, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Shrivastava, J.—Being aggrieved by the order dated 11-10-2001 in Criminal Case No. 1851/1995 (State v. Ram Prasad Pandey and three Ors.) passed by Chief Judicial Magistrate, Jagdalpur, Bastar, petitioner has preferred this revision.

2. Facts material for disposal of this revision, in brief compass, are that the petitioner was duly elected President of District Co-operative Central Bank Limited, Jagdalpur, Bastar. For proper functioning of the business of the Bank bylaws have been framed. Non-applicant No. 4, Balkrishna Agrawal applied for grant of loan for establishment of printing press namely as Sarita Printers and Publishers, Jagdalpur. The said application was forwarded to Apex Bank, Bhopal on 18-9-1993. On 27-9-1993 to discuss various agendas a meeting of Loan Sub-Committee was organized. Petitioner was the Chairperson of that Committee. There was no agenda to consider the matter regarding sanction of loan to Balkrishna Agrawal, but on the initiation of the petitioner, the matter was taken up, and a loan of Rs. 99 lakhs had been sanctioned without waiting for sanction

and guidance from the Apex Bank, Bhopal and after bank hours, on 27-9-1993, a sum of Rs. 25 lakhs was released in favour of Balkrishna Agrawal, and on 28-9-1993, a sum of Rs. 49 lakhs has been paid to him. An enquiry has been conducted by Joint Registrar, Cooperative Society and Branch Manager, M.P. Cooperative Central Bank Ltd., Raipur under the authority of Registrar, Co-operative Society, Bhopal. On discreet enquiry, it was found that, for sanction of loan, more than Rs. 7.50 lakhs, the permission of Apex Bank was necessary. Project Report and documents, required for sanctioning the loan, are required to be verified. Proper guarantee should be taken for its repayment, but all the necessary requirements for sanctioning the loan have been overlooked and without authority loan was sanctioned and a sum of Rs. 74 lakhs has been released in favour of Balkrishna Agrawal. The enquiring authority also found that, the petitioner, who was the Chairperson of the Bank, and Ram Prasad Pandey, the then Manager, knowingly that all the documents are fake, without any authority, sanctioned and paid a sum of Rs. 74 lakhs to non-applicant No. 4, Balkrishna Agrawal. A report was lodged on 1-11-1993 by the Manager, Co-operative Central Bank, Jagdalpur. Police registered a case against the petitioner and Ors. under Sections 420, 409, 406, 427, 467, 468, 471, 120B read with Section 34 of the IPC.

3. During investigation all the necessary documents to support the allegation, had been collected and seized. The statements of witnesses had been recorded, and after concluding the investigation, a charge-sheet against the petitioner and non-applicant Nos. 2,3 and 4 has been filed in the Court of Chief Judicial Magistrate, Jagdalpur for trial. Advocate Mr. Shivnarayan Pandey, appearing for non-applicant No. 2, Ram Prasad filed an application u/s 91 of the Cr.PC for calling the record relating to the resolution passed by the Loan Sub-Committee on 27-9-1993 and the loan policy. Learned Trial Court, vide order passed on 6-10-2001, rejected the same. However, the learned Trial Court mentioned that, in future, if necessary, the said documents can be called. On 11-10-2001, the matter was taken up for consideration, and the Trial Court, after hearing both the parties and considering all the facts and documents repelled the contentions of the petitioner that, sanction for prosecution was necessary, and from the material available on record, the Trial Court framed charges under Sections 120B, 409,420,471/34 of the IPC against the petitioner.

4. The petitioner contended that, without obtaining sanction from the Government, the petitioner can not be prosecuted in violation of Section 197(1) of the Cr.PC. For reference, the provision contained in Section 197(1) of the Cr.PC is reproduced below :?

"Section 197. Prosecution of Judges and Public servants.? (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction?

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of the Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted."

5. From bare reading of the above provision, it is clear that, only those public servants are covered under this provision who are removed by the Government or with the sanction of the Government. Admittedly, the petitioner is a public servant, but can not be removed from his office by or with the sanction of the Government. Therefore, the protection provided u/s 197(1) of the Cr.PC is not available to the petitioner.

6. ''Petitioner''s contention is that, he is entitled for indemnity as provided u/s 88 of the M.P. Co-operative Societies Act, 1960 (henceforth ''the Act''). The provision contained therein reads as below :?

"Section 88. Indemnity for acts done in good faith.? No suit, prosecution or other legal proceedings shall lie against the Registrar or any person subordinate to him or acting under his authority, in respect of anything done or purporting to have been done by him in good faith under this Act."

7. It is conspicuous that, the indemnity has been allowed only to the Registrar or any person subordinate to him or acting under his authority, that too, in case it is proved that, the acts done by them are in good faith. Section 3 of the Act makes the provision for Registrar and other Officers and also that provision specifies subordination. Neither President of District Co-operative Central Bank comes within the purview of Section 3 of the Act nor he is subordinate to the Registrar. Therefore, the indemnity as provided u/s 88 of the Act is not available to the petitioner. Apart from that, whether the act has been done in good faith or not, is a matter of evidence and that required to be proved by legal evidence.

8. Petitioner further contended that, for framing charge,prima facie there must be evidence to establish the allegations against the petitioner. Reliance has been placed by him in the case of Dilawar Babu Kurane v. State of Maharashtra, reported in 2002 Criminal Law Journal 980. Hon''ble the Apex court considering the provisions contained in Section 227 of the Cr.PC., which relates to Sessions Trial, has held that Judge can not act merely as a post office but has to consider total effect of evidence and documents produced before him. Petitioner has also

challenged framing of charge u/s 120B of the IPC against him and placed his reliance on the case of State of U.P. Vs. Sukhbasi and Others, , in which Hon''ble the Apex Court has held that to substantiate a charge u/s 120B of the Code, there must be a criminal conspiracy at least between two or more persons.

9. The given case is not a Sessions Trial, but warrant trial. For discharging the accused in Sessions Trial Section 227 of the Cr.PC, and for discharging an accused in warrant trial instituted on police report Section 239 of the Cr.PC, applies and for framing charges in Sessions Trial Section 228 of the Cr.PC, and in warrant trial instituted on police report, Section 240 of the Cr.PC applies. In Sessions Trial if a Judge considers that there is no sufficient ground for proceeding against the accused, accused can be discharged whereas in warrant trial accused can be discharged only if a Magistrate considers the charge against the accused to be groundless. Therefore, for Sessions Trial and for warrant trial instituted on Police report different yardsticks have been provided by the Legislature.

10. Petitioner''s contention is that on 27-9-1993 he was not present and has not sanctioned the loan. It is not disputed that the petitioner is by virtue of his post was the Chairperson of Loan Sub-Committee. Whenever a meeting of any committee is held, the members present are paid, their allowance in accordance with the prevailing rules by voucher prepared by department. On 27-9-1993 a document relating to payment of allowance has been prepared and Rs. 254.20 has been sanctioned for its payment. In that document, the name of the petitioner has been mentioned and the amount required to be paid has also been shown. Photo copy of the document is Annexure 08. Petitioner''s contention is that he has not signed that document. Although the said document does not bear the signature of the petitioner, but that alone does not establish the absence of petitioner in the meeting, whereas it can be presumed that the voucher had been prepared and amount had been drawn owing to the presence of the petitioner and for some reason for mistake signature could not be obtained by the employee. One of the witnesses Aashish Dude, in his statement very specifically stated that on 27-9-1993 petitioner was in the Bank in the company of Balkrishna Agrawal for the whole day. During investigation on 2-11-1993 various documents from the Bank have been seized and according to that seizure memo the the whole documents relating to Loan Sub-Committee, have been seized and as per description the matter relating to sanction of loan to Balkrishna Agrawal contains in Page Nos. 67 and 68 and that bears the signature of the Manager and the President.

11. The Joint Registrar, Co-operative Society, after enquiry came to the conclusion that the loan has been sanctioned by the petitioner. Photo copy of that enquiry report is Annexure 07. Petitioner himself has filed photo copy of Annexure 04 an order passed by Deputy Registrar Co-operative Bank on 12-6-2000. Petitioner in this dispute has submitted his written statement and it appears that in his written statement, he has not disputed that the sanctioning of

loan is not made in his presence in the meeting. The said Court in his order had given various findings based on pleading and material before him. One of the findings is that the matter regarding grant of loan to Sarita Printers & Publishers was incorporated by the permission of the Chairperson, it means with the permission of the petitioner, by other finding petitioner was also held responsible for disbursement of the said loan. According to bylaws all the transactions are needed to be done under the control and supervision of the President. Therefore, the President can not escape his liability alleging that the responsibility lies on the Manager. Hence it is also relevant to mention that the Manager from the inception has taken defence that whatever business relating to sanction and payment of loan to Balkrishna Agrawal has been effected, are done under the instructions and pressure of the President.

12. It is not disputed that loan to Balkrishna Agrawal had been sanctioned and on 27/28-9-1993 total amount of Rs.74,00,000/- has been paid to him by the Bank. Departmental enquiry against the Manager took place and the Manager had been dismissed. Although the petitioner has filed a photocopy of the letter dated 25-10-1993 written by him to the Chairperson, M.P. Co-operative Central Bank, Bhopal (Annexure A-5) complaining against the Manager, but that does not in any way diminish his own liability.

13. It is conspicuous from the material collected and placed before the Court that the petitioner being a Chairperson of the Bank, was present in the meeting of Loan Sub-Committee held on 27-9-1993 and although there was no agenda for the grant of loan to Balkrishna Agrawal, yet on his instigation the said matter was taken up and knowing it very well that the matter has already been referred to Apex Bank, Bhopal for its consideration and permission, the Loan Sub-Committee chaired by the petitioner, sanctioned the loan. Not only sanctioned, but from the evidence collected it is manifest that after closure of the Bank the employees were called from their houses and a sum of Rs. 25.00 lacs has been released on the same day in favour of Balkrishna Agrawal and thereafter Rs. 49.00 lacs has been released on 28-9-1993. Prima fade, there is material to show that a number of documents filed by Balkrishna Agrawal for grant of loan were not genuine and fake and the guarantee furnished by him was also not proper. Even one of the guarantors was the Personal Assistant of the petitioner.

14. Criminal conspiracy has been defined u/s 120A of the IPC which speaks that when two or more persons agree to do, or cause to be done,? (1) an illegal act, or (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy; provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

15. There is evidence to show that without genuine documents and even violating the directions of Apex Bank as also without jurisdiction an amount of Rs. 74.00 lacs belonging to Bank has been fraudulently made over to Balkrishna

Agrawal by the petitioner, Manager and Ors. . Being a Chairperson the amount of Bank shall be treated as entrusted to him and as a Chairperson he committed breach of trust in respect of that property. Therefore, considering all the evidence and material on record, I am of the opinion that charges against the petitioner were not groundless.

16. In view of the above discussions, I am of the opinion that the learned Chief Judicial Magistrate framing charge vide impugned order, has not committed any illegality or irregularity so as to call for any interference by the Revisional Court. Therefore, the revision filed by the petitioner is devoid of substance, liable to be dismissed and is accordingly dismissed. However, it is made clear that the Court below shall decide the case on its own merit without being influenced by any of the observations made herein. The Trial Court, on prayer being made by the petitioner, may call document mentioned at Serial No. 28, seized vide seizure memo dated 2-11-1993, but trial should not be kept in abeyance for want of that.