Ajit Kumar Singh Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Jan-19-2017

Appellant : Ajit Kumar Singh

Respondent : State of Jharkhand

Advocate for Pet/Ap. : Mr. Sanjeev Thakur

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI Criminal Miscellaneous Petition No. 89 of 2005 --- Ajit Kumar Singh son of Brindaban Singh resident of Sector III B, Chakki More, Plot No. B-1 Shopping Centre, PS B. S. City, District - Bokaro Petitioner Versus 1.The State of Jharkhand 2.Sushil Kumar Khakha, Senior Manager, Punbaj National Bank, Sector I, PS B. S. City, Bokaro Opposite Parties --- CORAM : HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY --- For the Petitioner : Mr. Sanjeev Thakur, Advocate For the Opposite Parties : None --- 6/19.01.2017 Heard Mr. Sanjeev Thakur, learned counsel for the petitioner. No one appears for the opposite parties.

2. In this application the petitioner has prayed for quashing the entire criminal proceeding in connection with B. S. City P. S. Case No. 208 of 2004 corresponding to G. R. No. 853 of 2004 including the order dated 25.10.2004 passed by the learned Judicial Magistrate 1st class, Bokaro whereby and whereunder cognizance has been taken for the offence punishable under Sections 406, 420 & 120(B) of the I.P.C.

3. It has been stated by the learned counsel for the petitioner that no offence with respect to cheating and criminal breach of trust is made out against the petitioner as the dispute relates to a transaction related to the bank. It has been stated thus that the stock which was alleged to have been sold out by the petitioner ultimately belonged to the petitioner and in fact the bank had availed of the alternative remedy by filing the necessary application before the Debt Recovery Tribunal as it could be ascertained by the counter affidavit filed by the bank. He further submitted that the question of enhancing the existing cash credit limit would not attract criminal prosecution. Learned counsel for the petitioner in support of his contention has referred to the judgment rendered by this Court in the case of Jai Kumar & Anr. Vs. State of Jharkhand & Anr. reported in 2010 (4) ECC308(Jhr.).

4. It appears that a case was instituted on the written report of the opposite party no. 2 in which it was alleged that the petitioner was the proprietor of M/s. A. B. Steel having its godown at Bye-pass Road, Chas, Bokaro. It was alleged that the petitioner is the borrower of the bank whose cash credit limit was enhanced from 10 lacs to 20 lacs against the hypothecation of iron and steel and the same was insured -2- against the joint name of borrower and bank. It has been alleged that the petitioner has submitted his last stock statement upto 31.07.2003 and the outstanding dues was to the tune of Rs. 21,02,704.51/- on 28.07.2004. In spite of repeated communications, the petitioner had failed to repay the loan and ultimately when the bank officials had visited the godown of the petitioner, it was found that the stock in the godown was nil. It has been alleged that the petitioner in connivance with the guarantor has sold the stocks hypothecated with the bank and therefore, the petitioner being the borrower as well as the guarantor has committed criminal breach of trust by dishonestly misappropriating property by entering into a criminal conspiracy. Based on the aforesaid allegations, B. S. City P. S. Case No. 208 of 2004 was instituted which culminated in the submission of charge-sheet. The learned court below vide order dated 25.10.2004 was pleased to take cognizance for the offences punishable under Sections 406, 420 & 120(B) of I.P.C. The dispute which emanates from the FIR is with respect to the loan which was taken by the petitioner and the hypothecated goods were subsequently on verification found to have been missing from the godown. The allegation itself therefore does not constitute any offence of criminal breach of trust or for that

matter, the case of cheating. In the case of Jai Kumar & Anr. Vs. State of Jharkhand & Anr. (supra), it was held as follows:

8. It is well settled that when a property is hypothecated to the creditor, the ownership and possession of the property hypothecated, remains with the debtor only, the creditor having neither ownership nor beneficial interest in the property. The hypothecation creates only a charge over the property and a right in favour of the creditor to take possession in the event of default on the part of the debtor and hypothecator. This is the view expressed by the Supreme Court in the case of Indian Oil Corporation (supra). The claim of the informant that the petitioners/borrowers could not have sold the stock on account of the charge being created in favour of the Bank, appears to be misconceived and misleading. Admittedly, the ownership and dominion over the stock continued to remain with the petitioners.

9. From the facts admitted, the essential ingredients of dishonest misappropriation of movable property as defined under Section 403 as also under Section 405, IPC, are conspicuously lacking.

10. No doubt, a commercial transaction or dispute may also involve criminal offence but only if the -3- essential ingredients of the criminal offences are made out. Where allegations in the FIR/Complaint are taken at their face value, disclose exclusively a civil dispute for which the civil remedy is available or has been availed, the initiation of criminal proceeding on the same facts, would amount to abuse of the process of the Court and in such cases, as declared by the Supreme Court in the case of Indian Oil Corporation (supra), the person who had initiated the criminal proceeding frivolously with ulterior motive, should be penalised. The test is whether the allegations in the complaint disclose a criminal offence or not.

11. In the present case, even going by the entire allegations in the FIR, none of the offences for which the Court below has taken cognizance, is made out. The creditor Bank being aggrieved with the fact that the petitioners being the borrowers, have defaulted in repaying loan, may have a legal remedy by way of filing a civil suit for recovery of the loan amount but cannot be allowed to abuse the process of Court in order to create a pressure upon the borrowers to repay the

amount.

5. It would thus appear that the ingredients of dishonest misappropriation of immovable properly as defined under Section 403 and 405 of I.P.C. are apparently lacking in the prosecution case. The dispute as has been indicated above is purely civil in nature of which the bank had already availed of its remedy as it has already instituted a case for recovery before the Debt Recovery Tribunal, Ranchi. Since the allegations made in the FIR do not constitute a criminal offence as at best the same would invite civil consequences for which the bank had taken appropriate remedy before the forum concerned, it would be an abuse of the process of court if criminal proceeding against the petitioner is allowed to continue.

6. As a consequence of the discussions made hereinabove, the entire criminal proceeding in connection with B. S. City P. S. Case No. 208 of 2004 corresponding to G. R. No. 853 of 2004 including the order dated 25.10.2004 passed by the learned Judicial Magistrate 1st class, Bokaro whereby and whereunder cognizance has been taken for the offence punishable under Sections 406, 420 & 120(B) of the I.P.C is quashed and set aside.

7. This application is allowed. (Rongon Mukhopadhyay, J) R. Shekhar Cp 3