

Champa Devi and Anr Vs. The State of Jharkhand

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Court : Jharkhand

Decided On : May-05-2017

Appellant : Champa Devi and Anr

Respondent : The State of Jharkhand

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr. Revision No. 1333 of 2015 1. Champa Devi 2. Radha Gupta .. Petitioner Versus The State of Jharkhand & Anr. .. Opp. Parties ----- CORAM: HON'BLE MR. JUSTICE ANANT BIJAY SINGH ----- For the Petitioners : Mr. Gautam Kumar, Advocate. For the State : A.P.P. For the O.P. No. 2 : Mr. Ashutosh Anand, Advocate. ----- Reserved on 21.04.2017 Pronounced on:

05. 05.2017 Criminal revision has been filed on behalf of the two petitioners namely Champa Devi and Radha Gupta being aggrieved and dissatisfied by the order dated 27.07.2015 passed by Shri Manoranjan Kumar, Judicial Magistrate, 1 st Class, Dhanbad in G.R. No. 392 of 2012, whereby after hearing the parties, an application filed on behalf of the petitioners under Section 239 of the Cr.P.C. was dismissed. Court has come to the conclusion that there are sufficient materials on record to frame charges under Sections 406, 420 and 506/34 of the I.P.C. against the petitioners and petitioners were directed to remain physically present on 12.08.2015 for framing of charges. The fact giving rise to the instant revision application is that one Pradeep Kumar Sonthalia, opposite party no. 2 filed C.P. Case No. 154 of 2012 before the court of learned Chief Judicial Magistrate,

Dhanbad against one B.N. Hotels Pvt. Ltd., a limited liability company duly incorporated under the Companies Act having its office at Gupta Bhawan, Main Road, Jharia, Dhanbad represented through its Director, Sri Rajendra Kumar Gupta and against Rajendra Kumar Gupta, which was referred under Section 156 (3) of the Cr.P.C. by the learned CJM, Dhanbad to the concerned police station for investigation, wherein the complainant / opposite party no. 2 has alleged that he is Director of Shri Ram Multicom Pvt. Ltd. - a company incorporated under Companies Act, 1956, having its office at 221, Shri Ram Plaza, P.O. - Bank More, P.S. - Bank More, District - Dhanbad and the said company of the complainant is engaged in the business of land development through construction of buildings, apartments, residential houses across the State of Jharkhand. -2- The accused no. 1 is a company floated and promoted by accused no. 2, and his family members, who happens to be Director of accused no.

1. The accused no. 1 has landed property on its name measuring 73 decimals situated at Dhaiya near C.D. Singh Colony, detailed description of the plot is given and the said land was mortgaged with United Bank of India, Dhanbad against loan taken by accused no. 2 in the name of their family members floated company namely M/s Work Metal Movers. The United bank of India had initiated a proceeding against M/s Work Metal Movers and accused no. 2 in Debt Recovery Tribunal at Ranchi. It is further alleged that Rajendra Kumar Gupta approached the complainant and offered him the subject land for its development and requested complainant to pay him Rs. 55 lacs as advance, initially for liquidating the loan liability of United Bank of India and for getting the DRT case disposed of. On the assurance given by accused Rajendra Kumar Gupta that the document pertaining to the subject land would be released from United Bank of India, if the aforesaid payment is made. It is further alleged that development agreement was signed by the complainant and accused no. 2 - Rajendra Kumar Gupta and it was agreed that a token amount of Rs. 5,01,000/- would be given to accused no. 1 - B.N. Hotels Pvt. Ltd. and Rs. 40 lacs would be given in the account of M/s World Metal Movers of the accused no.

2. After payment of aforesaid money to the accused persons, they ultimately ended up getting the subject land released from the mortgage from United Bank of

India by entering into settlement with the concerned Bank at DRT Ranchi. Further, in view of the terms and condition of the development agreement, and assurances made by the accused no. 2, the complainant requested the accused no. 2 to handover the possession of the subject land and gave power of attorney to start development work over it, but he delayed in giving power of attorney and only on 03.04.2008, the Rajendra Kumar Gupta handed over the possession of the subject land to the complainant and further the complainant constructed the part of the first floor out of his own fund and invested further Rs. 2,95,04,680/- in the year 2008-09 and 2009-10 and the estimated interest on upto 31.12.2011 came to around Rs. 2,26,55,200/- (totaling -3- around Rs. 5,21,59,889.00 except administrative and other expenditure) as per report given by the Chartered Accountant. The complainant kept on requesting the accused no. 2 to handover documents, which the bank was requiring, for the subject land for mortgaging the land, but the accused no. 2 refused to handover the same to the complainant causing huge financial loss to the complainant. On the basis of aforesaid allegation, instant case was instituted. Further, it appears that police after investigation has submitted final form on 31.10.2012 under Sections 406, 420, 506 / 34 of the I.P.C. showing Rajendra Prasad Gupta as absconder and against Alok Kumar Gupta, Kanhaiya Lal Gupta, Smt. Radha Gupta (petitioner no.

2) and Smt. Champa Gupta (petitioner no. 1). It further appears that learned C.J.M., under order dated 06.11.2012 took cognizance of the offence under Sections 406, 420, 506 / 34 of the I.P.C. against this petitioner and transferred the case to the court of learned J.M., 1st Class, Dhanbad. It further appears that on 18.03.2015 a discharge petition was filed on behalf of this petitioner under Section 239 Cr.P.C. stating that in the complaint petition, opposite party no.2 has not alleged any specific allegation against these petitioners and the allegations are mainly against Rajendra Prasad Gupta or the Company. It is further submitted that prior to lodging of this case, the Arbitration Clause was invoked and Misc. Arbitration Case No. 44 of 2009 was filed on 16.06.2009 in the court of Sub-Judge, 1st , Dhanbad for grant of interim injunction against M/s B.N. Hotels and the learned Sub-Judge, 1 st, Dhanbad has passed an order dated 22.07.2011 and has granted ad interim injunction in favour of SRMPL. Thereafter, being aggrieved with the order dated 22.07.2011 M/s B.N. Hotels filed Arbitration Appeal No.

13 / 2011 before the High Court and the High Court had set aside the interim injunction, against which SRMPL has preferred S.L.P. being S.L.P. No. 7985 of 2012 before the Hon'ble Supreme Court which was dismissed by order dated 07.05.2012. It is submitted that in this case, there is no entrustment of property to these petitioners and as such, no case under Section 405 of the I.P.C. is made out against these petitioners. So, prayer for discharge of the petitioners is fit to be allowed. -4- After hearing the parties on 27.07.2015, learned Judicial Magistrate has dismissed the petition filed under Section 239 of the Cr.P.C. and has opined that sufficient materials are available in the case diary for framing of charges under Sections 406, 420, 506, 34 of the I.P.C. Hence, this criminal revision. Criminal Revision was filed on 15.10.2015 and under order dated 23.04.2016, learned Coordinate Bench of this Court has directed the petitioners to add the complainant as opposite party no. 2 and notices were issued to opposite party no.

2. Pursuant thereto, the matter was transferred to this Court on 05.08.2016 and this Court directed the office to call for the L.C.R. It appears that opposite party no. 2 has appeared through learned counsel Mr. Ashutosh Anand by filing Vakalatnama. The matter was finally heard on 21.04.2017. Learned counsel for the petitioner while assailing the impugned order submitted that earlier one Rajendra Kumar Gupta and petitioner no. 1 have preferred an application bearing Cr.M.P. No. 277 of 2013 which was dismissed in terms of order dated 02.04.2013, against which the petitioner no. 1 preferred S.L.P. (Cr.) No. 460 of 2014 before the Hon'ble Supreme Court, which was dismissed under order dated 03.02.2014 with the observation that the said order would not preclude the petitioner from applying for discharge at an appropriate stage. Thereafter, pursuant to order of Hon'ble Supreme Court, discharge petition was filed, but learned court below without considering the materials rejected the petition filed under Section 239 of the Cr.P.C. It was submitted that from close scrutiny of the materials of the instant case, it appears that Rejendra Kumar Gupta entered into the agreement with opposite party no.

2. It was submitted that the agreement was executed between the Rajendra Kumar Gupta and complainant and the petitioners have not executed the agreement with the complainant. So, there is no endorsement of the petitioners,

who are housewives and so, no case under Sections 420 / 406 of the I.P.C. is made out against the -5- petitioner. In support of the submissions, learned counsel for the petitioners relied upon the judgment of learned Hon'ble Supreme Court delivered in the case of S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla & Anr. as reported in (2005) 8 SCC89 wherein in a case of Negotiable Instrument Act, while ascertaining the liability of the Director, the Hon'ble Supreme Court has held as follows: (a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the persons accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied. (b) The answer to question posed in sub-para (b) has to be in negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases. (c) The answer to question (c) has to be in affirmative. The question notes that the Managing Director or Joint Managing Director would be admittedly in charge of the company and responsible to the company for conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as Managing Director or Joint Managing Director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under Sub-section -6- (2) of Section 141. The learned counsel for the petitioners has also relied upon the judgment passed in the case of S.K. Alagh Vs. The State of U.P. & Ors. as reported in (2008) 5 SCC662 wherein in para-19, it has been held that a Director of the Company or an employee cannot be held to be vicariously liable for any offence committed by the company itself. The learned counsel for the petitioners has also relied upon the judgment passed in the case of

Maksud Saiyed Vs. The State of Gujrat & Ors. as reported in (2008) 5 SCC668 So, it has been further submitted that no role was assigned to these two petitioners. It is also stated that from close scrutiny of the complaint of C.P. Case No. 154 of 2012, it is apparent that there are nine paragraphs, but there is no whisper about role assigned to these petitioners. This fact has been overlooked by learned court below and the court below has only relied on the statements recorded under Section 164 of the Cr.P.C. and has not considered the aforesaid judgments of the Hon'ble Supreme Court and the court below has wrongly rejected the discharge petition filed by the petitioners. So, the impugned order is fit to be set aside and the revision is fit to be allowed. Learned counsel for the opposite party no. 2 has appeared and has opposed the prayer for discharge of the petitioners. Learned APP for the State has filed counter affidavit, wherein in para-10 & 11, it is stated that after completion of investigation, the police has final form under Sections 420, 406, 34 of the I.P.C. and thereafter the learned court below has taken cognizance against the petitioners and there are sufficient materials on the record for framing charges against the petitioners. A supplementary affidavit has also filed on behalf of the petitioners, whereby it has been stated that co-accused Ashok Kumar Gupta and Kanhaiya Lal Gupta, against whom, cognizance was also taken and both have challenged the order taking cognizance in Cr.M.P. No. 2717 of 2013 and this Court, after hearing the parties, under order dated 08.01.2016 has quashed the order taking cognizance against -7- them, copy of order is annexed as Annexure-6 with the supplementary affidavit. Learned counsel for the opposite party no. 2 has not filed any rejoinder and has not controverted the submissions of the learned counsel for the petitioners. After hearing the parties and after going through the judgments of Hon'ble Supreme Court referred above and also the judgment of this Court passed in Cr.M.P. No. 2717 of 2013 preferred by the co-accused namely Ashok Kumar Gupta and Kanhaiya Lal Gupta, it appears that the learned Magistrate has failed to exercise its jurisdiction vested upon him and has rejected the petition filed under Section 239 of the Cr.P.C. by the petitioners in a mechanical manner. The impugned order dated 27.07.2015 is hereby set aside. Accordingly, this revision is allowed. The court below is directed to pass a fresh order within 12 weeks after hearing the parties afresh and also taking in view the judgments of the Hon'ble Supreme Court and also the judgment

of this Court dated 08.01.2016 passed in Cr.M.P. No. 2717 of 2013. Let a copy of order along with LCR be forthwith be sent to the trial court at once. (Anant Bijay Singh, J.) Sunil/

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