

Narayan Chandra Mukherjee and ors. Vs. State of Bihar and anr.

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Court : Patna

Decided On : Sep-12-2000

Judge : Anil Kumar Sinha, J.

Appeal No. : Cri. Misc. Nos. 4598 and 5118 of 1999 (R)

Appellant : Narayan Chandra Mukherjee and ors.

Respondent : State of Bihar and anr.

Disposition : Application Dismissed

Judgement :

Anil Kumar Sinha, J.

1. Both these applications were heard together as both the cases arise out of the common facts and common relief, inasmuch as, in both the cases, it has been prayed that the entire criminal proceedings including the order of cognizance taken in Complaint case No. 141/99 (T.R. No. 839/99) pending in the Court of Sri K.K. Singh, Judicial Magistrate, Jamshedpur, may be quashed.

2. In both the cases, the facts are almost similar. The petitioners' case, in short, is that the complainant (opposite party No. 2) filed a complaint-petition in the Court of the Chief Judicial Magistrate, Jamshedpur, on 8.3.1999 against the petitioners which was transferred to the file of Sri K.K. Singh, Judicial Magistrate,

Jamshedpur, under Section 192(2) Cr.P.C. for disposal and the learned Magistrate recorded the statement of the complainant as well as the statement of sole witnesses, namely, B.R. Chakraborty and took cognizance in the case under Sections 408, 418 and 120B of the Indian Penal Code and passed order for issuing summons against the accused-petitioners. Later on, warrant of arrest and processes under Section 82, Cr.P.C. were also issued. The brief facts, in the complaint-petition are that the complainant who was one of the Directors of M/s. Bihar Air Products Ltd. in short ('B.A.P.L.') which is a company engaged in manufacturing and supplying industrial gases alleged that the petitioner Narayan Chandra Mukherjee was appointed as Company Secretary-cum-General Manager of the B.A.P.L. on 29.7.1979 and the terms and conditions of his appointment was that he will not divulge any trade or official secret of the company during the period of his service or he shall not receive any commission or gift of any kind from any person for rendering services during his employment. It is further alleged that Mr. Mukherjee had domain over the various secrets and confidential documents, trade secrets, equipment, plans and drawings of the company including the name of its customers, terms and conditions, principle policy, costing structures of various manufacturing/stores materials, other manufacturing and distribution costs and/or equipment in relation thereto and other confidential materials and/or information in the capacity of the General Manager and he entered into the conspiracy with the petitioner, namely, B.N.P. Singh, who is one of the Directors of M/s Bihar Gas Ltd. (in short 'B.G.L.') which is a competitive company of the B.A.P.L. and Sri Mukherjee passed on/divulged secret information, materials, documents, etc. to accused No. 2 and while continuing in the employment of the B.A.P.L. Sri Mukherjee joined as Chief Executive Officer of M/s B.G.L. and issued some notices in that capacity. It was, therefore, alleged that the petitioner N.C. Mukherjee entered into the conspiracy with the accused B.N.P. Singh and by committing criminal breach of trust caused wrongful loss to the complainant M/s. B.A.P.L. for the wrongful gain to themselves and also to M/s. B.G.L. It was, accordingly, prayed in the complaint-petition that the accused-persons may be summoned to face trial.

3. It has been stated in the petitions that M/s. B.A.P.L. as well M/s. B.G.L. are joint sector companies of Bihar State Industrial Corporation having a common

Chairman who is the Managing Director of the said Corporation. Besides that, other directors are also common.

4. It has been denied that the petitioners entered into any conspiracy and it has been submitted that Sri N.C. Mukherjee never accepted and/or received any salary/remuneration from M/s. B.G.L. and, as a matter of fact, only negotiations were held with M/s. B.G.L. in which terms of appointment of Sri Mukherjee in M/s. B.G.L. were considered and agreed but the agreement for appointment was never executed nor Sri Mukherjee accepted any payment in M/s. B.G.L. It has been emphatically denied-that Sri Mukherjee passed on secret information of M/s B.A.P.L. to M/s B.G.L. which caused wrongful loss to M/s B.A.P.L and wrongful gain to M/s B.G.L. or the accused-persons.

5. It has further been stated that the complainant had no locus stand! to file the complaint case since he was the nominee Director of M/s B.A.P.L. on behalf of M/s Asiatic Oxygen Ltd. and no prior sanction or permission was taken by the complainant from the Board of Directors or from the Chairman of M/s B.A.P.L. it is contended that M/s Asiatic Oxygen Ltd. filed suit No. 199/1993 in Calcutta High Court in which the complainant was plaintiff No. 5 besides the Company and other Officers of the Company and in that suit, it was clearly mentioned that plaintiff Nos. 4 and 5 are the nominees of the plaintiffs Nos. 1, 2 and 3. Thus, it is clear that the plaintiff No. 5 (complainant) was nominated by M/s Asiatic Oxygen Ltd. as Director in M/s B.A.P.L. It is further stated that in the aforesaid suit No. 199/1993 and Appeal No. 555/1993 an application was filed before the Hon'ble Calcutta High Court on 21.1.1999 by the plaintiffs of the case including the complainant for issuance of directions for removal of Sri Mukherjee and for preventing/restraining him from working and managing business affairs of M/s B.A.P.L. to which a rejoinder was filed on behalf of M/s B.A.P.L. (Annexure-3) denying the allegation against the petitioner and the matter is still pending before the Calcutta High Court, Photostat copy of the affidavit filed by M/s B.A.P.L. in Appeal No. 555/1993 (suit No. 199/1993) is annexed as Annexure-4 to this application.

6. It has been contended that M/s Asiatic Oxygen Ltd. filed another complaint case No. 578 (c) of 1997 against the petitioner N.C. Mukherjee for committing certain

offences giving rise to Cr. Misc. No. 3346 of 1998(R) for quashing the entire criminal proceedings and the Hon'ble Court vide order dated 4.3.1998 admitted the case and stayed further proceedings in the Court below and the complaint case No. 141/1999 filed by the complainant in the Court of the Chief Judicial Magistrate, Jamshedpur, is another attempt in the same direction and in both the complaint cases the only witnesses was Mr. B.R. Chakraborty, who is working as Assistant Manager (Legal and Secretarial) in Asiatic Oxygen Ltd., It was, therefore, contended that the present criminal case filed against the petitioners by the complainant is mala fide and it has been filed to harass and humiliate the petitioners for extraneous reasons.

7. The petitioners have stated in their respective applications that even if the allegations are taken at their face value and accepted in their entirety they do not prima facie constitute any offence and no case is made out against them and hence, the entire criminal proceeding is nothing but an abuse of the process of the Court which has been filed for wrecking vengeance with ulterior motive due to private and personal grudge of the complainant. It has, therefore, been prayed that the entire criminal proceeding being C.P. Case No. 144/1999 (T.R. No. 839/1999) including the order of cognizance dated 12.3.1999 (Annexure-1) passed by Sri K.K. Singh, Judicial Magistrate, Jamshedpur, may be quashed.

8. On behalf of the petitioners, Sri Gadodia, learned Sr. Counsel has raised the following points in respect of the respective cases of the petitioners:

(I) No offence under Sections 408, 418 and 120B of the Indian Penal Code is made out against the petitioners even if the entire allegations in the complaint-petition as well as the statement of the complainant and the evidence of the witnesses is accepted at their face value.

(II) The complaint case has been filed with mala fide intention and/or with oblique motive in order to humiliate/harass Sri N.C. Mukherjee in order to oust him from the service of M/s B.A.P.L. to wreck vengeance with him.

(III) The allegation against Sri Mukherjee that he violated the terms of his appointment is the breach of contract of the terms and conditions of the

appointment letter and service conditions which do not constitute any criminal offence.

(IV) The complainant who is the nominee Director of M/s B.A.P.L. has got no locus standi to file the complaint case.

(V) The opposite party No. 2 has not controverted the facts mentioned by the petitioners in their respective application.

9. I shall deal with all the points raised by Mr. Gadodia one by one.

Point No. 1 :-Mr. Gadodia strongly argued before me that even accepting the entire allegation in the complaint-petition as also the statement of the complainant on S.A. and the evidence of the sole witness, namely B.R. Mukherjee recorded by the Magistrate in course of inquiry under Section 202 Cr.P.C., no offence under Sections 408, 418, 120B of the Indian Penal Code have been made out against the petitioners. In order to appreciate the submissions of Mr. Gadodia, it is necessary to mention here the allegations which have been brought against the petitioners in the complaint-petition, wherein, it has been alleged that Sri N.G. Mukherjee in course of his employment in M/s B.A.P.L. was entrusted with and/or had domain over the secret and confidential documents, trade, security, equipment, plans and drawings, names of its customers, terms and conditions, pricing policy, cost and structure of various manufacture/store materials and he entered into a criminal conspiracy with Sri B.N.P. Singh, one of the Directors of M/s B.G.L. and without the knowledge of M/s B.A.P.L. or its Directors Sri Mukherjee entered into the service of M/s B.G.L. as its Chief Executive Officer and took away with him all the valuable documents/papers, secrets, etc. for his wrongful gain by causing loss to M/s B.A.P.L. and thereby Sri Mukherjee committed criminal breach of trust in conspiracy with Sri B.N.P. Singh which resulted in wrongful loss to the complainant and M/s B.A.P.L. and wrongful gain to M/s B.G.L. and the accused-persons. It has been specifically alleged that in the letter of appointment of accused N.C. Mukherjee, the terms and conditions were that he will not divulge any trade or official secret of the company during the tenure of his service in M/s B.A.P.L. and shall not receive any commission or gift of any kind whatsoever from any person by rendering any service under his employment

with the company. But, Sri Mukherjee in conspiracy with accused No. 2 joined the service of M/s B.G.L. as its Chief Executive Officer and divulged all the official secrets like the minutes of the meeting of the Board of Directors of M/s B.A.P.L. held on 2.3.1998 and also issued notice dated 22.10.1998 as Chief Executive Officer of M/s B.G.L. which clearly shows that he joined the rival company, namely, M/s B.G.L. and was participating in the activities of that company while remaining as company Secretary-cum-General Manager of M/s B.A.P.L.

10. The question arises that whether the aforesaid allegations constitute any offences under Sections 408, 418 and 120B of the Indian Penal code or not. For better appreciation, I may quote Section 408, I.P.C. which reads as hereunder:

408. Criminal Breach of trust by Clerk or servant. Whoever being a clerk or servant of employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

Section 418, I.P.C. lays down as follows:

418. Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.--Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years or with fine, or with both.

In this connection, I may refer to provision of Section 405 I.P.C. which reads as hereunder:

405. Criminal Breach of trust.--Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such

trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits 'criminal breach of trust.

11. It is pertinent for me to mention here that the lower Court records was called for and it appears from page 83 of the lower Court records that Sri Mukherjee had actually issued notice to all the Directors of M/s B.G.L. on 22.10.1998 in the capacity of the Chief Executive Officer of M/s B.G.L. It further appears from the minutes of the meetings of the Board of the Directors of M/s B.G.L. which is available at page 84 of the lower Court records that the Board of Directors of M/s B.G.L. decided to appoint Sri Mukherjee as its Chief Executive Officer on salary of Rs. 15,000/- per month of 4% of the turnover of the Company whichever is less besides other perquisites. The said minutes of the meeting of the Board of Directors of M/s B.G.L. were filed by the complainant before the learned Judicial Magistrate, who considered the same. It further appears from the resolution of the Board of Directors of M/s B.G.L. that Sri Mukherjee was also authorised to operate Bank account of M/s B.G.L.

12. The appointment letter of Mr. Mukherjee issued by M/s B.A.P.L. is available at page 87-88 of the lower Court records and Clause 6 of his appointment letter goes to show that one of the conditions of the appointment offered to Sri Mukherjee was that he will not divulge any trade or official secrets of the company during the period of his service and shall not receive any commission or gift of any kind whatsoever from any person concerned by reasons of rendering any service in his employment. It is, therefore, manifest from the allegation in the complaint-petition and the documents filed therewith that Sri Mukherjee had entered into conspiracy with accused No. 2 B.N.P. Singh, who was one of the Directors of M/s B.G.L. and in his conspiracy, he accepted the post of Chief Executive Officer of M/s B.G.L. on salary of Rs. 15,000/- while remaining in the service of M/s B.A.P.L. and he also performed certain duties in the capacity of the Chief Executive Officer of M/s B.G.L. by issuing notice to the Directors. There is allegation in the complaint-petition that Sri Mukherjee divulged the official trade, secrets, equipment, plans and drawings, terms and conditions pricing policy, names of the customers, etc. to M/s B.G.L. for his personal gain as well as for the gain of M/s B.G.L. to the loss of

M/s B.A.P.L. in violation of the terms and conditions of the appointment letter issued to him and took away all the valuable documents, paper, receipts, etc. of M/s B.A.P.L. for causing loss to the company.

13. Earned Counsel appearing for the opposite party No. 2 strongly argued that all the ingredients of Section 405, I.P.C. have been fulfilled and from the materials on record, it is established that Sri Mukherjee in conspiracy with Sri B.N.P. Singh committed the alleged offences and the learned Magistrate rightly took cognizance against them under Sections 408, 418, 120B of the Indian Penal Code after being satisfied with the complaint-petition, the documents accompanying therewith and the statement/evidence of the complainant and the witnesses.

14. Mr. Gadodia, however, argued that at. best, it is a case of breach of the service contract and no criminal offence is made out. But, the submission of Mr. Gadodia appears to be quite misconceived because it is not a simple case of breach of service contract only, rather, the allegations against the petitioners satisfied the ingredients of Section 405, I.P.C. and the offence under Section 408, I.P.C. and 418, I.P.C. read with Section 120B, I.P.C. prima facie appears to be made out against the petitioners who are alleged to have committed the aforesaid acts for the wrongful gain to themselves as also for M/s B.G.L. to the loss of M/s B.A.P.L. so much so that Sri Mukherjee while remaining in the service of M/s B.A.P.L. as its Secretary-Gum-General Manager is alleged to have worked for M/s B.G.L. as its Chief Executive Officer by accepting the salary of Rs. 15,000/-per month which is evident from the annexures filed with the complaint-petition available in the L.C.R. at page 83-88.

15. Mr. Gadodia further argued before me that, as a matter of fact, M/s B.A.P.L. and M/s. B.G.L. are the subsidiary companies under the Bihar State Industrial Development Corporation having its common Chairman, who is the Managing Director of the said Corporation and, as such, the question of causing loss to one unit for the gain of the other unit is a misconceived notion. He further stated that accused No. 2, namely Sri B.N.P. Singh is an Officer of Bihar Government and is a nominee Director of M/s B.G.L. and he has nothing to do with the gains of M/s B.G.L. Hence, in this view of the matters also, the allegation of the complainant of

causing wrongful loss to one subsidiary for the gain of other subsidiary of Bihar State Industrial Development Corporation would go to show that no offences of criminal breach of trust has been committed by the accused-petitioners. In reply to his argument, learned Counsel appearing for the opposite party No. 2 submitted that even though the Chairman of M/s B.A.P.L. and M/s B.G.L. is common but both the companies are separate entity and they are competitors in business, inasmuch, as both the companies deal in the manufacture of the industrial gases and both have their own profit and loss accounts, own policy and both the companies are independent. Therefore, only because the Chairman is common or both the companies have the patronage of the Bihar State Industrial Development Corporation, it cannot be assumed that the petitioners did not commit the alleged offences and will be absolved of the offences on that score. I find much force in the argument advanced on behalf of the opposite party No. 2 and I am equally of the view that only because the Chairman of both the companies is common it can not be presumed that the petitioners did not commit the alleged offences.

Point Nos. II to V.

16. Mr. Gadodia strongly argued before me that the complaint has been filed with oblique motive in order to humiliate/harass the petitioners to wreck vengeance with them and on this score alone the entire criminal proceedings against the petitioners is liable to be quashed. In support of his contention, he relied upon the decision in the case of State of Bihar v. P.P. Sharma and Ors. 1991 Cri.L.J. 1438 (SC), Sunil Kumar v. Escorts Yamaha Motors Ltd. 2000 Cri.L.J. 174, Sister Anlalia Furtado v. State of Bihar 2000 (1) East Cr.C. 51, Sheikh Abdul Wahid v. State of Bihar 1997 B.C.C.R. 292, Surubali Tiwary v. State of Bihar 1996 (2) PLJR 370, State of Haryana v. Bhajan Lal : 1992 CriLJ527 , Raghunath Prasad v. State of Bihar 2000 (1) PLJR 51.

17. Relying upon the principles enunciated in the aforesaid cases, it was submitted by Mr. Gadodia that it is evident from the perusal of Annexure-3 and 4 that the complainant filed a petition in Calcutta High Court for the removal of Mr. N.C. Mukherjee but he could not succeed. So, the present complaint-petition has been filed with ulterior motive and mala fide intention.

18. In reply to the argument advanced by Mr. Gadodia, earned Counsel appearing for the opposite party submitted that the complaint-petition was filed against the petitioners with regard to the criminal act committed by them and merely because there are pending proceedings between the parties, it cannot be assumed that the complainant filed the complaint with oblique motive because the allegations in the complaint-petition clearly disclosed the commission of the offence which is punishable under the law. He relied upon the decision in the case of *State of Maharashtra v. Iswar Piraji Kalpatri* and offers 1996 SCC (Cri.) page 150 wherein the apex Court observed that if the complaint which is made is correct and an offence has been committed which will have to be established in a Court, it is of no consequence that the complainant was a person who was inimical or that he was guilty at mala fides, the ingredients which establish the commission of the offence or misconduct, the prosecution cannot fail merely because there was an animus of the complainant or the prosecution against the accused.' It was further observed in the same decision that 'this Court has consistently taken the view that the Court should not except in extraordinary circumstances, exercise its jurisdiction under Section 482, Cr.P.C. so as to quash the prosecution proceedings after they have been launched. In *K.P.S. Gill* case, it was, inter alia, observed that we also give a note of caution to the effect that the power of quashing a criminal proceedings should be exercised very sparingly and with circumspection and that too in the rarest of rare cases, that the Court will not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegation made in the First Information Report or the complaint and that the extraordinary or inherent powers do not confer any arbitrary jurisdiction on the Court to act according to its whim or caprice.

19. It was, therefore, submitted that at the stage of quashing, the High Court is not justified in embarking upon an inquiry as to the probability, reliability or genuineness of the allegations made therein as has been held by the Apex Court. Earned Counsel submitted that in the facts and circumstances of the present case or the question of animus or malafide does not arise in view of the specific allegation brought by the complainant in the complaint-petition which prima facie constitute the alleged offences. So, in this view of the matter also, it cannot be said that the complaint was filed with oblique motive or malice nor the complaint can be

thrown out only because some previous litigations were going on between the parties in the Calcutta High Court. The correctness or otherwise of the allegations in the complaint cannot be inquired into or examined in a proceeding for quashing and it is the domain of the trial Court to look into that aspect. To bring home his point, the learned Counsel submitted that in view of the specific allegation in the complaint-petition which are supported by the documentary evidence the argument advanced by Mr. Gadodia that the complaint has been filed with oblique motive or to wreck vengeance cannot be sustained and is fit to be rejected. I find much force in his argument.

20. The next point urged by Mr. Gadodia that the complainant had no locus standi to file the complaint also bears no force in it because it is a recognised principle of law that any one can set the criminal law into motion except where the statute enacting or creating the offence indicates to the contrary. Moreover, there is no statutory restriction for launching prosecution under Sections 408, 418 and 120B, I.P.C. against the petitioners. Besides that, it would be evident that the complaint has been filed by none else than the Director of M/s B.A.P.L, who, in my opinion, is quite competent to file the complaint-petition.

21. The other argument of the learned Counsel for the petitioners that the allegations against them do not constitute any criminal offence and at best it can be a breach of service condition, I must say that such argument is also not sustainable in view of the allegation in the complaint-petition which prima facie satisfies the ingredients of the offences under Section 405, I.P.C. Therefore, the allegations in the complaint-petition are not merely the breach of the contract of service rather it also makes out a case under Section 408, 418, I.P.C. I am, therefore, of the view that the decision cited by Mr. Gadodia, as referred in the case of Mohd. Sajjad v. State of Bihar 2000 (1) East Cr.C. 58, R.P. Mathur v. State of Bihar and Ors. 1998 (2) PLJR 288, H.P. Chamaria v. B.K. Sureka : 1974 CriLJ352 , Trilok Singh v. S.D. Tripathy : 1980 CriLJ822 , Sanjay Kumar v. State of Bihar 1999 (2) PLJR 913, Ishwar Chandra v. State of Bihar 1998 (3) PLJR 322, Nageshwar Prasad Singh v. Narayan Singh and Anr. : 1999 CriLJ598 do not help the petitioners to support their contention that their prosecution is illegal on the ground that the allegation against them only constitute the breach of the service

contract.

22. The law has been well settled in several decision of the apex Court, viz., in the case of State of Bihar v. Rajendra Agarwalla 1996 SCC (Cri) 628 wherein it has been held that so far as the order of cognizance by a Magistrate is concerned, the inherent power can be exercised when the allegations in the First Information Report or the complaint together with the material collected during the investigation taken at their face value, do not constitute the offence alleged. At that stage, it is not open for the Court either to sight the evidence or appreciate the evidence and come to the conclusion that no prima facie case is made out. In the case of Bhajan Lal and Ors. : 1992 CriLJ527 , the law has been well settled and the apex Court has categorized the law in which the High Court in exercise of its power under Section 482, Cr.P.C. may interfere in the proceeding relating to cognizable offences to prevent abuse of the process of the Court or otherwise to secure the ends of justice. It was observed that the power should be exercised sparingly and that too in the rarest of rare cases. Those categories are as hereunder:

(1) Where the allegations made in the First Information Report or the Complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by the police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceedings in manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

The apex Court has taken into consideration the catena of decisions to lay down the law in the aforesaid decision. Relying upon the aforesaid decision, I am of the view that if the allegations in the complaint-petition are taken at their face value and accepted in their entirety, a prima facie case is made out against the petitioners under Sections 408, 418 and 120B of the Indian Penal Code and it is not the case where the uncontroverted allegations made in the complaint-petition did not disclose the commission of any offence against the accused petitioners, nor there is any such thing in the complaint-petition by which it may be assumed that the allegations are assured and inherently improbable. I have discussed the factual aspect in my foregoing paras which needs no repetition.

23. Having regard to all the facts and circumstances of the case and after considering the rival contentions of both the sides as also the decisions cited at the Bar, I am of the view that there is no merit in both the applications.

Accordingly, both the applications are dismissed.