

Anil Agarwal and ors. Vs. the State of Bihar and anr.

Anil Agarwal and ors. Vs. the State of Bihar and anr.

SooperKanoon Citation : sooperkanoon.com/136708

Court : Patna

Decided On : Nov-27-2006

Judge : Abhijit Sinha, J.

Acts : Companies Act - Sections 111A and 113; Code of Criminal Procedure (CrPC) - Sections 482; Indian Penal Code (IPC) - Sections 34, 120B and 406

Appeal No. : Criminal Misc. No. 19753 of 2006

Appellant : Anil Agarwal and ors.

Respondent : The State of Bihar and anr.

Advocate for Def. : Jharkhandi Upadhaya, A.P.P. and Lal Bahadur Pandey, Adv. for O.P. No. 2

Advocate for Pet/Ap. : Priyadarshini Y. Jha, Adv.

Disposition : Application allowed

Judgement :

Abhijit Sinha, J.

1. The five petitioners herein who are the Chairman and the Directors of a Company running in the name and style of M/s Sterlite Industries (India) Ltd. (hereinafter referred to as 'the Company') have invoked the jurisdiction of this

Court under Section 482 Cr.P.C. for quashing of the order dated 30.8.2001 passed by Sri Bajrangi Sharan, the erstwhile Judicial Magistrate, First Class, Danapur, in Complaint Case No. 367(c)/2001 whereby and whereunder cognizance has been taken against the petitioners for commission of offences under Sections 406/34, 120B I.P.C.

2. The brief factual matrix of the case may be called out from the complaint petition which has been appended to the petition as Annexure-1. The gravamen of the offence alleged against the accused persons is that they indulge in corrupt practices and unlawful acts like retaining share certificates, not to issue duplicate share certificates, illegally retaining Dividend warrants, mismanagement of public funds and the like. In this connection it is alleged by the complainant (O.P. No. 2 herein) who had been authorised by his daughter Aarti Kumari, to file the complaint that he had invested Rs. 18000/- in the name of his daughter, in fully convertible Debentures of the Company for which 100 shares were issued in the name of Aarti Kumari and her name was registered in the relevant register as holder of all those shares. It is said that later on due to inadvertence the said shares were either misplaced or lost and accordingly intimation in writing in that regard was sent to the accused persons as there was an apprehension that they might be utilised by dishonest and unscrupulous persons. It is further said that when no response was received from the accused persons notwithstanding the passage of several months a legal notice dated 6.2.1997 was sent by Sri Vikash Kumar, Advocate. It is alleged that notwithstanding repeated reminders, legal notice furnishing indemnity bond, affidavit, demand draft for Rs. 300/- towards advertisement expenses, the accused persons did not issue duplicate share certificates to Aarti Kumari which clearly displayed the dishonest, fraudulent and malafide intentions of the accused persons. On the aforesaid facts it was averred that the accused persons having entered into a conspiracy had retained the share certificates for wrongful gain to themselves as also to grab the dividend declared by the Company and accordingly the accused persons have committed fraud upon the complainant's daughter and consequently cheated her and are liable to be prosecuted for breach of trust.

3. The contentions of the learned Counsel for the petitioners is that the complainant had not mentioned in his complaint petition regarding the place where he had kept the share certificates and on what date the alleged misplacement or loss was detected. It is further submitted that the Company received information for the first time regarding the misplacement/loss of the share certificates from the communication dated 17.7.1996 through the Advocate to M/S PCS Industries Ltd., the erstwhile Registrar and Share Transfer Agents who had been replaced by M/s Share Pro Services as Registrar and Transfer Agents with effect from 15.7.2000. It is further said that in response to the legal notice M/S PCS Industries Limited vide letter dated 7.8.1996 advised the counsel of the complainant that though they had temporarily marked 'Stop Transfer' on the shares of the complainant's daughter, certain documents including injunction order from a court of competent jurisdiction and a copy of the F.I.R. regarding loss of share certificates were required for filling up the formalities but notwithstanding the same only indemnity bond, affidavit and demand draft of Rs. 300/- were sent but the other vital documents had not been sent. It was further submitted that a Title Suit bearing No. 81/97 was filed almost after 9 years and prayer for injunction was made therein for stopping transfer in terms of letter dated 7.8.1996 of the Registrar which only showed a lack of earnestness and sincerity on the part of the complainant and curiously neither the Company nor its Registrars were impleaded as party in the complaint petition. Expanding on this issue it was submitted that under the provisions of Sections 113 and 111A of the Companies Act and other relevant provisions, when a transfer deed properly executed is lodged for transfer accompanied by share certificates, transfer cannot be prohibited without court injunction. It was also sought to be submitted that in February, 1996, 100 shares of the Company claimed as lost/misplaced by the complainant was lodged for transfer by one Mahesh Chandra Purohit along with duly signed and executed transfer deed for purposes of transfer in his favour and as the specimen signature of Aarti Kunari, tallied with her specimen signature on the transfer deed, the transfer agents finding the transfer deed to be prima facie in order, effected the transfer of the shares in favour of Mahesh Chandra Purohit of Jabalpur on 30. 4.1996 and subsequently the share was transferred to CMO Trust A/C CMO Emerging Markets Fund which in turn sold the said shares to Biyani Securities which again sold the same to

Harsh Jain in May, 1999. In support of the submissions copies of the transfer deeds from 1996 to 1999 have been appended as Annexure-'3' series.

4. The learned Counsel for the petitioners further sought to submit that although a Title Suit was filed as far back as in 1997, no injunction order had been obtained and to put pressure on the Company the instant complaint case came to be filed on 6.7.2001. It was also sought to be submitted that the said Title Suit was dismissed for default on 24.6.2000 and restored on 7.2.2003. It was also sought to be submitted that from the averments in the complaint a criminal case against the petitioners was not made out and at best it could be said that a clear case of civil dispute had been made out which could be decided only by a Civil Court. Since the petitioners had no hand in the transfer of the share certificates which were effected by Registrar, no criminal liability could be fastened on the petitioners. In support of the submissions, the learned Counsel has referred to the reported decisions in *G. Sagar Suri and Anr. v. State of U.P.*, reported in : 2000 CriLJ824 , wherein it was held that it is to be seen if a matter which is essentially of a civil nature has been given a cloak of criminal offence and that criminal proceedings are not a shortcut of other remedies available in law. Referring to the decision on *M.L. Dalmia v. State of Bihar*, reported in 2006 (3) PLJR 331, the learned Counsel sought to point out that the Patna High Court in the said decision had deprecated the practice of filing of criminal cases which out and out fall within civil disputes and lower courts also without applying judicial mind and examining the facts disclosed in the complaint case take cognizance and proceed to prosecute the accused. Referring to the case of *Hriday Ranjan Prasad Verma v. State of Bihar*, reported in AIR 2000 SC 2341 and *Nageshwar Prasad Singh v. Narayan Singh*, reported in : 1999 CriLJ598 , the learned counsel for the petitioners sought to point out that criminal case in disputes of purely civil nature are not maintainable and that where a civil proceeding is pending on the same set of facts and the dispute is of civil nature, institution of criminal proceeding is not maintainable and is fit to be quashed.

5. Although, the complainant impleaded as O.P. No. 2 has entered appearance, no counter affidavit or show cause has been filed. However, the learned Counsel for O.P. No. 2 sought to raise a dispute regarding the civil nature of the case and sought to point out that from the facts and circumstances of the case the

petitioners were liable for criminal prosecution.

6. Admittedly, from the assertions in the complaint petition and from the submissions advanced by the parties, the fact remains that it were the Registrars-Cum- Transfer Agents of the Company who had transferred the shares and as a matter of fact the first transfer was made prior to the intimation sent by the complainant. Clearly then the petitioners cannot be fastened with the liability of the transfer of the certificates since they and appeared to have been done legitimately and after comparing the signature of Aarti Kumari with her specimen signature. Obviously the petitioners could not be held liable for any criminal act or omission then again other fact worthnoting is that the place of storage of share certificates and the date of alleged misplacement or loss has not been stated.

7. It is carious that now a days even in matter which clearly falls within purview of civil dispute rushed to chose the forum of criminal courts for settlement of such disputes and the courts below without applying their Judicial minds and examining the facts disclosed in the complaint petition take cognizance and proceed to prosecute the accused.

8. In Chandrapal Singh v. Maharaj Singh case reported in : 1982 CriLJ1731 , it was observed that 'We see some force in the submission but it is equally true that chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal court. Complainant herein is an advocate. He lost in both courts in the rent control proceedings and has now rushed to the criminal court. This itself speaks volumes. Add to this the fact that another suit between the parties was pending from 1975. The conclusion is inescapable that invoking the jurisdiction of the criminal court in this background is an abuse of the process of law and the High Court rather glossed over this important fact while declining to exercise its power under Section 482 Cr.P.C.'

9. Even prior thereto in the case of Ram Sumer Puri Mahanath v. State of U.P. and Ors. reported in : AIR 1985 SC472 , Their Lordships of the Supreme Court held that where a civil litigation is pending parallel 'proceeding should not be permitted to continue.

10. In the present case, as discussed above, the allegations do not constitute any criminal offence much less an offence under Section 406 I.P.C., i.e., criminal breach of trust.

11. Having given my anxious thoughts to the matter in issue and the facts and the circumstances of the case, the continuance of criminal proceeding is apparently a total abuse of the process of court and as such it has to be quashed. Accordingly, this application is allowed and the order in question as also the entire criminal prosecution is hereby quashed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com