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Court : Patna

Decided On : Sep-05-2001

Judge : P.K. Deb, J.

Appeal No. : Criminal Misc. No. 31044 of 2000

Appellant : Sunil Agarwal and ors.

Respondent : The State of Bihar and anr.

Judgement :

P.K. Deb, J.

1. Prosecution lodged by filing Complaint Case No. 396(C)/1998 by the Opposite Party No. 2 has been sought to be quashed by filing this petition under Section 482 of the Code of Criminal Procedure.

2. Admittedly the petitioners being the Officers of M/s Mittal Marketing and Sales Corporation had entered into an agreement with the Hindustan Antibiotic Limited (in short HAL) as handling agent for having a godown at Patna to retain the stocks of medicine and as per the instructions of the HAL, the goods are to be supplied to the customers as per the direction of the HAL. According to the petitioners, some of their dues were not paid by the HAL. On the other hand, the HAL had different grievance against the petitioners to the effect that they were preparing false bills etc. etc. For an amount which allegedly was due to the petitioners, a huge stock in

the godown of the petitioners had been allegedly consumed by the petitioners and according to the complainant-opposite party No. 2, whole of the articles in the godown had been misappropriated by the petitioners.

3. The crux of the dispute remains to the effect that the petitioners claimed to have their dues against the complainant-company and against such dues by giving notice, the petitioners had purchased those stocks on a consideration of the dues being not paid by the complainant. It has been argued for and on behalf of the petitioners that with prior notice when the goods have been purchased by the petitioners towards the satisfaction of their dues then there remains no scope of any criminality being attached to the petitioners. In such admitted position definitely there is criminality attached to it on the face of it prima facie as the petitioners cannot have the right of appropriation of the goods entrusted to them for the purpose of dispatch to the customers. If his dues are there, he was entitled to take proper platform for satisfaction of his dues. At best he could have filed a suit regarding his dues and got the goods attached and it appears that the suit was also filed from the side of the petitioners, but as soon as the suit has been dismissed, this complaint petition has been filed. On earlier occasion the petitioners had advanced themselves in filling criminal case against the Government officials of the HAL of petty offence and it is submitted that for the criminal case filed on behalf of the petitioners, the present case has been lodged as a retaliation. The main submission of Mr. P.K. Verma, for and on behalf of the petitioners is that if the petitioners had purchased the goods in their custody in lieu of their dues, the same can be construed to be a breach of contract for which civil liability can be there, but there cannot be any criminal liability. But on the face of it a person, who is entrusted with the property had misappropriated the same on the plea of his dues, cannot get himself absolved of its criminal liability. At least prima facie there is case against the petitioners. Even in commercial transactions it has been held by the Apex Court that criminality can be attached, if no payment is made, if the intention is found to be ulterior one. Here in the present case only because a prior intimation has been given although that is not on record before the Court below then also the petitioners cannot be absolved of the liability of misappropriation.

4. A judgment of this Court as reported in 1980 (28) BLJR 145 (On Prakash Singhania and Ors. v. Nauratan Mal Dudhania) from the side of the petitioners has been referred to which has got no bearing in the present circumstances of the case. In that case goods were sold on credit but payment was not made and as such there was breach of contract and it was held that only civil liability is there, no criminality can be attached to it, but here goods entrusted for the purpose of dispatch to the intending customers, as per the direction of the principal, have been misappropriated on the plea of dues. Prima facie criminality is there.

5. On the other hand a judgment of the Apex Court as reported in A.I. Rule 1986 SC 833 (J.P. Sharma v. Vinod Kumar Jain and Ors.) has been referred to wherein it was held that when on getting prima facie case cognizance has been taken then there is no jurisdiction of the High Court to invoke the jurisdiction under Section 482 of the Code of Criminal Procedure which is too restrictive and can only be applied in rarest of rare cases where it could be found that the whole proceeding would be nothing but an abuse of the process of Court. When finding a prima facie case, cognizance has been taken, there is no scope of this Court to enter into the factual aspect or the defence case at this stage. The petitioners shall get ample scope at appropriate stage to place their grievance before the trial Court, but at this stage from the crux of dispute, as already observed, prima facie there is ingredients of criminal offence against the petitioners. In that way this petition has got no force. Hence, the same is rejected.

6. The stay order passed by a Bench of this Court on 24-1-2000 is hereby withdrawn.