

Dinesh Kumar and ors. Vs. State of Jharkhand and anr.

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Court : Jharkhand

Decided On : Jan-22-2003

Reported in : [2003(2)JCR328(Jhr)]

Judge : D.N. Prasad, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 120B, 406, 409, 420, 461 and 468

Appeal No. : Cr M.P. No. 3243 of 2001

Appellant : Dinesh Kumar and ors.

Respondent : State of Jharkhand and anr.

Advocate for Def. : Additional Public Prosecutor and; B.K. Dubey, Adv. for Opposite Party No. 2

Advocate for Pet/Ap. : Deepak Kumar and; B.V. Kumar, Advs.

Disposition : Application dismissed

Judgement :

ORDER

D.N. Prasad, J.

1. This application has been filed under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') for quashing the entire criminal proceedings including the order taking cognizance dated 9.5.2000 whereby the learned, Chief Judicial Magistrate, Chatra took cognizance for the offences under Sections 406, 409, 420, 461, 468 and 120B of the Indian Penal Code in connection with Chatra P.S. Case No. 101 of 1995.

2. The prosecution case in brief as stated is that a complaint case was filed by opposite party No. 2 alleging therein that Sahara India introduced a scheme, namely, 'Golden Key Scheme' with terms and conditions. Once Kumar Manoj who was posted as Branch worker requested opposite party No. 2 for opening an account in the said scheme. Accordingly, complainant/opposite party No. 2 deposited a sum of Rs. 2,500/- on 30.1.1990 in the said scheme vide Account No. 36361 Code No. 10131 in the name of his mother Yashoda Devi against receipt No. 121330, but after lapse of one month inspite of several demand, the accused persons failed to give National Saving Certificate (NSC) and accused persons also interpolated in the register by cutting and over-writing and they refused to give the payment. Accordingly, the complaint case was filed which was sent to the Police under Section 156(3) of the Code. The police submitted final report. Thereafter the opposite party No. 2 filed a protest petition on which inquiry was made and after finding prima facie case, the learned Chief Judicial Magistrate took cognizance for the said offences.

3. The learned counsel appearing on behalf of the petitioners submitted that the police have rightly submitted final report in the case, which was duly accepted by the Chief Judicial Magistrate, but subsequently cognizance was taken which is bad in law as no case is made out against the petitioners. It is further submitted that the allegation as made is entirely of civil nature as well as the petitioners and its Company are ready to pay the double of Rs. 1000/- to the complainant who alleged that no payment was made to him for NSC of Rs. 1000/- and this case has been filed only to harass the petitioners. There was a term of arbitration in the said scheme that in case of any dispute between the parties, the dispute will be referred to the arbitrator appointed by the Company to settle the same arising between the parties and the decision of the arbitrator shall be binding upon the

parties. The learned counsel also relied upon a case of Nageshwar Prasad Sinha alias Sinha v. Narayan Singh and Anr., (1985) 5 SCC 694.

4. On the other hand, learned counsel appearing on behalf of the opposite parties contended before me that the learned Chief Judicial Magistrate has rightly took cognizance for the offences as the complainant was cheated by the accused persons on false pretext. It is also submitted that the complainant had filed a criminal revision before the learned Sessions Judge, Chatra against the order rejecting the protest petition which was duly allowed by finding the case prima facie and directed the Court below to proceed on the protest petition, on the basis of which inquiry under Section 202 of the Code was held, witnesses were also examined and they have supported the case of the complainant and after finding prima facie case, the Court below took cognizance of the offences rightly. It is also submitted that there is no dispute that the complainant has not deposited the amount in the said Scheme or that amount of NSC has ever been handed over to the complainant as per the Scheme as well as the accused persons also committed forgery in the register which will be evident from the said register and that is the matter for evidence to be considered at the time of trial itself. It is further argued that the petitioners filed this application after suppressing the actual facts as the petitioners had already moved before the Sessions Judge, Chatra against the order of cognizance dated 9.5.2000 in Criminal Revision No. 113 of 2000 which was dismissed by order dated 21.12.2000 finding no illegality or impropriety in the order of cognizance.

5. Apparently a protest petition was filed by opposite party No. 2 in the Court below against the submission of final report which was inquired into; witnesses were also examined during inquiry and after finding prima facie case, the learned Chief Judicial Magistrate took cognizance for the offences aforesaid. There is no denial that the complainant has not deposited a sum of Rs. 2,500/- under the Scheme named as 'Golden Key Scheme'.

6. From going through the order impugned, it appears that the learned Chief Judicial Magistrate after analyzing the evidence collected during inquiry finding prima facie case, took cognizance of the offences. One revision was also preferred

by the petitioners before the Sessions Judge against the order of cognizance which was dismissed by order dated 21.12.2000. It is well settled that criminal proceeding cannot be thwarted merely because civil proceedings are also maintainable. The High Court is to proceed entirely on the basis of allegations made in the complaint/first information report and if the first information report prima facie discloses commission of an offence, this Court should not interfere with the order of cognizance. In the instant case, there is a concurrent finding of the Chief Judicial Magistrate and the Sessions Judge on the point of cognizance. From bare perusal of the complaint, the allegation as made prima facie constitutes the offences. Therefore it can safely be held that the learned Court below rightly took cognizance for the offences. The terms of arbitration, if any, in respect of the said Scheme shall be taken into account and considered by the trial Court in the final hearing of the case.

7. Having regard to the above facts and circumstances coupled with the discussions made above, there appears no reason to interfere with the order impugned. Hence, this application is dismissed.