

Dhirendra Kumar Banerjee and ors. Vs. State of Bihar and anr.

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Court : Jharkhand

Decided On : Mar-22-2005

Reported in : 2005CriLJ4791; [2005(3)JCR141a(Jhr)]

Judge : Hari Shankar Prasad, J.

Acts : Bihar Co-operative Societies Act, 1935 - Sections 41 and 48; Jharkhand Cooperative Societies Act, 2002; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 156(3), 202 and 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 120B, 420 and 468

Appeal No. : Cri. Misc. No. 489 of 1999(R)

Appellant : Dhirendra Kumar Banerjee and ors.

Respondent : State of Bihar and anr.

Advocate for Def. : M.A. Khan; and Anita Sinha, Advs.

Advocate for Pet/Ap. : P.K. Prasad, Adv.

Disposition : Appeal allowed

Judgement :

Hari Shankar Prasad, J.

1. This application under Section 482, Cr PC has been filed for quashing the order dated 18.3.1999 passed in G.R. No. 135/98 corresponding to Doranda (Argora) P.S. Case No. 176/98, whereby and whereunder the learned CJM, Ranchi took cognizance. against the petitioners under Sections 468, 420 and 120-B, IPC.

2. Facts leading to the filing of this application are that opposite party No. 2, complainant filed a complaint, which was sent to the Court of CJM, Ranchi under Section 156(3), Cr PC for registration and investigation and on the basis of that Daronda (Argora) P.S. Case No. 176/98 was registered under Sections 468, 420 and 120-B, IPC. As per prosecution case, a demand notice was issued vide Letter No. 1189, dated 17.12.1993 from society and according to which a sum of Rs. 7443/- was to be paid by the complainant. The complainant paid Rs. 7381/- in four instalments by cheque but receipt were issued some time in the name of his brother and some time in the name of Nominee No. 2. It is further alleged that he submitted a petition on 4.9.1994 to separate development contribution and Municipal tax for Nominee No. 2 which was done even after assurance given to him by the Secretary that it would be placed before the New Board of Directors. It is alleged that the matter was never placed before the New Board for consideration, although Dr. D.K. Banerjee and Sri N.P. Sinha were re-elected as Vice-Chairman and the Honorary Secretary respectively. Another allegation is that an amount of Rs. 12,500/- was advanced as L.I.G. loan against which Rs. 13,615/- was paid back but even then interest amount went on increasing and became Rs. 10,944/- on 31.3.1993 from Rs. 1062/- and finally it became Rs. 11,475/- on 31.12.1993. According to the complainant, as per agreement only Rs. 61/2% was to be charged and a rebate of 1-1/2% was to be allowed for timely payment but higher rate of interest was charged without any reason. Another allegation is that complainant was several times called by Dr. D.K. Banerjee and was , assured by him that this matter be placed for separation of account before the New Board but the matter was never placed. Further allegation is that the list of members notified earlier found mention of the name of Sri A.M. Kumar, which was subsequently changed and his name was replaced by his deceased father without any reason with a motive to oust his elder brother from voting.

3. Learned counsel appearing for the petitioner, submits that Someshwar Sahay was a member of Services Housing Cooperative Society and Plot No. 347-B was allotted to him. In 1982 he submitted a nomination form for his three sons namely Sri A.N. Kumar, Sri B.K. Srivastava (complainant) and Sri A.P. Kumar, which was accepted by the society. It is further alleged the Sri A.N. Kumar, Nominee No. 1, was spelt out as 'Karta' in the nomination form. As there was no request made by him to make him member, the plot remained in the name of late Someshwar Sahay and all correspondences were made with Mr. A.N. Kumar as 'Karta'. It was further point out that a demand notice vide No. 1189, dated 17.12.1993 was issued to Mr. A.N. Kumar indicating liability of each brother with a copies to both the brothers and the complainant was to pay Rs. 7443/- against which he paid Rs. 7381/ in four instalments. It was further stated that while paying the first instalment of Rs. 1000/- by cheque, he made a written request on 3.2.1994 that receipts be issued in his name and as per established practice the Head Clerk issues receipt in the name of member of the Karta. On 3.2.1994 the secretary was not present and, therefore, the Head Clerk issued receipt in the name of Karta Sri A.N. Kumar through Sri B.K. Srivastava.

4. It is further alleged that on subsequent dates three receipts were issued in the name of Sri B.K. Srivastava, as he insisted for the same. On 12.4.1995 Mr. A.N. Kumar was made 'Karta/member' by the Board as per Bye-laws clause 9(v) and Mr. B.K. Srivastava and his brother became associated member and the decision was communicated vide No. 283, dated 15.4.1995 and copies of which were sent to complainant also.

5. It is further submitted that Rs. 14,500/- was advanced to Someshwar Sahay and not Rs. 12,500/-, against which only Rs. 13,615/- was paid leaving a balance of Rs. 885/- and the rate of interest was to be charged at 7-1/2% and in addition 1% was to be charged as service charges and if payment is not made in time 1-1 /2% was to be charged as additional interest. Rebate of 1-1/2% was to be charged in the last payment, which was not done by 31.3.1993 and the calculation was made on the above basis.

6. It is also submitted that allegation of charging 20-1/2% and not putting the issue in the Board are also not correct as the matter was placed before the Board on 11.9.1993 and a decision was taken to charge 10% late fee over the interest payable on 31.3.1993 if not paid by 30.9.1993 and the decision was communicated to Mr. A.N. Kumar 'Karta' vide No. 568, dated 15.9.1993 and, therefore, Sri B.K. Srivastava intentionally suppressed this fact. Mr. A.N. Kumar did not pay any amount by 30.9.1993 and so late fee of 10% was charged on interest amount of Rs. 10,944/- payable on 31.3.1993, which became Rs. 12,038/- and was indicated in the demand notice.

7. It is also submitted that it was wrong to say that Mr. B.K. Banerjee called complainant and assurance was given to him to put up the matter in the New Board. But, on written petition by Sri A.N. Kumar dated 26.3.1996 the matter regarding separation of account was placed before the Board on 30.3.1996 on 30.3.1996 and the request was turned down, which was communicated to Mr. A.N. Kumar 'Karta'/'Member' vide No. 773, dated 6.4.1996 and this fact has also been suppressed by Sri B.K. Srivastava. It was further pointed out that earlier list of members found name of Sri A.N. Kumar against Plot No. 347B, but for the purpose of decision, a corrected list of member was forwarded to Election Officer for 95 election, vide No. 898, dated 22.11.1995, and as per co-operative rules, voter list should include names of only such members, who were on the roll on 31st March preceding the date of election and on 31st March, 1995 Mr. A.N. Kumar was not made member and, therefore, his name was replaced by late Someshwar Sahay and correction was made and for such correction it was the duty of Sri A.N. Kumar to verify the same from the society.

8. On the other hand, learned counsel appearing for the respondent-opposite party No. 2, submitted that the learned Court below, after applying its judicial mind, has taken cognizance and the Court is only to see at the initial whether a prima. facie case is made out or not and from the nature of allegations a prima facie case has been found to be true and that is why the learned Court below has taken cognizance and that does not require any interference because the learned Court below has only to see whether a prima facie case made out or not. It was also submitted that Court even after accepting final form can take cognizance on a

complaint petition. In this connection reliance was placed upon 1987 PLJR (NOC) 11 (SC). It was also submitted that as cognizance has been taken by the learned Court below and same has been affirmed in revision by the learned Sessions Judge, hence there is concurrent finding. In this connection my attention was drawn to para 6 of the judgment and order reported in Dinesh Kumar v. State of Jharkhand, 2003 (2) JCR 328 (Jhr), which is quoted hereinbelow :

'6. From going through the order impugned, it appears that the learned Chief Judicial Magistrate after analysing 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 disclose 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 offence. 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.'

9. It is submitted that the matter comes within the purview of Registrar Cooperative Society under Bihar Co-operative Societies Act, 1935 (Now Jharkhand Cooperative Societies Act, 2002) and Section 48 and 41 deal that no approach by any Member of Co-operative Society to the Registrar for resolution of any dispute. It was held that neither any dispute between members themselves or between members and the society and matter related to sale of land by the society to petitioner and for deciding the question as to validity and legality of sale, the registrar is not conferred with power to decide the question. In this connection reliance was placed upon Ashiana Housing and Finance (India) Ltd. v. State of Jharkhand, 2003 (2) JCR 188 (Jhr).

10. It was also submitted that power under Section 482 Cr PC is to be exercised very sparingly and its extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice. When a prosecution at the initial stage is sought to be quashed, the test to be applied by the Court would be as to whether the uncontroverted allegations as made prima facie would make out an offence and power of quashing should be exercised very sparingly and in the instant case allegations are so clear that they do not warrant interference by this Court and in this connection reliance was placed upon 2000 (3) PLJR 695 and 2000 (3) PLJR 136 (SC).

11. The principle for exercising extraordinary power under Section 482, Cr PC is to see whether continuance of the prosecution will amount to abuse of judicial process. It is a well settled principle of law that to exercise power under Section 482, Cr PC the complaint in its entirety is to be examined and the High Court at that stage has no authority or jurisdiction to go into the matter and examine its correctness and in the instant case cognizance should not be quashed merely because case is of a civil nature and in this connection reliance was placed upon 2000(3) PLJR 56 and *Classic Automobile, Dhanbad v. State of Jharkhand*, 2004 (4) JCR 335 (Jhr).

12. It was further pointed out that recently a demand letter has been issued by the petitioners on 8.1.2005, which will prove that the petitioners are going on committing the offence as made out in the complaint case.

13. From the material on record, it appears that initially an FIR was lodged by the opposite party No. 2 and the police after investigation submitted final report holding the same to be a mistake of fact. A protest petition was filed and after enquiry under Section 202, Cr PC cognizance has been taken and against that the petitioners have come before the High Court.

14. From the nature of allegation, it appears to be a case of civil nature because there is no criminal intent of cheating and whatever money will be taken and whatever will be done that will be done under the purview of Jharkhand Co-operative Societies Act, 2002 and this will not be done for personal gain and in this connection reliance may be placed upon AIR 1974 SC 301, wherein it has been

held that appellant intending to start business giving in full faith a large amount to respondents for the same and respondents starting business in their own names and refusing to render accounts or return money and in such situation whether respondents could be held criminally liable under Section 420, it was held that no case of cheating is made out.

15. Allegations are made in para 2 of this judgment and from a plain reading of those facts, it will appear that a case of civil nature is made out and there is no intent to cheating etc. and, therefore, no offence under Sections 420 nor under Section 468 is made out and so far as power under Section 482 is concerned, it can be said that no hard fast rule can be laid down for exercise of its extraordinary power on facts and in this connection reliance may be placed upon 2005 (1) SCC 122. Reliance may also be placed upon 2000 (3) PLJR 136 (SC), wherein it has been held that no parameter for exercise of inherent power can be laid down and Court is to examine whether materials on record are sufficient to make out a prima facie case or not. In this case matter was remitted back to the Court for reconsideration but question is when materials are not proper to constitute offence under Section 420, 468 and other sections and it will be an abuse of process of Court then High Court should interfere and quash the proceedings to save from the abuse of the process of Court.

16. From the discussions made above, I am of the view that no prima facie case under Section 420, 468 and 120-B, IPC is made out and, therefore, in the facts and circumstances of the case, the order dated 18.3.1999 taking cognizance against the petitioners is hereby quashed.