

Ram Kumar Vs. State of Bihar and anr.

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Court : Jharkhand

Decided On : Oct-26-2005

Reported in : IV(2006)BC562; [2006(1)JCR99(Jhr)]

Judge : Amareshwar Sahay, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 409; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 192(1), 202 and 482

Appeal No. : Cri. Misc. No. 509 of 1999 (R)

Appellant : Ram Kumar

Respondent : State of Bihar and anr.

Advocate for Def. : Jawahar Prasad, APP and; M.K. Roy, Adv. for the O.P. No. 2

Advocate for Pet/Ap. : A.K. Das, Adv.

Disposition : Petition dismissed

Judgement :

Amareshwar Sahay, J.

1. The petitioner has prayed for quashing of the order dated 06.04.1998 taking cognizance under Section 409 of the Indian Penal Code against the petitioner in C/I Case No. 136 of 1998 and also the entire criminal prosecution against him

which was pending before the Judicial Magistrate, Jamshedpur.

2. The opposite party No. 2, Jamshedpur Co-operative House Building Society Ltd. filed a Complaint Case against the Manager, Canara Bank, Safdarganj Development Area, New Delhi before the Chief Judicial Magistrate at Jamshedpur. In short, the allegations in the complaint petition was that the complainant entered into an agreement on 09.09.1992 with M/s. Walia Construction (Builders) of New Delhi for construction of multi-storied buildings at Jamshedpur. It was alleged that the accused executed Bank Guarantee No. 317/ 95, dated 12.12.1995 for Rs. 1,00,000/-. Bank Guarantee No. 318/95, dated 12.12.1995 for Rs. 2,00,000/- and Bank Guarantee No. 319/95 dated 12.12.1995 for Rs. 2,00,000/- in favour of the complainant in lieu of security deposit or in lieu of deduction to be made from the bills of the said M/s. Walia Builders for the fulfilment of the terms and conditions contained in the contract.

It is said that the accused intimated to the complainant about the extension of the period of validity of the aforesaid three Bank Guarantee till 10.09.1996 vide their letter dated 11.03.1996.

It was further alleged in the complaint petition that the construction of the building was stopped by the aforesaid M/s. Walia Construction (Builders) and then on 2.11.1996. the complainant terminated the contract of said M/s. Walia Construction (Builders). Due to non completion of the construction Job. the complainant is said to have suffered loss to the tune of Rs. 50 lakhs (fifty lakhs) over and above the advance made to them to the tune of Rs. 58 lakhs. It was further alleged in the complainant petition that Canara Dank specifically agreed to guarantee the due recovery of the advanced amount specified in the guarantee bond and the accused also agreed that if the contractor (Walia Builders) fails to utilize the amount covered under the Bank Guarantee by the complainant, the accused undertook to pay the complainant on demand the amount covered in the respective Bank Guarantee. The accused also agreed that they shall not revoke the aforesaid Bank Guarantees during their currency except without the previous consent of the complainant in writing.

3. It is alleged that since the Bank Guarantees were scheduled to expire on 10.06.1997. the complainant lodged their claim to the accused against the aforesaid three Bank Guarantee amounting to Rs. 5.00.000/- (five lakhs) but the accused by his letter dated 30.08.1997 informed the complainant that since the aforesaid three Bank Guarantees have already expired and accordingly, the complainant was not entitled to invoke those Bank Guarantees.

4. According to the complainant, the accused was well aware of the fact that M/s. Walia Builders had filed Title (Arbitration) Suit No. 83/96 against the complainant in the Court of Subordinate Judge-I. at Jamshedpur in which the accused was also one of the defendant and a petition for injunction was also filed by M/s. Walia Builders in which the learned Sub-Judge had directed to maintain status quo vide his order dated 07.01.1997 and therefore, the action displayed by the accused in his letter dated 30.08.1997 informing the complainant that the complainant was not entitled to invoke the Bank Guarantees, the same amounted to criminal breach of trust as the accused deliberately acted in violation of the aforesaid legal contract describing the mode in which such trust was to be discharged.

5. After registering the complaint case, the Chief Judicial Magistrate, Jamshedpur transferred the same to the Court of Shri A.K. Shukla, Judicial Magistrate. Jamshedpur exercise of the powers under Section 192(1) of the Cr PC for enquiry and disposal. The learned transferring Magistrate held enquiry under Section 202, Cr PC and thereafter, by the impugned order dated 06.04.1998 took cognizance under Section 409 of Indian Penal Code against petitioner and issued processes against him for his appearance.

6. Mr. A.K. Das. learned Counsel appearing for the petitioner submitted that the cognizance taken against the Manager of Canara Bank, Safdargunj Development Area. New Delhi was bad-in-law. in view of the fact that the complainant had only made the manager of the said Bank as an accused without specifying the name of the Manager, who had been posted at that point of time when the Bank Guarantees in question were issued. It was further submitted that the present petitioner Joined the said Branch of the Bank on 20th June, 1998 and he was not there when the aforesaid three Bank Guarantees were Issued by the Bank or that

the letter dated 30.08.1997 was issued by the then Manager of the Bank.

Mr. A.K. Das further submitted that in view of the pendency of the Title (Arbitration) Suit and the order of status quo passed in the said Suit by the Sub-Judge, Jamshedpur, the Bank being defendant in the said suit, the question of entertaining the claim of the complainant by the Bank for revoking the Bank Guarantee did not and cannot arise.

In view of the above facts, it was submitted that even if the allegations made in the complaint petition are accepted to be correct in its entirety, no offence of any criminal nature was made out rather it was a civil dispute.

7. For the purpose of quashing the complaint, it is necessary to consider whether the nature of the complaint makes out an offence or not. A particular act may constitute both civil wrong as well as criminal wrong. Merely because a civil action is pursued, it does not render a criminal action impermissible.

From the impugned order, I find that the learned Magistrate has not only discussed the case of the complainant but has also discussed the statements of the complainant on solemn affirmation and the materials which came during enquiry under Section 202, Cr PC and then came to the specific finding that sufficient ground to summon the accused to proceed against him for the offence punishable under Section 409 of Indian Penal Code was made out.

8. At this initial stage, this Court, in exercise of powers under Section 482, Cr PC is not required to see as to whether there was any truth in the allegations made in the complaint petition or not?

At this stage, the High Courts should not sift or appreciate the evidence and come to a conclusion that no prima facie case is made out. As has been held by the Apex Court in the case of State v. Rajendra, reported in : 1996 CriLJ1372 .

9. This Court, at this stage, should not substitute its own finding on the question of fact particularly when the learned Magistrate, after applying his judicial mind, has come to the finding that prima facie case against the petitioner for the alleged offence was made out. The genuineness, the truthfulness or otherwise of the

allegations made in the complaint petition cannot be examined by this Court at this stage by this Court.

In this view of the matter, I am not inclined to interfere with the impugned order taking cognizance against the petitioner and no case for quashing of the criminal prosecution is made out and therefore, having found no merit in this application, the same is accordingly dismissed.

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