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Court : Orissa

Decided On : Feb-03-1986

Reported in : 61(1986)CLT335; 1986(I)OLR410

Judge : B.K. Behera, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 401; Indian ;[Penal Code \(IPC\), 1860](#) - Sections 406

Appeal No. : Criminal Revision No. 124 of 1985

Appellant : Radhamohan Agarwalla

Respondent : State

Advocate for Def. : D.P. Sahoo, Standing Counsel

Advocate for Pet/Ap. : B.B. Ray, S.K. Dey and Y. Mohanty

Disposition : Petition dismissed

Judgement :

B.K. Behera, J.

1. The petitioner has challenged the order passed by the trial Court holding that there is a case for framing a charge against him under Section 406 of the Indian Penal Code and his prayed for quashing the criminal proceeding. The prosecution

case has been set out in the impugned order. Briefly stated, the allegations are that having been entrusted with steel plates belonging to the Paradip Port Trust for transport on a contract basis from Bhubaneswar to Paradip through trucks, the petitioner, having received the stock through his agents in his capacity as the proprietor of M/s. Konark Transport, committed criminal breach of trust in respect of sixteen plates on July 22, 1981, On a consideration of the materials collected in the course of investigation, the learned Magistrate has passed the impugned order.

2. When an accused seeks to quash the criminal proceeding against him, certain well-established principles of law may be kept in mind. Criminal proceeding instituted against an accused shall ordinarily be proceeded with in accordance with law. Where, however the allegations made in the first information report Or in the complaint, even on their face value and if accepted in their entirety, do not constitute an offence or the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice, interference by the High Court is necessary, the High Court may exercise its power to quash the criminal proceeding.

3. It has been stated by the drivers of the trucks, as can be seen from the case diary, that while the articles entrusted with the petitioner for carriage were being transported, the petitioner detained the vehicles and got unloaded the pieces of plates in respect of which he is alleged to have committed criminal breach of trust in spite of their protest saying that it was none of their business. This had been done by the petitioner to cause wrongful gain to himself and wrongful loss to the Paradip Port Trust. Shortage was detected at the time of the delivery.

4. The truth of the allegations made against the petitioner in the instant case has not yet been tested. Charge is to be framed on the basis of the materials placed before the trial Court contained in the first information report, case diary and other documents. There is no legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged. The allegations made against the accused do constitute the alleged offence and it cannot appropriately be said at this stage that there are no materials against the accused-petitioner in

support of the charge.

5. Mr. Dey for the petitioner has submitted that under the agreement, it would be open to the Paradip Port Trust to recover any sum for shortage of the stock and that, therefore, the petitioner cannot be held liable for commission of any offence and there arises only a civil liability. Every breach of trust may give rise to a suit for damages. When there is evidence of a mental act of fraudulent misappropriation, the commission of an embezzlement becomes a penal offence punishable as criminal breach of trust. It is this mental act of fraudulent misappropriation which demarcates an act of embezzlement which is a civil wrong from the offence of criminal breach of trust. Every offence of criminal breach of trust involves a civil wrong in respect of which the victim may seek redress or for damages in a Civil Court. But every breach of trust in the absence of mens rea cannot legally justify a criminal prosecution in the instant case, under the direction and at the instance of the petitioner himself, some plates were unloaded from the trucks which were intended to be removed by the petitioner to his own premises, as the materials in the statements of the witnesses examined by the Investigating Officer would reveal. If this is true, there was no absence of mens rea on the part of the petitioner to commit misappropriation and merely because he would also be liable in a civil suit for damages, it may not legally be said that the criminal proceeding is misconceived, as rightly contended by the learned Standing Counsel.

6. Mr. Dey has invited my attention to the principles laid down by the Supreme Court in AIR 1979 SC850 Trilok Singh and Ors. v. Satya Deo Tripathi and has submitted that for the civil wrong, the petitioner is not to be penalised in a criminal trial. In that case, however, the purchaser had lodged criminal prosecution against the financier and in the circumstances of the case, it was held that the dispute raised was purely of a civil nature and the criminal proceeding was an abuse of the process of the Court.

7. Reliance has also been placed on behalf of the petitioner on two decisions of this Court reported in 1982 Cri. L.J. 1228 S. B. Goenka v. Rajendra Prasad Agarwalla and 1985 (II) OLR 115 Subodh Chandra Shome and Ors. v. Durga Madhab Das. Both the cases related to commission of offences punishable under

Section 420 of the Indian Penal Code and on the facts of those cases and in the circumstances in which proceedings had been initiated, it had been held that no case of cheating had been established.

8. A mere breach of contract or a breach of the conditions of a permit is not necessarily synonymous with criminal breach of trust, as held by the Patna High Court in AIR 1953 Patna 225 Sheonarayan Jaiswal and Ors. v. State of Bihar. A breach of an agreement cannot amount to criminal breach of trust, as held by a Full Bench of the Calcutta High Court in AIR 1967 Cal. 568 Ghasiram Agarwalla v. The State. In the instant case, however, it may be stated at the cost of repetition that having been entrusted with the properties which had been received by the petitioner through his agents the petitioner directed unloading of the properties alleged to have been misappropriated for his use and gain. Whether this allegation is well-founded or unfounded can be ascertained after evidence is recorded. It is not a case where it can be said at this stage that there is no case against the petitioner.

9. As held by the Supreme Court in AIR 1977 SC2018 State of Bihar v. Ramesh Singh; AIR 1980 SC52 Superintendent and Remembrancer of Legal Affairs, West Bengal v. Anil Kumar and Ors. and AIR 1981 SC1548 Mohd. Akbar Dar and Ors. v. State of Jammu and Kashmir and others, at the stage of framing a charge, even a very strong suspicion founded upon materials would justify the framing of a charge and the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged nor any weight to be attached to the probable defence of the accused. The Court is not to see at the stage of framing a charge as to whether there is sufficient ground for conviction of the accused. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of guilt at the conclusion of the trial. But at the initial stage, if there is a strong suspicion which leads a Court to think that there is ground for presuming that the accused has committed an offence, it is not open to the Court to say that there is no sufficient ground for proceeding against the accused.

10. For the foregoing reasons, I find no case for interference with the impugned order passed against the petitioner and in my view, it is not a fit case in which the criminal proceeding against the petitioner is to be quashed. The revision is accordingly dismissed.

The trial Court will judge the truth of the case of the prosecution in the light of the evidence adduced before it without, in any manner being influenced by any observation made in this order which has been done while disposing of the application to quash the criminal proceeding.

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