

Anup Kumar Mehra, and ors. Vs. State of Bihar, and anr.

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Court : Patna

Decided On : Sep-20-2010

Judge : Akhilesh Chandra, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 482, 319, 197(1), 210; Indian Penal Code (IPC) - Sections 467, 471, 477A

Appeal No. : CRIMINAL MISCELLANEOUS No.19811 OF 2006

Appellant : Anup Kumar Mehra, and ors.

Respondent : State of Bihar, and anr.

Advocate for Def. : Mr. Damodar Pd. Tiwary, Adv.

Advocate for Pet/Ap. : Mr. Ajay Kr. Thakur; Mr. Baidya Nath Thakur; Mr. Shankar Kr. Thakur, Adv.

Judgement :

1. Heard learned counsel for the petitioners, learned Additional Public Prosecutor and learned counsel for the complainant opposite party no.2.
2. This is an application under section 482 of the Criminal Procedure Code seeking quashing of entire criminal proceedings including the order dated 15.04.2006 passed by learned Chief Judicial Magistrate, Katihar, for the offences under sections 467, 471 and 477A of the Indian Penal Code in Complaint Case No. 1799 of 2004.

3. The relevant facts of this case is that one Complaint Case No. 1799 of 2004 was filed by the complainant opposite party no.2 on 03.09.2004 against five petitioners who are officials of Telecom Department alleging therein that on 10.01.1993 one Lalit Agarwal filed an application for Telephone Connection in the name of Shankar Lal Pansari, son of Nagar Mal Pansari, and accordingly, Telephone connection no. 23083 was provided till 19.09.2000 against the bill was paid, but, subsequently no payment was made. A bill worth Rs. 54,965/- till 11.11.2000 was issued, and due to non-payment, one Certificate Case No. 2/2003-04 was filed on 27th September 2003, against said Shankar Lal Pansari, who is none else than father of the complainant and died earlier. On the said ground certificate proceeding was disposed of, thus, another certificate proceeding was initiated against the complainant opposite party no.2 being heir of named holder. The complainant further asserted that at several occasions he represented before the authorities that there was no connection at his house rather it was with Lalit Agarwal but no heed was paid and one complaint case bearing no. 2220 of 2003 was also filed by the complainant against said Lalit Agarwal, which is pending in the court of Sri S. Rajak, Judicial Magistrate, 1st Class, wherein cognizance has already been taken against him and his wife. Against second certificate proceeding initiate against the complainant, he preferred C.W.J.C. No. 4701 of 2004 disposed of 30.06.2006.

4. During correspondences, the Telephone Authorities have admitted that telephone was installed in the house of Lalit Agarwal though asserted that with consent of father of the complainant but there are sufficient documentary evidence as per the complainant to show that it was the Lalit Agarwal who got the application submitted in the name of complainant's father and the Telephone Authorities with the accused persons named were in know of everything. After recording statement of the complainant and witnesses examined during inquiry cognizance has been taken giving rise to present instant application.

5. Learned counsel for the petitioners submits that the wrong if any committed that was done in the year 1993 and that too by Lalit Agarwal who is not made party to this complaint petition filed by the complainant impleading the petitioners as accused persons who were not even posted at the relevant time at Katihar, even

Telecom Department itself is not made accused in the complaint petition and also no sanction has been obtained to proceed with the petitioners. It is submitted also that if at all any complaint was filed earlier without impleading any authority of Telecom Department no fresh complaint is maintainable under law. But only on availability of any evidence and its disclosure/production during proceeding with the earlier complaint petition, other persons may also be summoned in exercise of jurisdiction under section 319 of the Criminal Procedure Code but instead of doing so filing of fresh complaint is not permitted under law. On the other hand, learned counsel for the complainant opposite party no.2 by placing reliance upon a decision of this court in case of G.C. Mrig vs. State of Bihar and another reported in 1994(1) PLJR 47; submits that sanction under section 197 Cr.P.C. was not at all required and further relying upon the decision of Apex Court in case of P.K. Pradhan vs. State of Sikkim reported in 2001(6) SCC 704; even if at any stage any necessity was made, steps can be taken for that but at this stage impugned order is not barred in want of such sanction. Learned counsel for the petitioners also concedes to the finding arrived at by Apex Court in the decision aforementioned, where in para 5 reads as such:

"5. The legislative mandate engrafted in sub-section (1) of Section 197 debarring a court from taking cognizance of an offence except with the previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from office save by or with the sanction of the Government, touches the jurisdiction of the court itself. It is a prohibition imposed by the statute from taking cognizance. Different tests have been laid down in decided cases to ascertain the scope and meaning of the relevant words occurring in Section 197 of the Code: "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty". The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. No question of sanction can arise under Section 197, unless the act complained of is an offence; the only point for determination is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter

even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. What a court has to find out is whether the act and the official duty are so interrelated that one can postulate reasonably that it was done by the accused in the performance of official duty, though, possibly in excess of the needs and requirements of the situation."

6. It is further submitted by learned counsel for the opposite party no.2 as well as learned Additional Public Prosecutor that cognizance has been taken after examining the materials and apparently there is no error requiring any interference but at the same time, the question raised as regard to maintainability of second complaint for same offence of course against other accused persons remained unreplied.

7. It is consistent case of the complainant that it was one Lalit Agarwal who was not made accused in the instant complaint petition, got an application filed before Telecom Authorities for Telephone connection in the name of complainant's father as early as in the year 1993, and even subsequently, he not only used the same connection which was installed in his house but also got some clips connected and application for the same was in his writing which tallies with the writing of application standing in the name of father of the complainant for Telephone connection in the year 1993. and subsequently, on inquiry, the Telephone Authorities by filing rejoinder in the proceedings admits that Telephone Connection was installed in the house of Lalit Agarwal but for the same offence though no paper has been produced, but remained undisputed and in paragraph 4 of the complaint petition it is mentioned that complaint case no. 2220 of 2003 has been filed against Lalit Agarwal and his wife and cognizance has also been taken against them. On this admitted position that for the same offence one complaint petition was earlier filed and is still pending trial but present petitioners or any authority of Telecom Department were not impleaded as accused, rather only after filing of the certificate case against the complainant for realization of the dues standing in the name of his father, now dead, the instant complaint has been filed.

8. Learned counsel for the opposite party no.2 tried to lead emphasis that at the earlier occasion it was not known to the complainant that on internal inquiry the authorities of BSNL have already arrived at this conclusion that Telephone Connection was installed in the house of Lalit Agarwal, even if assuming the submission correct. There is a provision in the Criminal Procedure Code 319 which reads as such:

"319. Power to proceed against other persons appearing to be guilty of offence

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1) then (a) The proceedings in respect of such person shall be commenced afresh, and witnesses re-heard; (b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

9. And the complainant, if had any material showing complicity of any other person, than the accused facing trial in the earlier complaint petition he could have taken that recourse but for the same offence or sequence of the offence another complaint impleading altogether different persons is not permissible under law. The principle cognizance is taken for the offence committed not against the accused or set of accused persons comes in to play. In case, such established and consistently followed preposition of law is ignored criminal proceeding may be

initiated and continue according to number of persons involved as an regular feature which is absolutely contrary to spirit of law. The proper course could have been, for the court to return the complaint petition to the complainant to opt other legal options available. The law makers have, to avoid such a situation, of two cases for same offence one as police case and another by way of complaint case has made provision of section 210 of the Cr.P.C. which reads as such:

"210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence (1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code."

10. There is no evidence on record nor even there is whisper in the complaint petition that either of the petitioners were at the time of installation of Telephone connection or filing of the application therefore were posted at Katihar, they have been impleaded as accused by their name and designation but Bharat Sanchar Nigam Limited i.e. BSNL is not made accused and in absence of the BSNL being impleaded as one of the accused, it cannot be said that its officials in succession joining one after another on transfer may be criminally held liable for the offence which was not committed personally by them or in their presence. In this

connection decision of Apex Court in a Case R. Kalyani v. Janak Mehta and others reported in 2009(1) SCC (Cri) 567 may be referred where in para 32 it is said: "32. Allegations contained in the FIR are for commission of offences under a general statute. A vicarious liability can be fastened only by reason of a provision of a statute and not otherwise. For the said purpose, a legal fiction has to be created. Even under a special statute when the vicarious criminal liability is fastened on a person on the premise that he was in charge of the affairs of the company and responsible to it, all the ingredients laid down under the statute must be fulfilled. A legal fiction must be confined to the object and purport for which it has been created."

11. In view of the facts and circumstances stated and discussed above, any further continuance of proceeding before the court below against the petitioners shall be nothing but abuse of the process of law and sheer wastage of precious judicial time which is not permissible under law but needs interference of this court to set the wrong good.

12. Accordingly, this application, without affecting right of the complainant opposite party no.2 to avail other available options within four corners of law, stands allowed, impugned order and further proceeding of the court below in connection with Complaint Case No. 1799 of 2004 pending in the court of Chief Judicial Magistrate, Katihar, is hereby quashed.

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