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Court : Patna

Decided On : Oct-28-2010

Judge : Rakesh Kumar, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 482, 192(1); Indian Penal Code (IPC) - Sections 418, 465, 467, 468, 469, 470, 471, 120B, 464

Appeal No. : CRIMINAL MISCELLANEOUS No.24064 OF 1998

Appellant : Birendra Kumar SinhA.

Respondent : State of Bihar, and ors.

Advocate for Def. : Sri A.M.P.Mehta, Adv.

Advocate for Pet/Ap. : S/Sri Vijay Kumar Sinha; Mrigank Mauli; Vinay Mistry, Advs.

Judgement :

1. Two petitioners, while invoking inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure , have prayed for quashing of the complaint filed by Opp.Party no.2 vide Complaint Case No.1021 (C) of 1998 and also for quashing of an order dated 25.9.1998 passed by Sri Ravindra Patwari, learned Judicial Magistrate, 1st Class, Patna. By the said order, the learned Magistrate has taken cognizance of offences under Sections 418,465 and 467 of the Indian Penal Code and directed for summoning the petitioners.

2. Short fact of the case is that Opp.Party no.2 filed a complaint in the court of learned Chief Judicial Magistrate, Patna, which was numbered as Complaint Case No.1021 (C) of 1998 against four accused persons which include the petitioners, M/S Veena Theatre and Smt. Sona Devi. The complainant alleged that accused had committed offence under Sections 465, 468,469, 470, 471, 120B of the Indian Penal Code. It was disclosed in the complaint petition that the complainant and witness Nos. 1 and 2 were legal heirs of one Late Rajendra Prasad Singh, who was one of the partners of M/S Veena Theatre having 21 % share as per partnership deed dated 13.1.1989. It has been disclosed by the complainant that Rajendra Prasad Singh died on 5.9.1992 and after the death of Rajendra Prasad Singh a false and forged partnership deed dated 17.2.1992 was prepared by the accused persons, wherein it was indicated that Rajendra Prasad Singh had desired to retire with effect from 1.4.1992 from the partnership on the ground of ill-health. It has further been disclosed in the complaint petition that even after the death of Rajendra Prasad Singh, the complainant and two witnesses were being regularly paid some of the profits of M/S Veena Theatre. At a belated stage, i.e. in the month of July, 1998 from the Income Tax Department, the complainant came to know that accused persons had created a false and forged partnership deed with effect from 17.2.1992. It has been asserted by the complainant that as per Clause-11 of the partnership deed dated 13.1.1989 even after the death of a partner, the partnership firm was to continue with adding legal heirs of the deceased partner. After coming to know regarding preparation of subsequent partnership deed, the complainant contacted the accused to get the matter and account settled, but all efforts went in vein. It has been asserted by the complainant that the complainant had suffered loss of huge amount. Accordingly, on the aforesaid allegation, complaint petition was filed. After filing of the complaint petition, the complaint was transferred by the learned Chief Judicial Magistrate under Section 192(1) of the Code of Criminal Procedure for its enquiry and disposal to the court of the learned Magistrate. After conducting enquiry, i.e. after examining the complainant on S.A. and examining the witnesses, the learned Magistrate by the impugned order, i.e. order dated 25.9.1998 has taken cognizance of offences under Sections 418,465 and 467 of the Indian Penal Code and directed to summon both the petitioners. The learned Magistrate has not

taken cognizance of offences in respect of accused no.1 i.e. M/S Veena Theatre and accused no.4, namely, Smt. Sona Devi.

3. Aggrieved with the order of cognizance dated 25.9.1998 passed by Sri Ravindra Patwari, Judicial Magistrate, 1st Class, Patna in Complaint Case No.1021 (C) of 1998, both the petitioners approached this Court by filing the present petition.

4. Sri Mrigank Mauli, learned counsel appearing on behalf of the petitioners, while challenging the order of cognizance, has argued that the petitioners had not forged the signature of late Rajendra Prasad Singh. It has been submitted that the material available on record shows that no offence either under Section 465 or Section 467 of the Indian Penal Code is made out. Learned counsel for the petitioners in support of his argument has referred to a decision of Single Bench of Karnatka High Court , reported in 1995 Cr.L.J. 3406(P.N. Parthasarthy & Ors v. G.K.Sriniwasa Rai & Ors.). Learned counsel for the petitioners has specifically referred to paragraph 29 of the said Judgment, which is as follows:

"29. The above view also finds support from the Judgment in Gulab Singh v. State of Punjab, (1984) 2 Crimes 869. The High Court of Punjab and Haryana held that to constitute the offence under Section 464 I.P.C. it is essential that the accused persons must make a document with the intention of making it to be believed that it was signed by or by the authority of someone else while he knows that it was not made or authorized by that person. In the case on hand , the petitioners have made and signed the documents in their own names on their own behalf and not at all purporting to act on behalf of somebody or in the name of someone else. Therefore, the offence of making a false document is not prima facie made out. Therefore the complaint averments, sworn statement of the complainant and the document referred to do not make out a case of making a false document or the offence of using the counterfeit seals or other aggravated offences alleged against the petitioners."

5. Learned counsel for the petitioner has further submitted that in the facts and circumstances of the present case, it is necessary for this Court to exercise power under Section 482 of the Code of Criminal Procedure with a view to prevent abuse of the process of the court. It has been submitted that as per the law laid down by

the Hon'ble Supreme Court, this Court has got ample power to interfere with a criminal prosecution, if the Court is satisfied that allowing the prosecution amounts to abuse of the process of the Court. In support of his contention, learned counsel for the petitioners has referred to a decision of the Hon'ble Supreme Court reported in 1998 Cr.L.J. 4091(Ashok Chaturvedi & Ors. v. Shitul H. Chanchani & Anr.) It has been submitted by Sri Mauli, learned counsel appearing on behalf of the petitioners that the facts and circumstances of the present case warrants exercise of power under Section 482 of the Code of Criminal Procedure by this Court in favour of petitioners. It has been submitted that in absence of disclosure of any offence in the complaint petition, this Court may quash the entire complaint petition as well as order of cognizance.

6. Sri A.M.P.Mehta, learned Addl.Public Prosecutor appearing on behalf of the State has opposed the prayer of the petitioners.

7. Besides hearing learned counsel for the petitioners as well as learned Addl.Public Prosecutor, I have perused the materials available on record, particularly the contents of the complaint petition. On perusal of the complaint petition, it is evident that there is a prima facie case of committing offence under Section 418 of the Indian Penal Code against the petitioners. It is specific case of the complainant that after the death of Rajendra Prasad Singh, the same partnership was required to continue, but a fresh deed of partnership was created and in the said deed it was shown that Rajendra Prasad Singh had shown his desire to retire from the partnership. Even after preparing the said partnership deed, the complainant was given to understand that earlier partnership deed was continuing and from time to time, the complainant was being given some profit from the partnership firm, namely, M/S Veena Theatre and at a later stage i.e. in the year 1998, the complainant came to know that accused persons have prepared a fresh deed and they have also used the same deed before the Income Tax Authority. This indicates that the complainant was put in dark by the petitioners. Of course, at the time of hearing a petition under Section 482 of the Code of Criminal Procedure that too against the order of cognizance, it is not required for this Court to record a finding. This Court has indicated the aforesaid facts only with a view to come to the conclusion as to whether this is a fit case for

exercising of power under Section 482 of the Code of Criminal Procedure or not. The Court is of the opinion that the petitioners have not made out an exceptional or rarest of rare case warranting exercise of power under Section 482 of the Code of Criminal Procedure in their favour. So far as Ashok Chaturvedi's case (supra) is concerned, this Court is of the opinion that it is not in dispute that the law is settled that if the court is satisfied that allowing a criminal proceeding prima facie amount to abuse of the process of the court, in that event the Court, while exercising power under Section 482 of the Code of Criminal Procedure, can interfere with the said proceeding and quash the same. In the present case, fact is not as such. The present case cannot be put in the category where it can be said that allowing the proceeding will amount to abuse of the process of the court. So far as P.N.Parthasarthy's case (Supra) is concerned, the Court is of the opinion that the petitioner may not get any benefit on the basis of the said Judgment. In the present case, there is specific allegation of commission of offence under Section 418 of the Indian Penal Code. In the case of P.N.Parthasarthi , there was no allegation of commission of offence under Section 418 of the Indian Penal Code.

8. In view of the facts and circumstances as indicated above, this Court is of the opinion that it is not a fit case for interfering with the order of cognizance. The order of cognizance has been passed by the learned Magistrate assigning a detailed reason, which requires no interference by this Court. Accordingly, the petition stands rejected.

9. In view of rejection of the present petition, interim order of stay dated 25.2.1999 stands automatically vacated.

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