

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 1519 of 2009

1. Mahesh Minz
2. Anil Toppo
3. Sunil Kumar
4. Rajiv Kumar Sharan Petitioners
Versus
1. The State of Jharkhand.
2. Shyam Sunder Lal Opposite Parties

with
Cr.M.P. No. 627 of 2013

B.K.N. Kishore (Braj Kishore Narain Kishore) Petitioner
Versus
1. The State of Jharkhand.
2. Shyam Sunder Lal Opposite Parties

with
Cr.M.P. No. 1078 of 2013

Sanjay Sahay Petitioner
Versus
1. The State of Jharkhand.
2. Shyam Sunder Lal Opposite Parties

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioners : Mr. Rajesh Kumar, Advocate.
: Mr. Manindra Kumar Sinha, Advocate.
For the State : Mr. Bishambhar Shastri, A.P.P.
: Mrs. Ruby Pandey, A.P.P.
: Mr. Shiv Shankar Kumar, A.P.P.
For the O.P. No. 2 : Mr. Pawan Kumar Pathak, Advocate.

19/ 10.11.2023 Heard Mr. Rajesh Kumar, learned counsel appearing for the petitioners, Mr. Bishambhar Shastri, Mrs. Ruby Pandey and Mr. Shiv Shankar Kumar, learned A.P.Ps. for the State and Mr. Pawan Kumar Pathak, learned counsel appearing for the O.P. No. 2 in respective cases.

2. In Cr.M.P. Nos. 1519 of 2009 and 627 of 2013, the prayer has been made for quashing of the entire criminal proceedings including the order taking cognizance dated 17.06.2009, by which, cognizance for the offences under Sections 380, 409 and 34 of the Indian Penal Code has been taken against the petitioners, in connection with Complaint Case No. 1159 of 2006, pending in the court of learned Judicial Magistrate, 1st Class, Ranchi.

3. In Cr.M.P. No. 1078 of 2013, prayer has been made for quashing of the entire criminal proceedings including the order dated 24.01.2013, whereby, a petition filed under Section 245 Cr.P.C. for

discharge was rejected, in connection with Complaint Case No. 1159 of 2006, pending in the court of learned Judicial Magistrate, 1st Class, Ranchi.

4. The learned court has been pleased to take cognizance pursuant to the protest-cum-complaint petition, wherein it has been alleged that the complainant along with his wife namely Smt. Kala Srivastava are the joint lessee of Locker No. 177 leased out by Punjab National Bank, Main Road, Ranchi. The complainant has operated his locker before the occurrence last time on 22.02.2002 and kept some gold articles inside the locker and again on the day of occurrence i.e. 9.06.2003 the complainant along with his son and daughter-in-law went to operate the said locker after opening the same he found the gold articles which were kept in the small box inside the locker were missing and he immediately informed the same to the then Locker In-charge Shri R.K. Sharan but he did not give any satisfactory reply and accordingly the same was informed to the then Branch Manager Shri Sanjay Sahay also and found that the locker could be easily opened then thereafter the same was reported to the local Police i.e. Lower Bazar, Ranchi and accordingly an F.I.R. was lodged which was registered as Lower Bazar P.S. Case No. 71/2003. The Police filed the Final Form on 15.03.2006 with no clue under Section 379 of the Indian Penal Code. Thereafter complainant also filed a complaint-cum-protest petition and in the said protest-cum-complaint petition after enquiry the learned Judicial Magistrate 1st Class, Ranchi vide its Order dated 17.06.2009 has taken cognizance under Section 380/409/34 of the Indian Penal Code against the petitioners / accused along with other 5 co-accused.

5. Mr. Rajesh Kumar, learned counsel appearing for the petitioners submits that the petitioners are the officers of the Punjab National Bank, Main Road Branch, Ranchi. He submits that for the grievance of the petitioners Lower Bazar P.S. Case No. 71 of 2003 was registered and the same was investigated by the police, however, the theft was said to be proved, but the police has not sent up the petitioners for trial. He further submits that on the protest petition, the learned court has taken the cognizance. He further submits that for the said occurrence, O.P. No. 2 has already preferred a Title Suit No. 246 of

2006, which is still pending before the court of learned Sub-Ordinate Judge at Ranchi. He further submits that the theft has occurred, but there is no material against the petitioners to put them accused, who are the Bank officials and in view of that the police has not sent up them for trial. He submits that if any case is made out, that is civil in nature and for that the O.P. No. 2 has already preferred a title suit. He further submits that the allegations are made that the ornaments were missing from the locker of the O.P. No. 2. He further submits that police has investigated the matter and has categorially stated that in the locker whatever ornaments / amount is taken out from the locker is only known to the locker owner and his relatives and it is not known to the Bank or its officers and so there is no entrustment and they have also tried to locate that who is the person involved in the case, but they have failed to get any clue and so due to absence of any clue the case was closed. He further submits that O.P. No. 2 has reported that the bank locker was not properly working so there might be some technical problem. He further submits that for such technical problem, it can be case of civil nature and at best the case of deficiency in service. He further submits that the said lockers were installed in the Banks by the different companies like Godrej etc. He submits that all the petitioners are bank officials and they have been falsely implicated in the case. He further submits even the discharge petition of one of the accused has been rejected, which has been challenged in Cr.M.P. No. 1078 of 2013. He submits that if such nature of case is there and the case has proceeded further before the learned court, the High Court is competent to pass appropriate orders and in view of that the entire criminal proceedings may kindly be quashed.

6. Learned A.P.Ps. appearing for the State submit that the police has investigated the matter and submitted the final form, whereby, the petitioners have not been sent up for trial, however, the learned court has taken the cognizance on the protest petition filed by the O.P. No. 2.

7. Mr. Pawan Kumar Pathak, learned counsel appearing for the O.P. No. 2 by way of referring paras-8, 9 and 10 of the complaint petition submits that on 09.06.2003 the complainant along with his son Abinash Kumar Srivatava and daughter-in-law Kavita Srivatava went to

the Punjab National Bank, Main Road Branch, Ranchi to operate the said locker No. 177 and thereafter they came to know that the jewelry was missing from the said locker. He submits that even the in-charge of the said locker of the said bank has not taken care of and no action was taken by the Bank manager. He submits that in the complaint case the allegations are there and the learned court has rightly taken the cognizance. He submits that if the criminality is made out, the criminal and civil cases both can go simultaneously and to buttress his arguments, he relied in the case of *Syed Askari Hadi Ali Augustine Imam & Anr. Versus State (Delhi Administration) & Anr.*, reported in (2009) 5 SCC 528. He submits that these petitions may kindly be dismissed.

8. It is an admitted fact that the jewelry was missing from the locker of the Bank. The police has investigated the matter and these petitioners were not sent up for trial. On the protest petition, the learned court has been pleased to take cognizance against these petitioners and subsequently the discharge petition, filed by one of the petitioners was rejected by the learned court, which is the subject matter in Cr.M.P. No. 1078 of 2013. The entire officials of the Bank have been implicated in the case of such nature in a protest-cum-complaint case.

9. In view of the Bank's Rule, the operation of the locker has been preproduced in para-12 of the main petition, which is quoted hereinbelow:-

"Operation of the Locker

(a) The custodian before opening the locker, must compare the visitor's signature with his/her specimen in Form No. PNB 81 and ensure its genuineness. After keeping a mental note of the relative "Pass Word", he will lead the visitor to his/her locker and before applying his/her key to the locker, the visitor must be enquired of and his/her "Pass Word", in seclusion. In case the visitor fails to give the correct "Pass Word", extra precaution should be exercised and access to the locker must not be permitted, till such time, the visitor is identified to the custodian's satisfaction.

(b) Where, however, the correct "Pass Word" is given by the visitor, the custodian will apply the master key to the locker and the visitor will be

requested to apply his/her own key to open the locker. It must be carefully noted that the lessee's key should on no account be handled by the custodian or any other member of the staff nor any assistance be given to the visitor in handling the contents of the locker.

(c) People in drunken state must not be allowed to have an access to the vault nor will they be permitted to operate on their locker but this matter should be handled with tact by the custodian himself.

(d) The mechanism of the locker provides for its automatic locking, when it is locked by the visitor. reopened unless both the custodian's and locker holder's keys are applied to it."

10. There are some duties caste upon the custodian of the locker and the said rules has been quoted in para-13 of this petition, which reads as under:-

“Inspection of Cabins

While accompanying the lessee for operation of a locker the custodian must carefully examine-

(a) Inspection of cabin, where provided, to ensure that any articles were left behind by previous visitor(s).

(b) The space near about the last operated locker, where such cabin has been provided, with the same object.

(c) The last operated locker, to ensure that the previous lessee has properly locked it. If only one locker is operated during the day, it will be examined in the evening before close the strong room /vault.

At the close of each day, the custodian will append the following certificate on the Visit Register (Forum No. PNB-82) by means of a rubber stamp reading:

"Certified that I have examined all the operated lockers during the day and have found them properly locked. Also verified the premises to ensure that nothing was left inside the strong room.

Custodian”

11. In view of the above, it appears that the locker is the nature of agreement, in view of that the hiring agreement cannot be equated with the bailment. Furthermore the said operation of the locker was the

agreement and the same can be terminated by a person in his favour the said locker is provided. In view of that hiring of a locker is a transaction to be distinct in nature from a transaction that would create the relationship of landlord and tenant. Whatever property is deposited in the locker is undoubtedly in the custody and possession of the Bank, merely because the locker can be operated only in the presence of the locker hirer, could not amount to joint possession of the locker. The Banker can always open the locker with a master key, the hirer of the locker is not in a position to open the locker without the assistance of the Bank. The hirer can only access the locker only specified banking hour. The Banker has no such limitation. If such a situation is there, the transaction of bailment could only be established if the provisions of Section 148 of the Indian Contract Act are complied.

12. In view of the above, it appears that the tile suit has already been preferred by the O.P. No. 2, which is still pending, and if such a case is there, the criminality is not made out. There is no doubt if the criminality is made out, the criminal and civil both cases can go on simultaneously, however, the criminality is not made out, to allow to continue the said proceeding will amount to an abuse of the process of law. This aspect of the matter has been recently reiterated by the Hon'ble Supreme Court in the case of *Usha Chakraborty & Anr. Versus State of West Bengal & Ors.*, reported in (2023) SCC Online SC 90.

13. In view of that the judgment relied by the learned counsel appearing for the O.P. No. 2 in the case of *Syed Askari Hadi Ali Augustine Imam (Supra)* is not helping the O.P. No. 2, as in the present case criminality is not made out.

14. So far discharge petition is concerned, the court can consider if *prima-facie* there is nothing which affixes culpability or constitutes commission of offence including mens-rea on the part of the petitioner, the Court can exercise its power. Reference may be made to the case of "*Pushpendra Kumar Sinha Vrs. State of Jharkhand*" reported in "2022 SCC Online SC 1069 wherein para 13,16, 18 and 19 it has been held as under:-

"13. The perusal of material indicates that because it was difficult for the JSEB to implement the award due to financial difficulty,

a roving and fishing enquiry was conducted, in consequence of which, Secretary, JSEB vide letter dated 30.07.2010 and Smt. Rajbala Verma (then Vigilance Commissioner) vide letter dated 03.09.2010, requested the DGP, Vigilance Bureau to register an FIR against the Appellant. We fail to understand as to why the same person, who had approved the implementation of award as a member of the Board, had later as Vigilance Commissioner, recommended initiation of prosecution against the Appellant, who had merely prepared the agenda for appointment of an arbitrator and had nothing to do with the approval of the award and payment of money. In view of the aforesaid, if at all any culpability had to be assigned, it should have been assigned after examining the role of senior authorities who were involved in the decision-making process. Astonishingly, most of the senior officials, who approved various decisions regarding extension of time, appointment of arbitrator and implementation of arbitration award and consequent payment to RPCL have not been arrayed as accused. In our considered view, prima-facie there is nothing which affixes culpability or constitutes commission of offence including mens-rea on the part of the Appellant. It seems that an attempt has been made to implicate the Appellant for the decisions in which prima-facie, he did not have any role to play, nor do his acts establish any culpability regarding the alleged offences.

16. The High Court quashed the criminal proceedings against Umesh Kumar with the above said observations. Assailing the same, Special Leave Petition (Criminal) No. 4062 of 2017, was filed by the State of Jharkhand, which was dismissed by this Court vide order dated 05.02.2020, after condoning the delay. As per the FIR allegations, it is alleged that Umesh Kumar and the present Appellant had made the payment of Rs. 4,89,24,788/- against the gross value of Rs. 7,89,84,826/- without approval of the competent authority. In this regard, the allegation against the Appellant is that he suggested that part payment of the arbitral award may be made to RPCL from the working

fund, on refundable basis since there was no fund available in the Power Finance Corporation Account. It is not the case of the prosecution that the Appellant had made payment to the agency. However, it can be inferred that the Appellant has suggested the possible mode of payment in furtherance of the Board's office order no. 243 dated 16.03.2006, after passing of the arbitral award which was required to be paid alongwith interest, but to satisfy the award by noting, the said suggestion was made. In our view, this itself is not sufficient to implicate the Appellant. In addition thereto, it is most pertinent that even on such a suggestion, the payments were not made from the working fund, rather, part payment of the award was made from the loan taken from Power Finance Corporation on the recommendation of Umesh Kumar, against whom criminal proceedings have been quashed as indicated hereinabove and the said order has not been interfered with by this Court.

18. It is a well settled law that at the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing of charge the Court must apply it's judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible. Indeed, the Court has limited scope of enquiry and has to see whether any prima-facie case against the accused is made out or not. At the same time, the Court is also not expected to mirror the prosecution story, but to consider the broad probabilities of the case, weight of prima-facie evidence, documents produced and any basic infirmities etc. In this regard the judgment of "Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4" can be profitably referred for ready reference. Having due regard to the documents placed before us and in the light of the submissions and discussion made above, we are of the considered view that sufficient grounds casting a grave suspicion on the Appellant, do not exist. It is observed that the ingredients of alleged offences cannot be prima-facie established against the Appellant as

neither had he been entrusted with funds of JSEB nor he had fraudulently or dishonestly deceived senior officials of the JSEB to cause any benefit to RPCL or any wrongful loss to JSEB and no evidence of illegal gratification or disproportionate assets has been found against the Appellant.

19. In view of the foregoing discussion, we are of the considered opinion that the High Court erred in refusing to exercise the revisional powers vested in it under Sections 397 and 401 of the Cr.P.C. and dismissing the criminal revision preferred by the Appellant. In the facts and circumstances of the case as discussed, the inescapable conclusion that can be drawn in this case that ingredients of the alleged offences are not prima-facie made out against the Appellant. Therefore, we deem it fit to allow the instant appeal and set aside the impugned order. Consequently, the Appellant is discharged in the criminal proceedings arising out of Special Case No. 02 of 2011.”

15. In view of the above discussion and considering that so far as criminal case is concerned, against the petitioners, who happens to be the bank officials of Punjab National Bank, Main Road Branch, Ranchi, is not made out. It is further well settled that even the proceeding has gone further before the learned trial court and if the court comes to the conclusion that the case of interference is made out, that power can be exercised at any stage, in view of the judgment of the Hon'ble Supreme Court in the case of *Rajiv Thapar & Ors. Versus Madan Lal Kapoor*, reported in (2013) 3 SCC 330, wherein the Hon'ble Supreme Court in paras 30 to 30.5 held as follows:-

“30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-

30.1. Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

30.2. Step two, whether the material relied upon by the accused, would rule out the

assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

30.3. Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal

proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused.”

16. In view of the above facts, reasons and analysis, the entire criminal proceedings including the order taking cognizance dated 17.06.2009, by which, cognizance for the offences under Sections 380, 409 and 34 of the Indian Penal Code has been taken against the petitioners, in connection with Complaint Case No. 1159 of 2006, pending in the court of learned Judicial Magistrate, 1st Class, Ranchi, are hereby, quashed so far the petitioners in Cr.M.P. Nos. 1519 of 2009 and 627 of 2013 are concerned. So far as the petitioner in Cr.M.P. No. 1078 of 2013 is concerned, the entire criminal proceedings including the order dated 24.01.2013, whereby, a petition filed under Section 245 Cr.P.C. for discharge was rejected, in connection with Complaint Case No. 1159 of 2006, pending in the court of learned Judicial Magistrate, 1st Class, Ranchi, are hereby, quashed.

17. All these petitions are allowed and disposed of.

18. Pending I.A., if any, stands disposed of.

19. It is made clear that whatever has been discussed hereinabove, that is only for the purpose of quashing of the criminal case and the civil suit, shall be decided without prejudice to this order.

(Sanjay Kumar Dwivedi, J.)

Amitesh/-

[A.F.R.]