courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 06/11/2025

(2010) 08 JH CK 0032

Jharkhand High Court

Case No: None

Jai Kumar and Smt. Ramkali Devi	APPELLANT
Vs	
The State of Jharkhand and Pranab Kumar Haldar	RESPONDENT

Date of Decision: Aug. 13, 2010

Acts Referred:

- Penal Code, 1860 (IPC) - Section 34, 403, 405, 406, 420

Citation: (2010) 4 JLJR 346

Hon'ble Judges: Dabbiru Ganeshrao Patnaik, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

D.G.R. Patnaik, J.
Heard Counsel for the petitioners and Counsel for the State.

2. The petitioners have filed the instant application for quashing the entire criminal proceeding pending before the court below vide G.R. Case No. 983/04 arising out of Bokaro Sector-IV P.S. Case No. 82/04 including the order of cognizance dated 06.05.2005 passed by the Chief Judicial Magistrate, Bokaro whereby cognizance for the offences under Sections 406, 420, 467, 468, 471 and 34 of the Indian Penal Code was taken against the petitioners and they have been called upon to appear and face trial in the case.

It may be observed that by an interim order passed in this case, the further proceeding in the case pending against the petitioners before the court below has been stayed.

3. Facts of the case stated briefly, relevant for the disposal of this case are as follows:

A case was registered on the basis of a written report filed by the informant Manager of the Punjab National Bank. The allegations in the F.I.R. are that the petitioner, being partners of a firm namely M/s. Jai Steels, had obtained a loan of Rs. 15 lakhs from the Informant Bank on 27.09.2001 and had availed cash credit facility to the extent of the loan amount and by way of security, had hypothecated their running stock with the Bank, in addition to furnishing guarantee of a guarantor namely Smt. Jaleshwari Devi.

As per the terms of loan and terms of hypothecation, the borrowers were required to deposit the sale proceeds of the stock promptly in the loan account. Thereafter, the loan account used to be operated smoothly and regularly but since after July, 2003, the borrowers were irregular in depositing the sale proceeds. Such irregularity continued despite repeated letters and warnings and as on 31.01.2004, an outstanding balance of Rs. 16,93,478/- stood in the loan account of the petitioners.

It is alleged that the officials of the Bank visited the godown and office premises of the petitioners'' firm on 16.01.2004 and on inspection they found the entire stock missing.

On the allegations that the petitioners have fraudulently removed the stock and dishonestly misappropriated the sale proceeds of the stock without repaying loan amount to the Bank, and have thereby committed criminal misappropriation, criminal breach of trust and offence under Sections 467 and 468 of the Indian Penal Code. The case was lodged at the Police Station and the criminal proceeding initiated against the petitioners

4. The petitioners have assailed the FIR and the entire criminal proceeding including the impugned order of cognizance on the ground that no criminal prosecution could be initiated against the petitioners on the basis of the allegations and if at all, the facts may constitute a civil dispute for breach of contract and by no stretch of imagination can the petitioners be saddled with any criminal liability.

5. Learned Counsel for the petitioner explains that even as per the admitted facts, though a hypothecation agreement was executed by the petitioners in favour of the Bank in respect of the stock but there is noting in the hypothecation agreement which would make it obligatory for the petitioners to show the exact quantity of stock every month. This was because the cash credit facility was sanctioned only for the purpose of purchase of steel materials from BSL and to sell the same in the open market and this being a daily affair, it was never contemplated that the petitioners should declare the specific minimum stock to the Bank.

Learned Counsel explains further, that the cash credit facility is not a loan in lien. Rather, it is a cash credit loan and the hypothecation agreement does not create any power to the Bank for restraining the petitioners from selling the stock. Furthermore, merely because a charge has been created on the stock, the creditor has no right of ownership of the goods. Rather, the ownership of goods remains with the borrowers.

To buttress his arguments, learned Counsel refers to and relies upon the judgment of the Supreme Court in the case of Indian Oil Corporation v. NEPC India Ltd. and Ors. 2006 (3) SCC (Cri) 188.

6. Learned Counsel for the Opposite Party No. 2, on the other hand, would argue that from the perusal of the allegations in the F.I.R., it would be apparent that the petitioners had in fact no intention to repay the loan amount and with dishonest intention, they had obtained loan from the Bank. Furthermore, the petitioners, being obliged under the terms of agreement to deposit the sale proceeds of the stock regularly, have misappropriated the sale proceeds of the stock. This, according to the learned Counsel, not only amounts to criminal misappropriation of money but also criminal breach of trust.

7. Having heard the Counsel for the parties and having gone through the materials available on record including the contents of the F.I.R., I find that admittedly, the main grievance of the informant Bank Manager is that the petitioners have committed breach of contract by failing to deposit the sale proceeds of the stock and by failing to repay the loan amount as per the terms of contract. Such claim is based on the basis of the hypothecation agreement under which the running stock of the petitioners'' firm was hypothecated.

From the admitted facts, it is apparent that the dispute relates to a commercial transaction and breach of contract. It further appears that the complainant has been labouring under a misconceived belief that since the stock has been hypothecated in favour of the Bank, the Bank is deemed to be the owner of the stock and by virtue of such ownership, the stock was entrusted to the petitioners giving them domain over the stock.

8. It is well settled that when a property is hypothecated to the creditor, the ownership and possession of the property hypothecated, remains with the debtor only, the creditor having neither ownership nor beneficial interest in the property. The hypothecation creates only a charge over the property and a right in favour of the creditor to take possession in the event of default on the part of the debtor and hypothecator. This is the view expressed by the Supreme Court in the case of Indian Oil Corporation (Supra).

The claim of the informant that the petitioners/borrowers could not have sold the stock on account of the charge being created in favour of the Bank, appears to be misconceived and misleading. Admittedly, the ownership and dominion over the stock continued to remain with the petitioners.

9. From the facts admitted, the essential ingredients of dishonest misappropriation of movable property as defined u/s 403 as also u/s 405 I.P.C., are conspicuously lacking.

10. No doubt, a commercial transaction or dispute may also involve criminal offence but only if the essential ingredients of the criminal offences are made out. Where allegations in the F.I.R./Complaint are taken at their face value, disclose exclusively a civil dispute for which the civil remedy is available or has been availed, the initiation of criminal

proceeding on the same facts, would amount to abuse of the process of the court and in such cases, as declared by the Supreme Court in the case of Indian Oil Corporation (Supra), the person who had initiated the criminal proceeding frivolously with ulterior motive, should be penalized. The test is whether the allegations in the complaint disclose a criminal offence or not.

11. In the present case, even going by the entire allegations in the F.I.R., none of the offences for which the court below has taken cognizance, is made out. The creditor Bank being aggrieved with the fact that the petitioners being the borrowers, have defaulted in repaying loan, may have a legal remedy by way of filing a civil suit for recovery of the loan amount but cannot be allowed to abuse the process of court in order to create a pressure upon the borrowers to repay the amount.

12. From the perusal of the impugned order of cognizance, it appears that the learned court below has failed to appreciate the admitted facts of the case even as declared in the F.I.R. and has proceeded to take cognizance of the offence in a most mechanical manner without application of judicial mind.

13. In the light of the facts and circumstances and the discussions made above, I find merit in this application. This application is allowed. Accordingly, the impugned order of cognizance as also the entire criminal proceeding pending against the petitioners before the court below vide G.R. Case No. 983/04 arising out of Bokaro Sector-IV P.S. Case No. 82/04, is hereby quashed.