(2008) 09 JH CK 0068

Jharkhand High Court

Case No: None

Vivek Kumar Lala		APPELLANT
	Vs	
State of Jharkhand and Another		RESPONDENT

Date of Decision: Sept. 1, 2008

Acts Referred:

- Contract Act, 1872 - Section 11
- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 120B, 34, 409
- State Financial Corporations Act, 1951 - Section 24

Citation: (2008) 4 JCR 235

Hon'ble Judges: Dilip kumar sinha, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

D.K. Sinha, J.
The petitioner Vivek Kumar Lala has invoked the inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure for quash-ment of the entire criminal proceeding in Govindpur (Barwadda) P.S. Case No. 179 of 2004 registered under Sections 409/34 of the Indian Penal Code against him and others pending in the Court of CJM, Dhanbad.

2. The factual matrix of the case is that on 12.10.1987 an agreement was entered into between M/s. Rupam Enterprises, a partnership firm and the Bihar State Financial Corporation/opposite party No. 2 herein for grant of loan to the extent of Rs. 11.5 lakhs. The petitioner was one of the partners of M/s. Rupam Enterprises. The partners on behalf of the firm executed several documents including the deed of hypothecation and letter of guarantee in favour of the Bihar State Financial Corporation (BSFC in short) for availing

the amount of loan aforesaid. According to the agreement, liability was fixed upon the corporation to grant the entire amount of loan to the borrower partnership firm. Though the agreement was executed on furnishing of the documents as far back as on 12.10.1987 but according to the defence case only a sum of Rs. 4.51 lakhs was released to the firm in installments for the reason given in the written report that the firm could not use the said fund properly. BSFC ignored the fact that the partners of the firm had invested huge amount in establishing the unit in anticipation of grant of total loan of Rs. 11.5 lakhs by the BSFC/opposite party No. 2.

3. The opposite party No. 2 alleged in the written report that the premises of M/s. Rupam Enterprises was visited by the informant including the Assistant Manager of BSFC on 10.7.2004 where it was found that the entire civil structures including the Kiln, Chimney, boundary wall etc. were removed from the site and some dressed bricks unearthed from the building structure were found lying at the site from which the informant gathered that the bricks were removed recently. All the hypothecated/ mortgaged assets of the said firm were under the possession of the partners, therefore, the informant had reason to believe that partners of the concern had dishonestly misappropriated the movable/immovable property mortgaged and hypothecated to the BSFC for their personal gains in violation of the terms and conditions of the agreement dated 12.10.1987, more so, in the event when the partners of the concern were not repaying the loan of the corporation, removal of assets in contravention of the terms of the agreement caused criminal breach of trust. The police registered a case for the offence under Sections 409/34 of the Indian Penal Code against all the five partners of the firm including the petitioner Vivek Kumar Lala. Yet, it was admitted that the petitioner was under guardianship of one Basant Kumar Lala and therefore, he was minor at the relevant time when the agreement between the parties was executed and also on the date of institution of the case.

4. Mr. A.K. Sahani, the learned Counsel for the petitioner submitted that though the BSFC was duty bound under the provision of Section 24 of the State Financial Corporation Act, 1951 to fulfill its commitment but unfortunately without performing its part as well as its obligation, the Corporation started demanding huge amount of interest beyond the terms of the agreement which resulted into controversy followed by several correspondence and legal notice from both sides. The accused persons approached the authority of BSFC for release of the balance amount for purchasing the machines etc. and pursuant to that a sum of Rs. 1,31.000/- was released in the name of the firm on 25.9.1989 but the cheque which was issued by the BSFC returned unpaid on account of certain spelling mistake therein so the same was sent to BSFC for correction but it could not be and in that matter was deprived of an installment, though too small. It was only because of non-co-operation on the part of BSFC for that the unit of M/s. Rupam Enterprises could not be opened and the partners of the firm incurred huge unbearable and irreparable loss. The balance amount of sanctioned loan could not be given inspite of persistent persuasion by the partners. The breach of contract cannot be rendered as a criminal breach of trust. The written report disclosed the entrustment of plant and machinery but It did not mention that

any beneficial interest in the plant and machinery was held by the BSFC.

5. Mr. Sahani pointed out that by order dated 23.4.2005 the learned Chief Judicial Magistrate, Dhanbad took cognizance of the offence under Sections 409/120-B of the Indian Penal Code against all the accused persons including the petitioner who was admittedly minor at the relevant time.

6. Section 11 of the Indian Contract Act, 1872 deals with competence of a person to enter into a contract which speaks:

Every person is competent to contract who is of the age of majority according to the law to which he is subject (Indian Majority Act, 1975) and who is of sound mind and is not disqualified from contracting by any law to which he is subject.

The law is specific in this regard that a contract by a minor is void and the famous case law Mohiri Blbee v. Dharmdas Ghosh (supra) is of much relevance.

7. The petitioner was admittedly minor under guardianship of Basant Kumar Lala as contained in the written report at the relevant time of agreement and therefore, his criminal prosecution oh the basis of void contract u/s 11 of the Contract Act, 1872 is unsustainable under law. I find that the learned CJM, Dhanbad has taken cognizance of the offence erroneously as against the petitioner also, who was a minor, without application of his judicial mind which is unsustainable under law.

8. On the given facts and circumstances, the criminal prosecution of the petitioner Vivek Kumar Lala is not maintainable and hence the same is set aside in Govindpur (Barwadda) P.S. Case No. 179 of 2004 corresponding to G.R. No. 2363 of 2004 pending in the Court of Chief Judicial Magistrate, Dhanbad. Accordingly, this Criminal Miscellaneous Petition is allowed.