

T.V. Ramanathan, Managing Director and Chief Operating Officer, Exide Industries Ltd. and Another Vs State of Jharkhand and Another

Court: Jharkhand High Court

Date of Decision: Oct. 19, 2007

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 482
Penal Code, 1860 (IPC) â€” Section 120B, 406, 420

Citation: (2008) 1 JCR 167

Hon'ble Judges: D.K. Sinha, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

D.K. Sinha, J.

The petitioners have preferred this petition u/s 482 Cr.P.C. for quashing the entire criminal proceeding initiated against them

including the order dated 5.4.2006 passed by the Judicial Magistrate, 1st Class, Ranchi in C.P. Case No. 1388/05 whereby and where-under

cognizance of the offence has been taken u/s 406/420 read with 120B, IPC against the petitioners now pending in the Court of Shri Sanjay

Kumar, Judicial Magistrate, Ranchi.

2. The brief fact of the case as narrated in the Complaint Petition filed by the O.P. No. 2 was that he was the C & F agent for South Bihar based

at Ranchi of the Standard Batteries Limited (S.B.L. in short). He had paid Rs. 10 lakhs as Security deposit to S.B.L. by D.D. No. 01726/323/

457 dated 28.7.1995 and D.D. No. 02195/ 323/457/95 dated 28.8.1995 as confirmed by the letters dated 28.7.1995 and 28.8.1995 of the

accused No. 1 D.K. Verma, Former Branch Manager of S.B.L., Ranchi on behalf of S.B.L. Money receipts were also issued in lieu of such

security deposits. It was promised and confirmed by accused No. 2 A.K. Ghai that 18% interest would be given in respect of the security deposits

by the complainant. However, the complainant/O.P. No. 2 received notice from the accused No. 3 F.J. Guzdar on behalf of S.B.L. vide letter

dated 20.2.1998 that its C & F agency stood terminated with effect from 1.3.1998 on the ground that S.B.L. had sold/transferred its undertaking

to M/s Exide Industries Limited with effect from 16.2.1998 and the aforesaid letter terminating the C & F agency of the complainant was

ostensibly sent ante dated mentioning the date 20.2.1998, though its envelop recorded the correct date of dispatch as on 23.3.1998. The

complainant O.P. No. 2 vide letter dated 17.4.1998 protested against the termination of his C & F agency without clearing his dues in the kind of

security deposits. The complainant pointed out that under the agreement dated 21st November, 1997 the S.B.L.'s entire manufacturing of lead

acid batteries and miners cap lamp business comprising of assets both tangible and intangible and including net current assets were sold on "slump

sale basis" to M/s Exide Industries Limited (in short E.I.L.). Subsequently E.I.L. acquired the assets and liabilities of Standard Batteries Limited

(S.B.L.) in February, 1998, as was evident from the true copy of the Director's report dated 12.5.1999 of Standard Batteries Ltd. The

complainant/O.P. No. 2 sent several letters at least on 5 dates to E.I.L. for release of its outstanding dues but to no avail. The complainant defined

slump sale which means the transfer of one or more business undertaking as a result of the sale for a lump sum consideration without as signing

values to individual assets and liabilities. The complainant alleged that on the one hand M/s. Exide Industries Limited was benefited from the

mechanism of a slump sale as far as taxation matters were concerned. But on the other hand, it denied liabilities, which it owed to the third parties

like the complainant as a consequence of slump sale. The outstanding payments due to the complainant came squarely within the meaning of

liabilities of S.B.L. which was transferred to the E.I.L. The complainant/O.P. No 2 further stated that M/s Exide Industries Limited vide letter No.

Nil dated 5.3.2001 had requested him to furnish the details of the outstanding amount which was promptly responded by sending the complete

statement of accounts vide its letter No. E.M.K./Exide/2001/137 dated 13.3.2001. The action of the E.I.L. therefore, in demanding the statement

of accounts and then denying the liability of E.I.L. clearly displayed the criminal intent on the part of the managerial officials of the E.I.L. which

constituted documentary evidence that the E.I.L. officials in collusion with S.B.L. Officials made it to appear that the termination of C & F agency

of the complainant was contemporaneous with the sale and transfer of S.B.L.'s undertaking to E.I.L. with the mens rea so that E.I.L. may

deceptively shirk off its responsibility to pay back the outstanding of the complainant/O.P. No. 2 on the false pretext that it ever had dealings with

him.

3. Specifying the accusation against the petitioners herein, the complainant/O.P. No. 2 alleged that the petitioner No. 1 T.V. Ramnathan vide his

letter dated 14.4.2003 and another petitioner No. 2 Barun Das vide his letter dated 23.12.2004 had taken false stand that M/s Exide Industries

Ltd. has never any dealings with him.

4. Mr. P.P.N. Roy, learned senior counsel submitted that the petitioner No. 1 T.V. Ramanathan is the Managing Director and Chief Operating

Officer in the Exide Industries Ltd. whereas petitioner No. 2 Barun Das is the Divisional Head as well as Legal & Company Secretary in the Exide

Industries Ltd. It is to make it clear and to be noted that on account of agreement dated 21.11.1997 for transfer an industrial undertaking with

S.B.L., an existing company under the Companies Act, 1956 Exide Industries Ltd. had not taken over S.B.L., rather only certain assets and

liabilities of the S.B.L. was purchased by the E.I.L. for a net purchase consideration which however does not include any amount allegedly payable

to the complainant/O.P. No. 2. This fact was conveyed to the complainant by the letter of the E.I.L. dated 14.4.2003 and 23.12.2004. Against

the several letters written by the complainant/O.P. No. 2. Exide Industries Ltd. had replied categorically denying any contract with the complainant

and the petitioners with certain clarification that certain assets and liabilities which were acquired from S.B.L. by E.I.L. in 1997 do not include any

amount shown as payable to the complainant O.P. No. 2. By another letter dated 19th November, 2004 it was alleged by the complainant that the

petitioners were acting as successors in interest of S.B.L. and again it was clarified that in the year 1997 only certain assets and liabilities of S.B.L.

were taken over by E.I.L. which did not include the alleged amount as mala fide demanded by him. As a matter of fact, S.B.L. was never

merged with the E.I.L. The petitioners had advised the complainant to take up the matter with the Standard Batteries Ltd. as it continued to be a

distinctly separate entity.

5. Advancing his argument Mr. Roy submitted that the alleged demand by the complainant from the petitioners was without any right and that he

started threatening the petitioners and officials of the Exide Industries Ltd. by damaging the peaceful running of the business of the E.I.L. and to its

personnel, reputation and property. It was wrongly alleged that S.B.L. was merged with E.I.L. as was interpreted by the complainant and such

questions of E.I.L. being successor in interest of S.B.L. was absolutely misconceived on the part of the complainant O.P. No. 2. It was true that

E.I.L. had acquired certain assets and liabilities of S.B.L. w.e.f. 16th February, 1998 but not all the assets and liabilities except certain limited and

the name of the complainant did not figure in the said list of liabilities. Standard Batteries Ltd. had executed deed of indemnity on November, 28th,

2000 in favour of M/s Exide Industries Ltd. by which it was agreed upon that all the liabilities were to be borne by S.B.L. except the liability to

labour/work force/employees which has been transferred to E.I.L. The list of such persons was annexed with the indemnity bond but the name of

the O.P. No. 2 herein or Em Kay Enterprises was not figured in the said list. It was made clear in the indemnity bond that all other liabilities of any

nature whatsoever of S.B.L. will continue to be the liability of S.B.L. who will meet the payments and discharge other claims/debts that may be

made by any of the creditor who had any dealings with S.B.L. Mr. Roy emphasized that whatsoever claim the complainant/O.P. No. 2, as alleged,

the same is against S.B.L. and therefore, the petitioners or E.I.L. has no role to play in this regard and this fact was communicated to him time and

again.

6. Mr. Roy stressed that the letter terminating the C & F agency of the Opposite Party No. 2 alleged to be sent on a back date cannot be levied

against the petitioners or the E.I.L. management and the question of defrauding the complainant by the petitioners in collusion with the S.B.L. did

not arise at all and finally it was submitted on fact that the liabilities which were acquired by the E.I.L. from the S.B.L. w.e.f. 16th February, 1998

did not include any amount shown as payable to the complainant.

7. On the point of law Mr. Roy submitted that on the complaint filed by the complainant O.P. No. 2 the cognizance of the offence was taken under

Sections 406 420 120B, IPC against all accused persons including the petitioners and summons were directed to be issued against them. The

complainant failed to produce any documentary evidence that he had entrusted the petitioners with property or with any dominion over property

and that the petitioners thereafter dishonestly misappropriated or converted the said property to his own use.

8. Reliance has been placed upon a decision reported in (2001) 8 SCC 216 : 2002 (1) ECC 11 the Apex Court of India in S.W. Palanitkar and

Ors. v. State of Bihar and Ors. held:

Every breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of a mental act of fraudulent

misappropriation. An act of breach of trust involves a civil wrong in respect of which the person wronged may seek his redress for damages in a

civil Court but a breach of trust with mens rea gives rise to a criminal prosecution as well. The ingredients in order to constitute a criminal breach of

trust are : (i) entrusting a person with property or with any dominion over property (ii) that person entrusted (a) dishonestly misappropriating or

converting that property to his own use; or (b) dishonestly using or disposing of that property or willfully suffering any other person so to do in

violation (i) of any direction of law prescribing the mode in which such trust is to be discharged (ii) of any legal contract made touching the

discharge of such trust.

9. Advancing his argument Mr. Roy further placed his reliance on the same decision in which the offence of cheating was defined and the Apex

Court held:

The ingredients of an offence of cheating are : (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person

so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so

deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases

covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind,

reputation or property.

10. Mr. Roy further submitted that the Complainant/O.P. No. 2 failed to produce any documentary evidence in proof of criminal conspiracy prima

facie against the petitioners that they criminally breached the trust of the complainant and thereby put him to wrongful loss or that they in any

manner cheated the complainant/O.P. No. 2 to constitute an offence under Sections 406/420/ 120B, IPC. The criminal prosecution of the

petitioner is not sustainable and Mr. Roy submitted that the order taking the cognizance of the offence against the petitioners be quashed.

11. Mr. Rajiv Ranjan, learned Counsel appearing on behalf of the O.P. No. 2/complainant submitted that the petitioners at no point of time

furnished a copy of the agreement between the S.B.L. and E.I.L. as well as other relevant documents to complainant in order to mislead him and

to deprive him of his security money deposits.

12. Advancing his argument Mr. Ranjan submitted that the C & F Agency of the complainant was terminated w.e.f. 1.3.1998 vide letter

purportedly sent which bore the date 20.2.1998 by accused No. 3, F.J. Guzdar on behalf of S.B.L. The security deposits of the

complainant became due only upon termination of his C & F agency on 1.3.1998. This was the liability of E.I.L. as per the Deed of Indemnity

itself. Thus, though the list of liabilities appended to the said Deed of Indemnity did not include the security deposits with interest thereon payable to

the complainant, his outstanding amount was EIL's liability as per the relevant clauses of the Deed of Indemnity itself. However, this fact was

concealed by the petitioner. The C & F agency of the complainant was a contract under Clause 11 of the said Agreement of Sale dated

21.11.1997. "Clause 11 provides that, that SBL has entered into contracts with various persons including Government/public authorities for supply

of batteries at prices in accordance with the relevant contracts. SBL shall made their best efforts to get the benefit/obligations under all such

contracts transferred to EIL on the same terms and conditions." This was the liability of EIL as per the Deed of indemnity and Agreement of Sale

dated 21.11.1997 itself. However, this fact was concealed by the petitioners. The list of liabilities appended to the said Deed of Indemnity includes

the expenditure, remuneration of C & F Agent at Ranchi, i.e. the complainant, SBL has also written to EIL that such dues are the liability of EIL.

However, this fact was concealed by the petitioners who always maintained that no outstanding dues were payable to the complainant by EIL.

Thus, the petitioners have very much participated in and were in charge of, and responsible for the actions of EIL in entrustment and

misappropriation of the security deposits made by the complainant and the interest thereon, which makes out a prima facie offence under Sections

406 and 420, IPC.

13. Finally Mr. Ranjan submitted that merely because an act has a civil profile is not sufficient to denude its criminal outfit as held by the Apex

Court in M/s. Medchl Chemicals and Pharma P. Ltd. Vs. M/s. Biological E. Ltd. and Others, . The High Court being the higher Court of a State

should normally refrain from giving a prima fade decision in a case where the entire facts are incomplete and hazy, in the circumstances when the

evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, cannot be assessed in their true

perspective without sufficient materials collected in course of trial.

14. Having regard to the facts and circumstances, I find that a number of documents have been produced on behalf of the petitioners to show their

innocence in support of their cause and to prove their innocence for the quashing of the order taking cognizance of the offence by the Magistrate.

The Hon"ble Apex Court time and again have held that the exercise of jurisdiction under the inherent power to have the complaint or the charge-

sheet quashed is an exception rather a rule and the case for quashing at the initial stage must have to be treated sparingly as a rarest of rare so as

not to scuttle the prosecution.

15. It was held by the Apex Court in State of Karnataka Vs. M. Devendrappa and Another, held:

Needless to record however and it being a settled principle of law that to exercise powers u/s 482 of the Code, the complaint in its entirety shall

have to be examined on the basis of the allegation made in the complaint and the High Court at that stage, has no authority or jurisdiction to go into

the matter or examine its correctness. Whatever appears on the face of the complaint shall be taken into consideration without any critical

examination of the same.

16. In the facts and circumstances and the Rule propounded by the Hon"ble Apex Court by making observations I find that no ground has been

made out by the petitioners for interference in the cognizance order and the order impugned passed by Shri Sanjay Kumar, Judicial Magistrate, 1st

Class, Ranchi in Complaint Case No. 1388/05 on 5.4.2006. There being no merit, the petition filed tinder Section 482 Code of Criminal

Procedure, therefore, is dismissed.