

(2014) 08 JH CK 0041

Jharkhand High Court

Case No: Criminal Miscellaneous Petition No. 5097 of 2001

Devendra Kumar Singh

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: Aug. 29, 2014

Acts Referred:

- Penal Code, 1860 (IPC) - Section 419, 420

Citation: (2014) 4 LJLR 363

Hon'ble Judges: Harish Chandra Mishra, J

Bench: Single Bench

Advocate: Anil Kumar and Nilesh Kumar, Advocate for the Appellant

Judgement

Harish Chandra Mishra, J.

Heard learned counsel for the petitioner and learned counsel for the State. The complainant opposite party No. 2, has not appeared in spite of valid service of notice upon him.

2. The petitioner is aggrieved by the order dated 21.6.2001 passed by Sri Sitaram Prasad, learned Judicial Magistrate, Ranchi, in Complaint Case No. 82 of 2000, whereby prima facie offence under Sections 419 and 420 of the Indian Penal Code has been found against the accused persons, including the petitioner, and summons were directed to be issued against them. The petitioner has also challenged the entire criminal proceeding against him in the said compliant case.

3. Complaint Case No. 82 of 2000 was filed by the complainant opposite party No. 2, in the Court of the Chief Judicial Magistrate, Ranchi, wherein, the petitioner has also been made accused along with other accused persons. The petitioner has been described as the Managing Director of Bihar State Mineral Development Corporation (herein after referred to as the "Corporation"). According to the complaint case, the complainant was a licensee under the Bihar Trade Articles (License Unification) Order, 1984, and was carrying out his coal business from his

depot, situated at Nawabganj, in Hazaribag. He was entitled to lift the coal from Sikni Coal Mines, situated in the district of Daltonganj, belonging to the Corporation. According to the complainant, he lifted the coal till July 1995 and subsequently, he was stopped from lifting the coal and when he approached the petitioner, who was then working as Chief of Marketing in the Corporation, he was falsely informed that his authorization had been cancelled and he was asked to meet a MLA, who was the nephew of the complainant. It is also alleged that the petitioner also instructed his subordinates not to deal with the complainant any more, and no permit be issued to him for lifting of the coal from Sikni Colliery. There is direct allegation against this petitioner to have point blank told the complainant that his authorization was cancelled. Subsequently, the petitioner became the Managing Director of the Corporation and became more powerful and the complainant was not allowed to lift the coal. Sometimes, in January 1998, the complainant was informed that the steam coal was actually being lifted from Sikni colliery by the accused persons on the complainant's authorization and upon verification, the complainant learnt that in between 1.8.1995 to 1.1.1998, steam coal weighing 4178.73 M.T. had been lifted from the said colliery on the authorization of the complainant. The total value of the coal, thus, illegally lifted by the accused persons, came at Rs. 17,84,324.75 paise. It is alleged in the complaint petition that the coal was being lifted under the collusion and connivance of the accused persons, including the petitioner, and they have sold the stock in the open market and converted the same in the valuable security, for which, they did not pay even the commercial taxes and the income tax. It is also stated in the complaint petition that upon coming to know about the illegal lifting of coal, the complainant filed a writ petition being CWJC No. 914 of 1998(R) before the Patna High Court, Ranchi Bench, wherein by order dated 1.4.1999, lifting of the coal on the petitioner's license was stayed. In the said CWJC No. 914 of 1998(R), the accused Nos. 1 and 3 appeared through advocate, but the petitioner did not appear. The accused No. 1 Bhikku Dutta filed a counter affidavit and admitted that the complainant was a licensee for sale of retail coal, but he falsely claimed to have lifted the coal on the basis of partnership deed between the petitioner and the said accused. The complainant has claimed that the said partnership deed is a forged document, in which his signature was forged for the purpose of cheating. It is also stated that the said CWJC No. 914 of 1998(R) was admitted for hearing and the stay was also lifted so far as the complainant was concerned, and liberty was given to the complainant to lift the coal on his license/authorization, vide order dated 23.12.1990 passed therein. With these allegations and statements, the complaint petition was filed by the complainant.

4. The complainant also supported his case before the Court below on his statement recorded on solemn affirmation and three witnesses were examined by the complainant at the enquiry stage, who also supported the complainant's case, on the basis of which, the Court below, by the impugned order dated 21.6.2001 found prima facie offence under Sections 419 and 420 of the Indian Penal Code, against

the accused persons, including the petitioner.

5. Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in this case. It is also the case of the petitioner that during the period from 1.8.1995 to 1.1.1998, the petitioner was not the Chief Marketing Officer, rather, he was holding the post of Managing Director of the Corporation right from the month of January 1995 itself. It is the case of the petitioner that the coal was lifted during the said period on the authorization of the complainant, for which, some documents have also been brought on record, allegedly issued under the signature of the complainant, which have been marked as Annexure-3 Srs. Placing reliance on these documents, learned counsel for the petitioner has submitted that these documents clearly show that the coal was lifted by the complainant throughout, and the petitioner has been falsely implicated in this case. Learned counsel has submitted that these documents may be taken into consideration even at this stage in view of the law laid down by the Supreme Court of [All Cargo Movers \(I\) Pvt. Ltd. and Others Vs. Dhanesh Badarmal Jain and Another,](#). It is also submitted that in the facts of the case, no offence can be said to be made out against the petitioner under Sections 419 and 420 IPC, inasmuch, there is no allegation against the petitioner of any cheating by personation and even the offence of cheating cannot be said to be made out against the petitioner on the basis of the allegations made against him. Learned counsel has also placed reliance upon the decisions of the Apex Court in [Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others,](#) as also in the case of [Suryalakshmi Cotton Mills Ltd. Vs. Rajvir Industries Ltd. and Others,](#) in support of his contention that as in the facts of this case, the offence is not made out against the petitioner, the criminal proceeding against the petitioner is fit to be quashed.

6. Learned counsel for the State, on the other hand, has opposed the prayer and has submitted that on the basis of the allegations made against the petitioner, offence is clearly made out against him.

7. After having heard learned counsels for both sides and upon going through the record, I find that there is specific allegation against the petitioner to have prevented the complainant from lifting the coal and informed the complainant that his authorization had been cancelled. There is allegation in the complaint that the accused persons connived amongst themselves for the purpose of cheating and on the basis of the forged document allegedly issued under the signature of the complainant, the coal was lifted and in this manner, the complainant was put to a loss about of Rs. 17,84,324.75. Though there is no allegation against the petitioner directly of cheating by personation, but from the facts of this case, it is apparent that there is allegation against the accused persons of using the forged documents bearing the forged signature of the complainant for lifting the coal. As such, the submission of learned counsel that the offence under Section 419 IPC is not made out against the petitioner, cannot be accepted at this stage, as it can be seen only

after the trial as to whether the connivance of the petitioner was there or not in committing the offence of forgery by personating the complainant. The submission of learned counsel for the petitioner that offence under Section 420 IPC is also not made out in the facts of this case, cannot be accepted at this stage. The documents brought on record as Annexure-3 Srs., show that the coal was lifted during the period from 1.8.1995 to 1.1.1998 on the basis of authorization issued under the signature of the complainant and there is allegation against the accused persons of lifting the coal on the basis of forged documents. The fact whether the documents contained in Annexure-3 Srs., are genuine, or they are forged documents, cannot be established at this stage, which can only be established in course of trial. In the facts of this case, there being direct and specific allegations against the petitioner to have connived with the other co-accused and to have lifted the coal on the basis of forged documents said to be issued by the complainant and to have sold them in the open market, as also in view of the specific allegation against the petitioner that it was the petitioner who had informed the complainant that his authorization had been canceled, due to which he could not lift the coal for a long period of time, and the coal was actually lifted during that period by the accused persons, causing heavy monetary loss to the complainant, I am of the considered view that it cannot be held at this stage that the petitioner has been falsely implicated in this case. The role, if any, of the petitioner can only be ascertained during trial. Indeed, it is apparent from the complaint petition that in the writ petition also, the complainant was allowed to lift the coal on the basis of his license/authorization. In my considered view, no case is made out for any interference in the criminal proceeding, or the impugned order finding prima facie offence against the petitioner, at this stage.

8. There is no merit in this application and the same is accordingly, dismissed.