

(2011) 02 PAT CK 0038

Patna High Court

Case No: Criminal Miscellaneous No. 24482 of 2003

Amar Kumar Prasad Sinha and
Renu Sinha

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision: Feb. 19, 2011

Final Decision: Allowed

Judgement

Rakesh Kumar, J.

Two Petitioners, who are husband and wife, have approached this Court while invoking its inherent jurisdiction u/s 482 of the Code of Criminal Procedure, with a prayer to quash an order dated 8.3.2001, passed by learned Chief Judicial Magistrate, Vaishali in Sarai P.S. Case No. 30 of 2000. By the said order, the learned Magistrate has taken cognizance of offence under Sections 420, 467, 468/34 of the Indian Penal Code and under Sections 49(2) & 49(3) of the Bihar Finance Act, 1981.

2. Short fact of the case is that, a written application of Assistant Commissioner, Commercial Taxes, Hajipur Circle, Hajipur, addressed to the Officer-in-charge, Sarai Police Station, Vaishali Hajipur against the Petitioners and others alleging therein commission of offences under Sections 420, 467, 468/34 of the Indian Penal Code and Sections 49(2)(g) & 49(3)(d) of the Bihar Finance Act, 1981 an F.I.R. vide Sarai P.S. Case No. 30 of 2000 was registered on 1.4.2000. According to F.I.R., the Petitioner No. 1 was Managing Director and Petitioner No. 2 was Director of M/s Natraj Engineering Pvt. Ltd. which was an industrial unit registered with the Sales Tax Department. The said company was manufacturing sleepers for the Railways, and it was registered with the Hajipur Circle of the Sales Tax Department under the Bihar Finance Act. The company had submitted return, and unauthorized claimed set off during the financial years 1996-97, 1997-98, 1998-99 & 1999-2000. The total set off amount was Rs. 34,06,316.13 whereas, after 17.9.1997, set off was not permissible under the Rules. It was alleged that the company in question with a view to reduce tax liability had furnished false statement. The company had also filed a writ petition before this Court which was subsequently rejected. The company was given notice

for depositing the said amount. However, no step was taken on behalf of the company and as such, it was alleged that, company in question had violated the provisions contained in Sections 49(2)(g) & 49(3)(d) of the Bihar Finance Act which is a cognizable offence u/s 49(C) of the Act. On the basis of the said written application, a F.I.R. vide Sarai P.S. Case No. 30 of 2000, for the offences under Sections 420, 467, 468/34 of the Indian Penal Code and Sections 49(2)(g) & 49(3)(d) of the Bihar Finance Act against six accused persons including the aforesaid two Petitioners. After registering F.I.R., Police investigated the case, and thereafter, charge-sheet was submitted for the offences under Sections 420, 467, 468/34 of the Indian Penal Code and Sections 49(2) & 49(3) of the Bihar Finance Act. After filing of the charge-sheet, the learned Chief Judicial Magistrate vide its order dated 8.3.2001, took cognizance of offence under Sections 420, 467, 468/34 of the Indian Penal Code and Sections 49(2) & 49(3) of the Bihar Finance Act, and for disposal, transferred the case record to the court of Sri N.K. Lal, Judicial Magistrate, Ist Class.

3. Aggrieved with the order of cognizance dated 8.3.2001, both the Petitioners approached this Court by filing the present petition. On 9.11.2004, this petition was admitted for hearing, lower court record was called for and it was further directed that during the tendency of this application further proceeding in court of the Judicial Magistrate, Ist Class, Vaishali at Hajipur in Sarai P.S. Case No. 30 of 2000, G.R. Case No. 720 of 2000 shall remain stayed. The order of stay is still continuing.

4. Sri Ashwani Kumar Singh, learned senior counsel for the Petitioners while challenging the order of cognizance has raised several points. It was submitted that, the Petitioner Nos. 1 & 2 are Directors of M/s Natraj Engineering Pvt. Ltd. which is a registered company under the Indian Companies Act, and the said company manufactures concrete P.S.C. sleepers for the Railways at Sarai. The Petitioners' company had regularly submitted its return, and same was being regularly accepted by the Sales Tax Department. Suddenly, on 2.3.2000, the Sales Tax Department issued show cause notice to the company fixing 27.3.2000 as the date of hearing in relation to the amount of tax in question for the period 1996-97, 1997-98, 1998-99 & 1999-200. Sri Ashwani Kumar Singh, learned senior counsel for the Petitioners has referred to Annexure-2 to the petition, which is a copy of notice purported to be issued to the company in question. It was argued that after the receipt of notice the company appeared through its Advocate before the Sales Tax Authority at Hajipur and raised certain objections regarding the notice and sought for certain clarification from the authorities of the Sales Tax Department. It was submitted that the informant of the present case, in the capacity of Assistant Commissioner, Sales Tax, Hajipur Circle made certain clarification by his subsequent notice dated 28.3.2000 and fixed the next date to 3.4.2000, for the hearing in the matter, but surprisingly, the informant, before the next date fixed by him, filed a written report before the Officer-in-charge, Sarai Police Station and thereafter, the F.I.R. in the case was registered on 1.4.2000. It was submitted by Sri Singh, that the F.I.R. was filed in a retaliation due to the reason that earlier a writ petition was filed in respect of the

same claim of the Department, and after rejection of the writ petition, in haste without even waiting for the next date which was fixed by the informant himself, the present case was got instituted, that too, for a so-called irregularity in submission of return / statement before the Sales Tax Authority on behalf of the company in question. It was also argued that the set off was claimed by the company in view of the policy decision of the Sales Tax Department. It was not an intentional act on behalf of the company for committing evasion of taxes and as such, in the facts and circumstances of the present case, no offence is made out under Sections 420, 467, 468/34 of the Indian Penal Code.

5. Sri Singh has also taken a plea that company was a body corporate and it is a juristic person and as such, if for the time being, it is assumed that while submitting return some offences were committed, it was committed by the company, and for that, Petitioners being Directors of the company without any specific allegation of omission or commission by the Petitioners can't be made accused. On the ground of vicarious liability the Petitioners cannot be prosecuted. In support of his contention, learned Counsel for the Petitioners has relied on [S.K. Alagh Vs. State of U.P. and Others](#), & [Keki Hormusji Gharda and Others Vs. Mehervan Rustom Irani and Another](#), .

6. Learned Counsel for the Petitioners, besides raising aforesaid points has argued that, in any event, the order of cognizance is not sustainable in the eye of law, due to the simple reason, that in the present case no sanction was obtained from the Commissioner of the Commercial Taxes in compliance with Section 49(5) of the Bihar Finance Act. Learned Counsel for the Petitioners, has relied on an unreported judgment of this Court dated 11th March, 1998 passed in Cr. Misc. No. 11663 of 1992 (Ganesh Kumar Agrawal v. The State of Bihar) and other analogous cases wherein, this Court has held that in absence of sanction issued by the Commissioner, Commercial Taxes as required u/s 49(5) of the Bihar Finance Act order of cognizance would not be sustainable.

7. Sri Hriday Prasad Singh, learned Additional Public Prosecutor has forcibly opposed the prayer of the Petitioners. It was submitted by learned Additional Public Prosecutor, that it was a gross case of evasion of Commercial Taxes to the tune of Rs. 34 Lakhs and odd, and Petitioner No. 1 was the Managing Director of the Company in question and Petitioner No. 2 was its Director and as such, for commission of such a serious offence the learned Magistrate has rightly passed the impugned order of cognizance. On the question of sanction, it was submitted by Sri Hriday Prasad Singh, learned Additional Public Prosecutor that sanction point can be argued before the court below during the trial, and at this stage, this Court may not interfere with the impugned order of cognizance.

8. Besides hearing learned Counsel for the parties, I have also perused the materials available on record.

9. Without going into merit of the case, the court has examined the materials on record to ascertain as to whether before passing order of cognizance prosecution had brought on record sanction as required u/s 49(5) of the Bihar Finance Act. In this case, it is not in dispute that, order of cognizance was passed in absence of sanction granted by Commissioner, Commercial Taxes. Section 49 (5) of the Bihar Finance Act, puts a bar on a court to take cognizance of the offence under the Bihar Finance Act, 1981 in absence of sanction granted by the Commissioner, Commercial Taxes. Since in the present case, no sanction was accorded, the court is of the opinion that the order of cognizance is liable to be set aside on this ground alone.

10. In view of the facts and circumstances, the court is of the opinion that, it is a fit case for interference with the order of cognizance. Accordingly, the order of cognizance dated 8.3.2001, is hereby set aside and petition stands allowed.