
(2014) 08 CAL CK 0105

Calcutta High Court

Case No: C.R.R. 3608 of 2011

Sekhar Nath Das

APPELLANT

Vs

The State of West
Bengal

RESPONDENT

Date of Decision: Aug. 11, 2014

Acts Referred:

- Penal Code, 1860 (IPC) - Section 120B, 201, 202, 203, 302

Citation: (2015) 1 CALLT 1

Hon'ble Judges: Joymalya Bagchi, J

Bench: Single Bench

Advocate: Sandipan Ganguly and Debangana Bhattacharya, Advocate for the Appellant; S. Banerjee, Sudipto Moitra and Sanjoy Bajernee, Advocate for the Respondent

Final Decision: Allowed

Judgement

Joymalya Bagchi, J.

Order dated 28.7.2011 passed by the learned Metropolitan Magistrate, 7th Court, Calcutta, to the extent it directs framing of charge u/s 203 of the Indian Penal Code against the petitioner, has been assailed.

2. The prosecution case as alleged against one Dinesh H. Shah, one of the trustees of the Calcutta Gujarati Education Society (hereinafter referred to as "Society"), J.K. Majitata, an office bearer of the said society, Indrajit Chatterjee, proprietor of one M/s. Chatterjee's, one Subash Chakraborty, a former Branch Manager of Bank of Baroda, Prince Anwar Shah Road Branch, and the petitioner who had joined the said branch on 1st March, 2001 to the effect is that the society through its trustees had opened Term Deposit Account with the aforesaid Bank of Baroda, Prince Anwar Shah Branch, to the tune of Rs. 50,00,000/- being Account No. 4345 and T.D.R. No. 95/D-0164552 dated 24.4.2000 which was to mature on 24.4.2003. According to the constitution of the Society, there is no provision to take loan against term deposits maintained by the Society in

various banks. Notwithstanding such provision, it appears lien had been created against the aforesaid term deposit and a loan of Rs. 40,00,000/- was sanctioned by the said branch against the said term deposit. In view of the aforesaid facts, on 09.04.2001, one Mr. J.K. Majitata addressed a letter to the petitioner, as Branch Manager of Bank to confirm in writing that no lien has been made against the aforesaid term deposit and that the Bank will not entertain any such lien against the same in future. In response to such letter, the petitioner, on 18.4.2001, stated that there is no lien on the said fixed deposit as on that date.

3. Thereafter on 10.7.2001, the Society by another letter to the petitioner informed him that it had not received any acknowledgement from the latter and intimated him that they had come to know from reliable sources that lien was created on the aforesaid term deposit and a loan of Rs. 40,00,000/- had been sanctioned to M/s. Chatterjee"s. On 24.07.2001, the petitioner wrote back to the Society that D.H. Shah, one of the trustees of the Society, had requested the Bank for loan of RS. 40,00,000/- to M/s. Chatterjee"s, a proprietorship concern of Indrajit Chatterjee and that Mr. Shah submitted a resolution dated 9.5.2009 in support thereof. The petitioner also disclosed that Mr. Shah had placed a resolution of the Board of Trustees held on 21.4.2000 sanctioning such transaction.

4. It has further been alleged that the resolution dated 21.4.2000 purportedly signed by Mr. D.H. Shah was a forged document. It is alleged that the then Bank Manager, Subhash Chakraborty, in collusion with J.K. Majitata, Indrajit Chatterjee and Dinesh H. Shah had on the basis of forged documents created a lien on the fixed deposit and granted loan facilities to M/s. Chatterjee"s, a firm owned by Indrajit Chatterjee. It is pertinent to note that the lien was duly discharged on 16.04.2001.

5. With regard to the petitioner it is alleged that he in spite of receipt of the letter dated 09.04.2001 of the Society requesting him to let the latter know whether there was any lien on the aforesaid F.D.R. had by his letter dated 18.04.2001 stated that there was no lien on the F.D.R. as on that date. It is alleged that the petitioner had suppressed that the F.D.R. was lying with the Bank and that an earlier lien had been created on the F.D.R. which was discharged on 16.04.2001.

6. In conclusion of investigation, charge sheet was filed wherein petitioner has been charged u/s 203 of the Indian Penal Code and accusations under sections 120B/420/468/471/406 of the Indian Penal Code have been levelled against the other accused persons.

7. By order dated 28.07.2011, the trial Court directed, inter alia, framing of charge u/s 203 I.P.C. against the petitioner.

8. Mr. Ganguly, learned counsel appearing for the petitioner challenged the framing of charge against the petitioner on the premise that uncontroverted allegations do not disclose essential ingredients of the offence punishable u/s 203 of the Indian Penal Code.

He submitted that in response to the letter dated 09.04.2001 his client had written letter dated 18.04.2001 stating that "there was no lien on your fixed deposit as on date". Such statement cannot be said to be false inasmuch as the lien on the fixed deposit had been discharged on 16.04.2001. He further submitted that in response to the subsequent letter dated 07.07.2001, wherein further particulars had been sought, his client by letter dated 24.07.2001 had given detailed information about the transaction in respect of the F.D.R. clearly exposing any lack on culpable intention on his part. He, accordingly, prayed for quashing of the proceeding so far as the petitioner is concerned.

9. Mr. Moitra, learned Senior Counsel appearing on behalf of the opposite party no. 2 submitted that letter dated 18.04.2001 left much to be desired. The petitioner ought to have promptly replied to the letter dated 09.04.2001 of the Society and disclosed the entire facts. He chose to suppress facts to screen the other offenders. Accordingly, ingredient of the offence u/s 203 I.P.C. was prima facie disclosed warranting framing of charge.

10. Mr. Banerjee, learned counsel appearing on behalf of the State supported the case of the opposite party no. 2 and submitted that there is sufficient material has been collected in the course of investigation warranting framing of charge. Section 203 I.P.C. reads as follows:-

203. Section 203. Giving false information respecting an offence committed--Whoever knowing or having reason to believe that an offence has been committed, gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two year, or with fine, or with both.

Explanation.--In sections 201 and 202 and in this section the word "offence", includes any act committed at any place out of India, which, if committed in India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460.

11. Ingredients of the aforesaid offence are-

(a) person must know or have reason to believe that an offence is committed and

(b) he must give information in respect of the offence which he knows or believes to be false.

12. In the instant case it is admitted that the petitioner was not in the concerned branch of Bank of Baroda till March, 2001. Accordingly, the petitioner had no role to play in the manner and circumstances under while lien on the Fixed Deposit Account had been created. Therefore, it is difficult to conclude, even prima facie, that the petitioner who had only joined in March, 2001 had requisite knowledge or belief that an offence had been committed in respect of the transaction in question. He received the letter on 9th April,

2001 and on 18th April, 2001 he categorically stated that "there is no lien on your fixed deposit as on date" as such lien had been discharged on 16.04.2001. The contents of the said letter cannot therefore be said to be false. It has been strenuously argued that there was delay in responding the said letter which was received by the petitioner on 11th April, 2001 giving opportunity to the other accused persons to discharge the lien in the interregnum. This clearly discloses the requisite mens rea on the part of the petitioner.

13. I am unable to accept the aforesaid contention advanced on behalf of the opposite party no. 2. I do not understand how discharge of the lien on the Fixed Deposit Receipt is an act which has prejudiced to the opposite party no. 2 or the prosecution case in any manner whatsoever. On the other hand, it had ensured restoration of the security free from encumbrances to the Society. There is nothing on record to show that such action of discharge of lien was prompted at the behest of the petitioner. The response of the petitioner to the letter of the Society, in the factual backdrop of the case, cannot be said to be either false or untrue. It is a fact that there was no lien on the Fixed Deposit Receipt on that date. Further particulars in respect of the transaction no doubt is absent in the letter. However, the same was promptly provided by the petitioner much prior to the institution of the case by letter dated 24.7.2001. Such conduct of the petitioner clearly renders his action bona fide. Institution of the impugned prosecution on the allegation that he furnished false information knowing or having reason to believe that offence has been committed pales into insignificance in the light of his detailed reply dated 24.7.2001, as aforesaid. Crux of the offence punishable u/s 203 I.P.C. is tarnishing of false information. I am unable to convince myself how letter dated 18.04.2001 by any stretch of imagination conveys any false information to the opposite party no. 2.

14. In the light of the aforesaid discussion, I am constrained to hold that the uncontroverted allegations in the charge sheet do not disclose essential ingredients of the alleged offence. Institution and continuation of a criminal proceeding is a serious matter more particularly for the petitioner who is in a public servant employed in a nationalized bank.

15. In [Punjab National Bank and others Vs. Surendra Prasad Sinha](#), it has been held as follows:

6. It is also salutary to note that judicial process should not be an instrument of oppression or needless harassment. The complaint was laid impleading the Chairman, the Managing Director of the Bank by name and a host of officers. There lies responsibility and duty on the Magistracy to find whether the concerned accused should be legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded then only process would be issued. At that stage the court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complaint as vendetta to harass the persons needlessly. Vindication of majesty of

justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance. Considered from any angle we find that the respondent had abused the process and laid complaint against all the appellants without any prima facie case to harass them for vendetta.

16. The net in the prosecution case, in my considered opinion, has been cast too wide and the petitioner, who had no role to play in the transaction which is the subject matter of the alleged offences (as he had joined the Branch in March, 2001) and had merely replied to queries of the Society as per records in ordinary course of business, has been arrayed as an accused person therein.

17. Accordingly, the impugned order dated 28.7.2011 framing charge against the petitioner u/s 203 of the Indian Penal Code is quashed. I make it clear that the observations made herein are for the purpose of disposal of this petition and shall not have any bearing in the course of trial of the other accused persons, which, needless to mention shall be conducted in accordance with law.

18. This application is allowed.

19. Urgent photostat certified copy of this order, if applied for, be furnished on priority basis.