

IN THE SUPREME COURT OF INDIA  
JURISDICTION

CRIMINAL APPELLATE

CRIMINAL APPEAL NO. 2114 2013  
(Arising out of SLP (Crl.) No. 1233 of 2012)

J.L. Soman & Ors. ... Appellants

Vs.

State of Bihar & Anr. ... Respondents

WITH

CRIMINAL APPEAL NO.2115 2013 (Arising out of SLP  
(Crl.) No.1232 of 2012)

AND

CRIMINAL APPEAL NO. 2116 2013 (Arising out of SLP  
(Crl.) No.1234 of 2012)

O R D E R

V.Gopala Gowda,J.

Leave granted.

2. These criminal appeals have been filed by the appellants as they are aggrieved by the final common judgment and order dated 29.07.2011 passed by the High Court of Judicature at Patna dismissing their petitions for the reason that their earlier criminal misc. petitions were dismissed by a common order dated 12.06.2007 after hearing the parties which fact is admitted by the appellants but they again approached the High Court for similar relief. Hence, the High Court was not inclined to interfere with the same in the said criminal misc. petitions and dismissed the same. Aggrieved by the said orders passed in Criminal Misc. Case Nos. 15687 of 2011, 16326 of 2011 and 15681 of 2011, these criminal appeals have been filed by the appellants urging various facts and legal contentions and prayed to set aside the impugned order and quash the proceedings initiated against the appellants after taking cognizance of the offences alleged against them by the respondents/complainants in these appeals.

3. The necessary facts of the case are stated hereunder:-

The appellants, namely, J.L. Soman, K.D.P. Murty and T.K. Mukherjee were working as the Managing Director, General Manager and Distribution Manager respectively, at Uni-Sankyo Ltd., a limited Company, during the period of service of the complainants, namely, Sidharth Burman, S.K. Sinha and Rajnikant who have been arrayed as respondent No.2 in the respective criminal appeals.

4. The complainants resigned from their services from the aforesaid Company on 03.02.2003, 04.02.2003 and 04.02.2003 respectively. On resignation, they claimed full and final settlement and claimed salary, bonus, leave encashment, gratuity etc. which were allegedly due to them by the Company. The appellants, on the other hand, alleged that the complainants had allowed misappropriation of stocks and payments received from customers, allowed accumulation of outstanding dues to the Company

against goods sold by allowing indiscriminate sales and did not recover the huge outstanding amounts although it was promised. Due to this, their full and final settlement of accounts was kept pending by the Company. The complainants denied the allegations and filed criminal complaints against the appellants alleging cheating and forgery, among other offences.

5. By orders dated 02.05.2006, 24.4.2006 and 25.4.2006, the Judicial Magistrate First Class, Gaya, took cognizance of the offences against the appellants punishable under Sections 418, 504 and 120B of the Indian Penal Code and issued summons and warrants to them. The appellants filed criminal misc. petitions before the High Court under Section 482 of the Criminal Procedure Code ("Cr.P.C." in short) seeking for quashing of the entire proceedings on the file of the learned Judicial Magistrate, First Class including taking of cognizance vide the aforesaid orders. The High Court disposed of those petitions vide common order dated 12.06.2007 in Criminal Misc. Nos. 23569 of 2007, 25544 of 2007 and 25546 of 2007 with a direction to the appellants to appear in the court below within four weeks ordering their prayer to be considered. The appellants contend that the High Court vide order dated 12.06.2007 did not adjudicate on the correctness or otherwise of the orders dated 02.05.2006, 24.4.2006 & 25.4.2006 and again filed criminal miscellaneous petitions before the High Court for quashing of the entire proceedings including aforementioned orders of cognizance. The High Court dismissed the same vide order dated 29.07.2011 stating that appellants had approached the High Court earlier seeking the same relief and the same was disposed of. Aggrieved by the same, the present appeals have been filed by the appellants urging certain grounds.

6. When these cases were listed for admission after notice, the learned senior counsel for the appellants Mr. Nagendra Rai, agreed for the observations made by this Court during the course of his submissions, to verify from the records of the Company in which the second respondent in each one of these criminal appeals were working, as to what exactly the monetary benefits due to them by the Company are with reference to the claim made by each one of them which are mentioned in detail in their private complaints filed before the Chief Judicial Magistrate, First Class, for certain offences alleged to have been committed by the appellants under Sections 420,468,504, 120B, 406/34 of the IPC in complaint case No. mentioned in the table below, the monetary dues from the Company is also mentioned in the relevant column of the table :

| Sl.No. | Name            | Complaint case No. | Amount claimed   |
|--------|-----------------|--------------------|------------------|
| 1      | Sidharth Burman | 315 of 2006        | [pic] 1,66,335/- |
| 2      | S.K. Sinha      | 319 of 2006        | [pic] 1,18,178/- |
| 3      | Rajnikant       | 374 of 2006        | [pic] 1,48,008/- |

7. A detailed statement of affidavit was directed to be filed by them when these matters were listed for admission after issue of notice by this Court. The affidavit of K.D.P Murty s/o late K.S.Murty, General Manager of Uni-Sankyo Ltd., resident of B.N.R. Apartment, Hyderabad was filed stating certain relevant facts in relation to these appeals questioning and challenging the common order dated 29.07.2011 passed by the High Court of Judicature at Patna filed under Section 482 of the Cr.P.C. seeking to quash the entire proceedings initiated against the appellants by the contesting respondents before the Judicial Magistrate, First Class, Gaya. In the affidavit, the claims of each one of the contesting respondents have been mentioned along with the reasons in relation to their resignation from their services and also alleged the damage caused by each one of them to the Company which are not required to be adverted to in this order in view of the stand taken by the appellants in the affidavit filed by the aforesaid person at para 4 which reads thus:

"4. In any view petitioner with utmost veneration state that the petitioner is ready to abide by and accept any order/direction of this Hon'ble Court to put an end to this vexatious litigation which has travelled up to this court, wherein criminal law has been set in motion."

8. However, as could be seen from the averments made in the complaint by each one of the contesting respondents-complainants herein against the appellants, it is alleged that the appellants had committed cheating and forgery against the contesting respondents-complainants with a motive to grab the amount, the details of which are mentioned in the complaint. Before the Judicial Magistrate First Class some of the respondents-complainants were examined as witnesses before taking cognizance and issuing summons, and after recording their statements, it is alleged by the appellants that on incorrect appreciation of material available on record and lack of application of mind, the learned Judicial Magistrate First Class was pleased to take cognizance for offences punishable under Sections 418, 504 and 120B of the IPC against the appellants and issued summons without serving the same on them and without following the procedure as required under Sections 82 and 83 of the Cr.P.C., the non-bailable warrants were issued to the appellants for their appearance before the learned Judicial Magistrate First Class in the proceedings.

9. The correctness of the same was challenged by the appellants before the High Court of Judicature at Patna by filing criminal misc. petition Nos. 23569 of 2007, 25544 of 2007 and 25546 of 2007. The same came to be disposed of by common order on 12.06.2007 with a direction to the appellants to appear before the learned Judicial Magistrate, First Class, within four weeks whereby their petition under Section 205 for recalling the warrant of arrest as also the attachment order may be considered. Thereafter, the cognizance taken in the proceedings was challenged by the appellants in the second round of misc. petitions, which came to be dismissed vide common order dated 29.07.2011 for the reason that the appellants had earlier approached the High Court as stated by them in para 2 of their petitions. Therefore, the learned single Judge was not inclined to interfere with the above said petitions and the same were dismissed. The said orders are challenged before this Court in these criminal appeals.

10. This Court after condoning the delay on 06.02.2012 issued notice in all these cases and passed an interim order staying the operation of the orders dated 02.05.2006, 24.04.2006 and 25.04.2006 in complaint case Nos. 315, 319 and 374 of 2006 respectively, passed by the Judicial Magistrate, First Class, Gaya, Bihar.

11. We have perused the impugned order and also the complaints filed by the contesting respondent-complainants in these criminal appeals. The allegations were made against the appellants that they have committed offences punishable under the aforesaid provisions of the IPC and as their claims made with the Company have not been settled, we therefore, directed the appellants' counsel to ascertain as to what exactly is the amount due to each one of the contesting respondents-complainants in these appeals from the company. In the course of submissions, learned senior counsel Mr. Nagendra Rai on 06.12.2013, made a categorical submission that the Company, in which the contesting respondents have been working, is willing to settle their claim by giving a sum of [pic]1,00,000/- to each one of them. His submission is placed on record, and we have perused the same, having regard to the facts and circumstances of the case and the fact that the contesting respondent in each one of these appeals has claimed his monetary benefits under various heads as mentioned in their complaints. It would suffice for this Court to pass an order directing the Company and the appellants to see that the amount of [pic]1,20,000/- in relation to S. Burman, [pic]1,10,000/- in relation to Rajnikant, and [pic]1,00,000/- in relation to Sanjay Kumar Sinha is paid towards full and final submission of all their claims, by issuing demand draft in their favour within two weeks from the date of receipt of the copy of this order failing which the appellants/Company will be liable to pay an interest at the rate of 9% per annum on the above said sums from the date of resignation by the complainants till the date of payment. Further, we direct the appellants/Company not to write any letter either to the employer where the contesting respondents are working at present or any letter to whomsoever to disturb their employment with their respective employer. We hereby set aside the orders dated 02.05.2006, 24.4.2006 and

25.4.2006, passed by the Judicial Magistrate First Class, Gaya, whereby he took cognizance of the offences punishable under Sections 418, 504 and 120B of the Indian Penal Code and issued summons and warrants. We also quash the proceedings arising out of the complaint case Nos. 315 of 2006, 319 of 2006 and 374 of 2006 before the Judicial Magistrate First Class, Gaya, Bihar.

12. In view of the above directions given to the appellants/Company, these appeals are disposed of.

.....  
.....J.  
[SUDHANSU JYOTI MUKHOPADHAYA]

.....  
.....J.  
[V. GOPALA GOWDA]

New Delhi,  
December 17, 2013  
ITEM NO.1A

COURT NO.12 SECTION IIA

S U P R E M E C O U R T O F I N D I A RECORD OF  
PROCEEDINGS

Petition(s) for Special Leave to Appeal (Cr1) No(s).1233/2012

(From the judgement and order dated 29/07/2011 in CRLMC No.15687/2011, of  
The HIGH COURT OF PATNA)

J.L.SOMAN & ORS. Petitioner(s)  
VERSUS

STATE OF BIHAR & ANR Respondent(s)

WITH SLP(Cr1) NO. 1232 of 2012  
SLP(Cr1) NO. 1234 of 2012

Date: 17/12/2013 This Petition was called on for Judgment today.

For Petitioner(s) Mr. Smarhar Singh, Adv.  
Mr. T. Mahipal, Adv.

For Respondent(s) Mr. Gopal Singh, Adv.  
Mr. Sunil Kumar, Adv.  
Mr. Prithvilal, Adv.  
Mr. Vipin Kumar Jai ,Adv.

UPON hearing counsel the Court made the following

O R D E R

Hon'ble Mr. Justice V. Gopala Gowda pronounced the order of the Bench comprising of Hon'ble Mr. Justice Sudhansu Jyoti Mukhopadhyay and His Lordship.

Leave granted.

The appeals are disposed of in terms of the signed non-reportable order.

[ Neeta ]  
Sr. P.A.

[ Usha Sharma ]  
Court Master

(Signed non-reportable Order is placed on the file)