20.09.2022
Piya (PA)
Sl no.4
Ct no. 30

CRR 2666 of 2019

Dipika Jhunjhunwala @ Dipika Agarwal
Vs.
The State of West Bengal & Anr.

Mr. S.Chatterjee
Mr. A. Tarafder
.......for the Petitioner.

Mr. S.G. Mukherjee
Ms. A. Sinha
Mr. P.K. Mitra
.......for the State.

Mr. Anish Biswas

.........for the Opposite Party no. 2.

Learned lawyer appearing for the petitioner has submitted that the petitioner is the widow of Late Rajesh Jhunjhunwala @ Late Rajesh Agarwal, who was the owner of Sonali Tea Estate, Bagrakote, District Jalpaiguri. The petitioner's husband was murdered on 22.11.2014 in the said Tea Estate relating to which Mal Police Station Case No. 655/2014 has ended in a chargesheet under Sections 302/34 of the Indian Penal Code. That the petitioner had nothing to do with the business transactions of her deceased husband and is also not aware of any such transaction that her deceased may have entered into. The Opposite Party no. 2 Girdhari Sharma in gross abuse of the process of criminal law has lodged a complaint against the petitioner on 06.07.2019 (four years after the death of Rajesh Jhunjhunwala husband of the petitioner) with Shyampukur Police Station on the basis of which Shyampukur Police Station Case No. 130 of 2019 was started against the petitioner.

The case of the complainant (Opposite Party no. 2 herein) was “that on 16.09.2013 the deceased husband of the petitioner namely, Late Rajesh Jhunjhunwala @ Late Rajesh Agarwal being the then proprietor of Sonali Tea Estate, Bagrakote, Jalpaiguri had taken a loan of Rs. 3,00,000/- along with interest of 18% p.a. for a period of 1 year and had assured to repay within such period. Thereafter, the said Late Rajesh Jhunjhunwala @ Late Rajesh Agarwal died and the petitioner being his widow and legal heir is liable to repay such loan taken by her deceased husband. On demand by a legal notice dated 12.02.2019 the petitioner failed to pay the said amount of Rs. 3 lakhs along with interest accrued thereon.

It has been further submitted on behalf of the petitioner that the law is well settled in criminal jurisprudence that the criminal liability and/or penal liability does not and cannot devolve upon the legal heirs. Therefore, the present petitioner cannot be prosecuted in the instant criminal proceedings merely because of the fact that she is the widow of Late Rajesh Jhunjhunwala @ Late Rajesh Agarwal, who according to the allegations of the Opposite Party no. 2 did not repay the loan during his lifetime allegedly given by the Opposite Party no. 2.

That none of the ingredients as required to constitute an offence under Sections 403, 406, 420 of the Indian Penal Code has been made out the petitioner and she cannot be prosecuted for the said offences. The presence of the petitioner during the alleged time of incident/offence and her participation in such offence being not a case of the petitioners, the present Shyampukur Police Station Case no. 130 of 2019 is thus liable to be quashed.

Admittedly the petitioner's Late husband was the sole owner and proprietor and is solely responsible for the said loan taken (as alleged) and the petitioner not being connected with the said transaction in any manner what so ever and the present criminal case being instituted after four years of the death of the petitioner's husband, the instant case having not been made out against the petitioner is liable to be quashed.

Learned counsel appearing for the State has produced the case diary from wherein it is seen that the Police Station Case Shyampukur P.S. Case no. 130 of 2019 was registered on 19.07.2019 and the present petitioner has been shown as the proprietor of Sonali Tea Estate. The petitioner submitted a photo copy of a hand written acknowledgement letter duly signed by the receiver being her Late husband Rajesh Jhunjhunwala dated 15.09.2013 under the letter head and seal of Sonali Tea Estate. The Investigating Officer in his memo of evidence has noted "**The complainant could not provide any**

valid agreement paper with the accused person i/c/w his complaint. He also failed to mention the name of any witness in his favour".

A sum of Rs. 1.5 lakhs has been paid to the complainant by a demand draft as directed by the Court and such payment has been admitted by Opposite Party no. 2/ complainant.

The final report of the Investigating Officer on the basis of the evidence collected so far is as follows:-

"It was found that the complainant failed to show any evidence where the FIR named accused person, namely, Dipika Jhunjhunwala, W/o. Late Rajesh Jhunjhunwala was involved into the offence of taking the loan from the complainant. The money was taken by the deceased husband of the FIR named accused person and the complainant also admits that in this FIR. There is also little evidence to prove that the FIR named accused persons is the present proprietor of Sonali Tea Estate……….."

"………...It appears that the matter is civil in nature."

Learned counsel appearing for the Opposite Party no. 2 has reiterated his averments made in the complaint and has submitted that as the petitioners is the present proprietor of the company she is responsible for the alleged act and it shall not be proper to quash the entire proceedings against her at the initial stage of investigation.

From the documents on record it transpires that the previous proprietor of Sonali Tea Estate, Late Rajesh Jhunjhunwala @ Late Rajesh Agarwal expired on 22.11.2012. The loan of Rs. 3 lakhs was allegedly taken by the Late Rajesh Jhunjhunwala on 16.09.2013 (under the seal of Sonali Tea Estate). Neither the complainant nor the Investigating Agency could prove that the petitioner was in any way connected or involved with the functioning of the company at the relevant time. The Opposite Party no. 2 (complainant) sent a demand notice only on 12.02.2019, four years after the death of the person who allegedly took the loan. No explanation has been put forward by the complainant/Opposite Party no. 2 as to why such demand was not made during the life time of Late Rajesh Jhunjhunwala the erstwhile proprietor or within time.

The jurisdiction under Section 482 of the Code of Criminal Procedure should be exercised with care, caution and circumspection and should not be used to axe down a legitimate prosecution. The test is whether allowing the proceedings to continue shall amount to abuse of the process of the Court.

Learned lawyer for the petitioner has relied upon a ruling cited in ***(2011) 13 Supreme Court cases 412 para 43***

(Thermax Limited & Others vs. K. M. Johny & Others) wherein the **Supreme Court** has held:-

> *"The Courts below failed to appreciate an important aspect that the complaint came to be filed in the year 2002 when the alleged disputes pertain to the period from 1993-1995. As rightly pointed out, the courts below ought to have appreciated that Respondent 1 was trying to circumvent the jurisdiction of the civil courts which estopped him from proceeding on account of the law of limitation."*

It is the case of the petitioner that the debt if any of the petitioner's deceased husband is clearly time barred and the Opposite Party no. 2 complainant is trying to misuse and abuse the process of criminal law to cover up his laches.

It has been held by this Court on numerous occasion that payment of a deceased's debts by his widow who has received asset from him falls within the 1st class of debts. It has also been held that it is an essential duty of the widow for which she may alienate the property inherited from her husband, whether the debt is time barred or not. Whether the complainant is entitled to any relief or not is to be decided by the appropriate forum and the process of criminal law cannot be misused for such purpose.

In the present case, it is evident from the materials on record that the petitioner had nothing to do with the dealings of the company at the relevant time i.e. on 16.09.2013 when the alleged loan was given/taken to/by the Late Rajesh Jhunjhunwala @ Rajesh Agarwal who, then being the sole proprietor of the company, was responsible for any or every act performed on behalf of the company. No property was entrusted to the petitioner and question of misappropriation of such property or cheating does not arise. Therefore no criminal liability under Sections 403/406/420 of the Indian Penal Code can be attached to the petitioner in the present case as none of the ingredients required to constitute such offence has been made out and allowing the proceedings to continue against the petitioner shall amount to abuse of the process of the Court.

Accordingly, the revisional application being CRR 2666 of 2019 is allowed.

There will be no order as to costs.

Proceedings being G.R. Case No. 844 of 2019 pending before the learned Additional Chief Metropolitan Magistrate – 1, Calcutta in connection with Shyampukur Police Station Case No. 130 of 2019 dated 19.07.2019 under Sections 403/406/420 of the Indian Penal Code is quashed.

Copy of this order be sent to the learned Trial Court forthwith for necessary compliance.

Urgent certified website copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)