

IN THE HIGH COURT OF JUDICATURE AT PATNA
Or. Criminal Miscellaneous No.3 of 2010

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OFFICIAL LIQUIDATOR OF M/S AUTONIGHT PVT.LTD.

... .. Petitioner/s

Versus

SRI B.K.SINGH,EX. M.D. and ANR.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Alok Kumar Aggarwal, Adv.
For the Opposite Party/s : Mr. Nilanjali Chatterjee, Adv.

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**CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH
SHARMA**

ORAL ORDER

- 71 23-02-2023 1. This is a complaint application filed for seeking prosecution against two accused persons in terms of Section 454 (5) of the Companies Act, 1956.
2. Notices were issued and charges were framed on 27.08.2010 and the accused persons were put on trial. The bail bonds were accepted by this Court. Evidences were recorded and cross-examination of P.W. 1 namely, Ajit Kumar Singh , Company prosecutor of the office of Official Liquidator and also D.W.1 and D.W. 2(Ex-M.D. & Ex-Director of the Company under liquidation) were also done.
3. B.K. Singh, D.W. 1 has stated that he had no knowledge of winding up proceedings and came to know about it only in November, 2009 whereafter, he moved an application for recalling of winding up proceedings. It is also stated that he



paid Rs. 5,00000/- (Five Lakhs only) to the concerned petitioner and also settled with B.S.F.C. over other secured creditors. The company was closed and books of accounts were missing from his office. He filed statement of affairs on 19th August, 2011 as upon receiving certain objections from the O.L. He filed revised statement of affairs on 19.07.2012. It is stated that delay in filing the statement of affairs was on account of not having books of accounts, as the property was allowed to some other person by the A.I.A.D.A. to third-party. The balance-sheet was being filed with R.O.C. regularly. The O.L. did not examine it.

4. As regards the other Director, Nisha Singh, she too has stated that B.K.Singh was the Managing Director of the company and is her brother-in-law. She was never participating in the proceedings relating to the company and did not sign any minute books, transaction or documents of the company nor she received any money from the company. In cross-examination she tells that she learnt about her being the Director only after the notices were issued to her and she had never been given her consent to become the Director. As a member of joint family, her name was mentioned, however, she states of being member of the family and came to know about Auto Knight Private Ltd. and was making supply to Telco. It is further stated that the



business was being conducted in Jamshedpur, while she was staying in Patna.

5. Learned counsel appearing for the O.L. submits that there was a delay of three years in filing the statement of affairs. The **Section 454 (5) of the Companies Act, 1956** reads as under:

“(5) If any person, without reasonable excuse, makes default in complying with any of the requirements of this section, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one hundred rupees for every day during which the default continues, or with both.”

6. From the evidence which came on record, this Court is satisfied that there has been a delay on the part of the accused in submitting the statement of affairs while D.W. 1 B.K. Singh has given reasons for the delay as non-availability of the books and accounts, this Court finds that even after he was able to obtain the accounts statement from the office of the Registrar of companies, he has delayed in filing the statement of affairs.

7. So far as D.W. 2 is concerned, this Court is satisfied that she has no role to play in submitting the statement of affairs directly, however, she would be responsible as a



Director. The submission of D.W. 2 regarding ignorance of the functioning of the company and of her being Director of the Company is not acceptable as the statement of accounts each year bears signatures of the Directors.

8. Be that as it may, considering above facts, it is in the provision of law and this Court deems it appropriate to close the case as against both the Directors since the company has gone into liquidation long before and since the statement of affairs has already been produced before the O.L.

9. Accordingly, they are fined for submitting statement of affairs belatedly by a sum of Rs. 30,000/- (Thirty Thousand only) jointly and severally. The amount shall be deposited with the O.L. within period of one month from today. If the penalty is not deposited, the respondents namely B.K. Singh and Nisha Singh shall be punished with imprisonment for a term of three months.

10. Accordingly, the Original Criminal Miscellaneous No. 3/2010 is disposed of and is consigned to Records.

(Sanjeev Prakash Sharma, J)

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Item No. 86

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