

Ashish Kumar Jha Vs. the State of Bihar

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Court : Patna

Decided On : Jul-18-2002

Judge : R.S. Garg, J.

Appeal No. : Criminal Revision No. 133 of 2001

Appellant : Ashish Kumar Jha

Respondent : The State of Bihar

Disposition : Petition Dismissed

Judgement :

R.S. Garg, J.

1. The Petitioner, the then Managing Director of Magadh Central Co-operative Bank being faced with a criminal prosecution made an application to the concerned Magistrate that the case diary does not contain any material allegations against him and he deserves to be discharged under Section 289 of the Code of Criminal Procedure. After going through the case diary and taking into consideration the material allegations made by the complainant and the evidence collected by the police, the learned Magistrate recorded that the case diary contained sufficient material to connect the accused with the alleged crime. It accordingly rejected the application.

2. Being aggrieved by the said order the Petitioner has come to this Court, inter-alia, submitting that the order passed by the learned Magistrate is patently illegal and calls for an interference of this Court. It is contended before this Court that the Petitioner himself had made certain complaints against certain persons and also made an application for audit of accounts, thereafter the audit was conducted and the Joint Registrar, Cooperative Societies lodged a report with the police against certain other persons. According to him the Petitioner was not shown as an accused. It is further contended that but for an omnibus statement that the Petitioner was involved in the matter, no other allegations or specific allegations have been made against the Petitioner. Referring to the judgment of the Supreme Court in Chandrapal Singh and Ors. v. Mahamj Singh and Anr. : 1982 CriLJ1731 and Pepsi Food Ltd. and Anr. v. Spl. Judicial Magistrate and Ors. : 1998 CriLJ1 it was contended that if there is no material available on the record then the Court cannot proceed against the accused and the Court should nip in the bud and should discharge the accused at the very inception.

3. Earned Counsel for the State on the other hand contended that a fair perusal of the case diary would show that the case diary contains sufficient material against the accused and perusal of the order passed by the learned Magistrate would show that he has applied his judicial mind to the facts of the case and was not unjustified in recording a finding that the accused is connected with the alleged crime. In the matter of Pepsi Food Ltd. (supra) the Supreme Court was considering a case of private complainant. The Supreme Court observed that the criminal law cannot be set in motion by a complainant by examining himself and two witnesses, who may dance to the tune of the complainant. Their Lordships observed that before issuing the process or summoning a person to face a trial, a Magistrate is required to look into the nature of the allegations, the evidence and its character whether oral or documentary. The Magistrate is required to see everything and has to take part into the proceedings before issuing the process or summoning the accused. In the present matter the said observations made by the Supreme Court would not apply because in the present case no summons have been issued to the accused in a private complaint.

4. Referring further to the said judgment it is contended that if no material is available against the accused then at any stage of trial the Magistrate should discharge the accused. On the proposition of law there can be no dispute. Section 239, Cr.P.C. is a stage where an accused can be discharged, but the accused must show to the Court that the allegations made by the prosecution are moonshine, absolutely absurd, no reasonable prudent man would accept the allegations, the allegations if are accepted on their face would not make any offence and even if the allegations are proved either there would be no conviction or there are very bleak chances of conviction. Catena of the authority say that the revisional Court or the High Court under Section 482, Cr.P.C. should not ordinarily, interfere in a case where the Magistrate after going through the case diary has taken cognizance or has issued summons or has refused to discharge the accused. If the criminal law cannot be set in motion just for the sake of asking, the accused cannot be discharged just for the sake of asking. Certain grounds which the accused has to raise and prove as his defenses during the course of the trial, if are projected seeking discharge, then any Court would be unjustified in taking into consideration the said defenses at the stage when the accused is seeking a discharge. A discharge petition or quashment Petition can only be allowed taking into consideration the allegations made by the prosecution to be a gospel truth and unless the accused is in a position to give a severe dent to the reliability of the prosecution case at the very threshold or the inception. If in a given case the allegations are absolutely absurd then certainly the accused can be discharged but the defenses such as of victimization, enmeshing of the enmity or that because the accused had made certain complaints against the complainant of the matter, everything has to be held to be bad, in the opinion of this Court, would not provide any ground for discharge of the accused. From the orders passed by the learned Magistrate it would clearly appear that he had applied his mind to the facts of the case and has recorded a tentative finding that the complicity of the present accused cannot absolutely be ruled out. If that be so, the learned Magistrate was absolutely justified in rejecting the application of discharge and proceeding further with the trial.

5. It was also contended before this Court that the ingredients to constitute the offence under Sections 409 and 468 I.P.C. are not made out nor are available in

the case diary, therefore, the accused deserved to be discharged, in the opinion of this Court this argument has simply been raised to be rejected. In a given case when a conspiracy is asserted, the involvement of the accused is prima-facie found then it cannot be argued that the ingredients to constitute the offence are not available.

6. The petition is dismissed. The learned Magistrate shall proceed with the trial.

7. It is made clear that the observations made by this Court are only for the purpose of disposal of this case and in any case would not affect the merits of the case during the course of trial.

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