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Court : Patna

Decided On : May-04-1999

Judge : S.K. Chattopadhyaya, J.

Appeal No. : Criminal Misc. No. 23508 of 1998

Appellant : Arun Kumar Sinha

Respondent : State of Bihar

Disposition : Application Allowed

Judgement :

S.K. Chattopadhyaya, J.

1. Heard learned Senior Counsel for the petitioner, Mr. Tara Kant Jha assisted by Mr. Gautam Bose and the learned A.P.P. on behalf of the State.
2. The petitioner has impugned that order dated 7.1.98, by reason of which the petitioner's prayer for discharge has been refused.
3. The facts of the case lies in a narrow compass.

According to the prosecution on 7.9.82, Sub-Inspector of Sone Nagar G.R.P.S. filed a complaint stating, inter alia, that on 5.9.82 at about 17.46 hours one Goods train collided with another Goods Train, as a result of which some wagons and

engine were damaged and were derailed. It is alleged that the Railways suffered loss of lacs of rupees due to negligence of Ram Krishna Prasad, Rest giver ASM, Headquarters Jakhim, Relieving Switchman, Achuda Nand, Head-quarters, Gaya, Ramashray Singh, the Driver of Crack 4, Head-quarters at Gaya and Controller on duty G.C. Section, Mughalsarai. It was also alleged that the Driver, Assistant Driver and the Guard of the another Goods train suffered grievous injuries but the aforesaid Railway employees informed about the incident 24 hours later with mala fide intention. With this allegation complaint was filed against the Driver, Ramashray Singh, Ram Krishna Pd. and ASM on duty, Switchman Achuda Nand and the Controller on duty G.C. Gaya under Sections 101 and 103 of the Railway Act.

4. The investigation was taken up by the Officer-in-charge of the Sone Nagar G.R.P.S. and first information report was instituted on the basis of the said report.

5. There is no denial of the fact that the petitioner, who was posted as Divisional Mechanical Engineer (Carriage & Wagon) at Mughalsarai at the relevant time was not named in the F.I.R. and no allegation whatsoever was made against him. Subsequently, the petitioner was promoted as Chief Rolling Stock Engineer, Eastern Railway and posted at Calcutta. In December 1997, the petitioner received an information about the case and on being surrendered before the Court on 19.12.97 was enlarged on bail on the same day. The petitioner repeatedly requested for supply of documents consisting of statements of witnesses or any other documents so that he could put forward his defence before the trial Court, but no such document was ever supplied to him. The petitioner having learnt that nothing tangible was found against him during the investigation filed a petition on 20.3.97 before the learned Court below for his discharge. This petition is Annexure-4 to this application.

6. Apart from the merit of the case, the petitioner took specific plea in his said petition that he being appointed by the President of India, he could not be prosecuted against without proper sanction from the appropriate authority. He took the plea that as no sanction for the prosecution was obtained by the prosecution agency he could not have been proceeded against. By the impugned order dated

7.1.98, the learned Judicial Magistrate dismissed the said application.

7. Learned Counsel for the petitioner has strongly contended that when the petitioner took the plea in his petition for discharge about non-obtaining of sanction, the trial Court was bound to decide the question as to whether in the facts and circumstances of the case sanction was required before proceeding against the petitioner. Secondly, it is contended that the order impugned clearly shows that the learned Magistrate has failed to exercise his judicial mind in deciding the matter in issue.

8. Learned Counsel for the State, on the other hand, has contended that the plea of sanction can be taken by the petitioner even at the stage of trial and only because his prayer for discharge has been rejected, it is not a fit case where the High Court should interfere in this application.

9. In the case of *State of Maharashtra v. Dr. Budhikota Subbarao* : [1993]2SCR311, their Lordships have reiterated the necessity of taking sanction before proceeding criminally against a public servant and the stage at which the question of sanction should be considered. According to their Lordships, so far as public servants are concerned, cognizance of any offence, by any Court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The word 'cognizance' means 'jurisdiction' or 'the exercise of jurisdiction' or 'power to try and determine causes'. The common parlance it means taking notice of. A Court, according to their Lordships, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have committed during discharge of his official duty. The mandatory character of the protection afforded to a public servant is brought out by the expression, 'no Court shall take cognizance of such offence except with the previous sanction'. According to their Lordships use of the words 'no' and 'shall' make it abundantly clear that the bar on the exercise of power of the Court to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is the complaint cannot be taken notice of.

10. In the instant case, admittedly there is no allegation against the petitioner in the F.I.R. and, as such, he had no knowledge about the case. On promotion, he was posted at Calcutta and in the year 1997 as soon as he came to know about the criminal case against him he surrendered before the Court and obtained bail. The petitioner filed a petition for discharge on the ground that no case was made out against him and being a public servant sanction was required for his prosecution. On such petition being filed the learned Magistrate on 7.1.1998 passed the following impugned order:

A petition for discharge has been filed on behalf of accused R. Mukherjee on 18.8.97 and Arun Kumar Sinha on 20.3.97.

Heard.

Perused the record and the case diary. I am of the opinion that there is ground for presuming that the accused has committed the offence. Hence the petitioner for discharge is rejected.

11. This cryptic order of the Magistrate is enough to justify the contention of the learned Counsel for the petitioner that he has failed to exercise his judicial mind on the question of discharge. When admittedly, there was no allegation against the petitioner in the F.I.R. what transpired before the Magistrate to reject the prayer for discharge is not clear. He has not even discussed the materials available on the case diary, which led him to presume that the accused has committed the offence. More significant is that the Magistrate has not even considered the question as to whether sanction was necessary for proceeding against the petitioner.

12. It is well settled that the Court while exercising its power under the Code/statute must give reasons for his findings. It is true that at the stage of framing of charge or deciding the question of discharge the Court is not required to come to a conclusion that the materials on record are sufficient for his conviction. If there is sufficient reason to believe that on the basis of allegation charge can be framed, the Court can frame a charge, but in the instant case no such consideration is coming from the learned Court below and, as such, the impugned

order cannot be sustained in law.

13. In the result, this application is allowed. The order dated 7.1.98 is set aside and the matter is sent back to the Magistrate for reconsideration on the petitioner for discharge and specially with the question of sanction.

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