SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

State of Bihar Vs. Kishore Kumar Rai

State of Bihar Vs. Kishore Kumar Rai

SooperKanoon Citation : sooperkanoon.com/140210

Court : Patna

Decided On : Nov-24-2004

Judge : Nagendra Rai, A.C.J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 197; Indian Penal Code (IPC), 1860 - Sections 120B, 409, 420 and 467

Appeal No. : Criminal Revision No. 356 of 2003

Appellant : State of Bihar

Respondent : Kishore Kumar Rai

Judgement :

Nagendra Rai, A.C.J.

1. This Court in exercise of suo motu power issued notice to the accused-opposite party Kishore Kumar Rai to show cause as to why the order dated 28.2.2003 passed by Sri A.K.M.M. Qureshi, 3rd Addl. Sessions Judge, Saharsa in Criminal Revision No. 80 of 1998 (s) quashing the order dated 2.3.1998 passed by the Chief Judicial Magistrate, Supaul in G.R. Case No. 343 of 1987 by which the Chief Judicial Magistrate, Supaul has taken cognizance under Sections 409, 420, 467 read with Section 120B of the Indian Penal Code, against the aforesaid opposite party Kishore Kumar Rai, Rameshwar Prasad and Awinash Kumar and after due notice to the aforesaid opposite party Kishore Kumar Rai, the matter was heard and is being disposed of by this order.

2. The factual matrix giving rise to the present application is that Mohan Prasad, B.D.O. Supaul, lodged a written report on the basis of which Supaul police lodged a first information report alleging that in the year 1985 under the scheme N.R.E.P. five Yojnas were allotted in the name of Rameshwar Prasad, Panchayat Sewak, and 216 quintals of wheat were given to Rameshwar Prasad, Panchayat Sewak, Supaul for distribution among the labourers. Only 168 quintals of wheat were essential for distribution but 216 quintals of wheat were allotted. The B.D.O. made spot inspection and found that only 2 quintals of wheat have been distributed and thereafter Panchayat Sewak was asked to give explanation with regard to remaining wheat. The Panchayat Sewak gave information that he has distributed 25 quintals of wheat and remaining he will return but he did not return the same. Thereafter, the written report was filed against the Panchayat Sewak by the BDO. During course of investigation complicity of other officials including the opposite party Kishore Kumar Rai who was, at the relevant time, Junior Engineer, was also found. It was found that the Junior Engineer had not maintained the measurement book even then he recommended for advance and on the basis of which advance wheat was given to the Panchayat Sewak. The police after investigation submitted a charge sheet and thereafter cognizance was taken by the Chief Judicial Magistrate by order dated 2.3.1998 under the aforesaid sections against the three accused persons, Opposite Party Kishore Kumar Rai, Awinash Kumar and Rameshwar Prasad.

3. Rameshwar Prasad filed Cr. Misc. No. 10958 of 1998 before this Court and by order dated 16.7.1998 this Court dismissed the application with an observation that no sanction was required. Then other accused Awinash Kumar filed Cr. Misc. No. 33715 of 2000 before this Court which was finally disposed of on 21.3.2002 and this Court did not interfere with the order of cognizance and held that the question of sanction will be agitated at the time of framing of charges.

4. It appears that Opposite Party Kishore Kumar Rai filed Criminal Revision No. 80 of 1998(s) before the Sessions Judge, Saharsa which was transferred to 3rd Addl. Sessions Judge, Saharsa, Sri A.K.M.M. Qureshi who by 14 pages order quashed the cognizance order solely on the ground that no sanction was obtained before prosecuting the opposite party Kishore Kumar Rai and other accused persons.

5. It appears that the fact that two of the accused persons who were unsuccessful before this Court was not brought to the notice of the Addl. Sessions Judge, Saharsa. Be that as it may, the fact remains as to whether the Addl. Sessions Judge was justified in quashing the cognizance order on the ground mentioned in the order.

6. Section 197 of the Code of Criminal Procedure gives protection to the public servant from vexatious prosecution. The object is that the public servant should perform their duties honestly and no public servant should be harassed by some one and if any act complained of has been done by him reasonably in discharge of his official duties, then he should not be prosecuted unless sanction has been obtained by the competent authority. This section has been the subject matter of decisions times without number by the Apex Court as well as the High Courts. The settled law is that the question of. sanction can be raised at the time of taking cognizance and at the subsequent stage of proceeding. As to what stage, this question is to be decided depends upon the facts of this case. In cases, where the materials on record are available and the Court feels satisfied to decide the question on the basis of material at the time of taking cognizance it can be decided at that stage. If the materials are not sufficient and the question cannot be decided without taking further evidence or even taking into consideration the evidence brought on record by the defence, then the question is to be decided at the time of trial. In this connection, reference may be made to the recent two decisions of the Supreme Court, in the case of P.K. Pradhan v. State of Sikkim, reported in (2001) 6 SCC 704 and Raj Kishor Roy v. Kamleshwar Pandey and Anr., reported in (2002) 6 Supreme Court cases 543, wherein it has been laid down that the question of sanction under Section 197 of the Code of Criminal Procedure can be raised at any time after the cognizance; may be immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well.

7. Thus, even if the question of sanction could have been raised at the time of taking cognizance it was for the Court to consider as to whether at this stage it was proper to decide the question on the basis of materials on record.

8. However, the crucial question for consideration is as to whether the act complained of against the accused persons prima facie requires sanction or not.

9. The offences alleged against the accused persons are under Sections 409, 420, 467 and 120B of the Indian Penal Code. On this point also the law is well settled. If the accused makes a reasonable claim, not fanciful claim or mere pretence, that the act complained of was done in discharge of his official duties, then the sanction is required. In other words, the act and the discharge of official duty are so inter linked that cannot be separated then sanction is must, but if there is no reasonable connection between the official duty and the act complained of and the official status has provided only an opportunity or occasion for committing the offence alleged then no sanction is required. In this connection reference may be made to the Constitution Bench judgment of the Supreme Court in the case of K. Satwant Singh v. The State of Punjab, reported in AIR 1960 Supreme Court 266 wherein in paragraph 16 it was held that 'the act must bear such relation to the duty that the public servant could lay a reasonable but not a pretended or fanciful claim that he did it in the course of the performance of his duty.'

10. The same view has been reiterated in the case of Bakshshish Singh Dhaliwal v. The State of Punjab, reported in AIR 1967 Supreme Court 752 and in the case of P.K. Pradhan (supra).

11. So far the offences of cheating and criminal breach of trust are concerned, in no way it can be said that it is the duty of the public servant to commit cheating and criminal breach of trust. Such acts have been done by the public servant while taking benefit of official status. In K, Satwant Singh's case (supra) it was held that the offence of cheating by its very nature cannot be regarded as having been committed by public servant while acting or purporting to act in discharge of his official duties.

12. In the case of Harihar Prasad etc. v. State of Bihar, reported in (1972) 3 Supreme Court Cases 89 it has been held that for the offences under Section 409 read with 120B of the Indian Penal Code, the sanction is not required. So far the offence under Section 467 is concerned, the act complained of under the aforesaid section is so connected with the discharge of official duty than sanction is required

otherwise not.

13. Thus, it is clear that so far as the prosecution for the offences under Sections 420 and 409 read with Section 120B of the Indian Penal Code are concerned, sanction is not required and the revisional, Court (3rd Addl. Sessions Judge) wrongly held that sanction is required relying upon the judgment of the learned Single Judge of this Court in the case of Gaur Sarkar @ God Sarkar and Ors. v. State and Ors., reported in 2001 (3) PLJR 475. The law laid down by the learned Single Judge on the face of it appears to be contrary to the well settled law and as such the judgment rendered by the learned Single Judge even if held to be applicable is pericurium as it has ignored the law laid down by the Supreme Court.

14. Coming to the facts of this case, it is not the case that there is no material against the opposite party and as stated above, the sanction is not required for two offences namely, 420, 409 read with Section 120B of the IPC, and so far where the sanction is required under Section 467 of the IPC or not, that cannot be considered at this stage and it has to be considered at the stage of final, trial in view of the fact that it requires evidence to come to the conclusion that the act of forgery was so connected that the accused persons can claim that he did it in the discharge of his official duties.

15. In the result, the order dated 28.2.2003 passed by the 3rd Addl. Sessions Judge, Saharsa in Criminal Revision No. 80 of 1998(s) is set aside. Now the opposite party Kishore Kumar Rai should be tried along with other accused persons.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com