

Raj Kishor Kumar Vs. State of Jharkhand

Raj Kishor Kumar Vs. State of Jharkhand

SooperKanoon Citation : sooperkanoon.com/48999

Court : Jharkhand

Decided On : Mar-12-2015

Appellant : Raj Kishor Kumar

Respondent : State of Jharkhand

Advocate for Pet/Ap. : Mr. Rajeev Kumar

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr.M.P. No. 1909 of 2012
----- Raj Kishor Kumar, Son of late Sudarshan Baitha, Resident of Village,
P.O. & P.S. Karaghar, District-Rohtas (Sasaram), Bihar, at present Estimtor, D.W.
and S. Circle Hazaribagh, P.O. & P.S. Sadar Hazaribagh, District-Hazaribagh.
..Petitioner Versus The State of Jharkhand. .Opposite Party ----- Coram: HONBLE
MR JUSTICE RONGON MUKHOPADHYAY ----- For the Petitioner : Mr. Rajeev
Kumar, Advocate For the State : APP ----- C.A.V. On 17.12.2014 Pronounced on
12/3/2015 Heard Mr. Rajeev Kumar, learned counsel for the petitioner and learned
counsel for the State. In this application, the petitioner has prayed for quashing the
entire criminal proceeding including the order dated 10.07.2012 passed by learned
Civil Judge cum Chief Judicial Magistrate, Chatra in Sadar P.S. Case No. 131 of
2009 corresponding to G.R. No. 543 of 200 whereby and whereunder the
application filed by the petitioner under section 239 of the Code of Criminal
Procedure, read with Section 44 of the Evidence Act, was rejected. The
prosecution story as would appear from the written report of the informant is to the
effect that the Executive Engineer-Sri Gumani Ravidas in conspiracy with the

petitioner and another Assistant Engineer namely Shri Upendra Singh had committed defalcation. It has been alleged that one Shri Niranjana Jha, the Executive Engineer, directed the engineers to submit the bills and /or refund the money but there was no action taken by them in this regard, which is against the Treasury Code and Account Code. It has further been alleged that because of this act, the beneficiaries of NAREGA have been deprived and accordingly a written report was submitted, which led to institution of Chatra P.S. Case No. 131 of 2009. On 1.2.2010, the petitioner was produced from custody and after supply of police papers, the charge was framed against the petitioner for the offence punishable under section 409/34 of the Indian Penal Code. Subsequent thereto, an application was filed on 13.03.2012, by the petitioner under section 239 of the Code of Criminal Procedure read with Section 44 of the Evidence Act. The said -2- application was dismissed by the learned Civil Judge cum Chief Judicial Magistrate at Chatra on 10.07.2012, which is under challenge in the present application. Learned counsel for the petitioner submits that the charge was framed on 1.2.2010 without giving any opportunity to the petitioner to file an application under section 239 of Cr.P.C. . It has also been submitted that the report of Deputy Commissioner, Chatra dated 9.5.2009 reveals that the work was in progress and some portion of the work was already completed and in such circumstances, the entire allegation levelled against the petitioner becomes non existent. It has further been submitted that the learned Chief Judicial Magistrate, Chatra while framing charge on 1.2.2010 completely failed to take into consideration the procedure prescribed under Section 239 of the Code of Criminal Procedure and the petitioner had filed the application on 13.03.2012 under section 239 of the Cr.P.C. read with section 44 of the Evidence Act, which, however, was rejected on 10.07.2012. Learned counsel for the petitioner submits that sanction for prosecution under Section 197 of the Code of Criminal Procedure was given by Deputy Commissioner, Chatra but in fact the services of the petitioner are under the administrative control of the Engineer-in-Chief cum Special Secretary, PHED, Government of Jharkhand, who is the appointing authority as well and that he was the competent authority for grant of sanction, which would be evident from the letter dated 17.11.1986 issued by the Government of Bihar. In such circumstances, the petitioner claims that since the Deputy Commissioner, Chatra

was not the sanctioning authority, the entire criminal proceeding deserves to be quashed and set aside. At this, learned counsel for the State has submitted that while passing the impugned order dated 10.07.2012 the learned trial court has properly considered the arguments advanced on behalf of the petitioner and has rejected the said contentions giving cogent reasons for refusing to accept the contention of the petitioner. He has further submitted that the sanctioning authority of the petitioner is the Deputy Commissioner, Chatra and since sanction for prosecution has been given by him and in absence of any cogent reasons to the contrary, no interference in the criminal proceedings as well as the order dated 10.07.2012 is warranted. After hearing learned counsel for the parties and after going -3- through the records, I find that initially on 16.06.2009 on the basis of written report of one Bijay Kumar Munjni, Sadar P.S. Case No. 131 of 2009 was instituted for the offence punishable under section 409/34 of the Indian Penal Code. Vide order dated 1.2.2010 when the petitioner was produced from custody, police papers were supplied to him and charge was framed on the same day itself for the offence punishable under section 409/34 of the Indian Penal Code. It has nowhere been stated in the application filed before this Court that the order dated 1.2.2010 was under challenge before the higher forums. After expiry of more than 2 years from the date of framing of charge, an application was filed on 13.03.2012 under section 239 of the Code of Criminal Procedure read with section 44 of the Evidence Act, in which the main contention of the petitioner was that the sanction, which was obtained by the prosecution was not by the competent authority and it was also prayed therein that the petitioner may be given an opportunity of hearing under Section 239 of the Cr.P.C. by recalling the order dated 1.2.2010, by which charge was framed against the petitioner. Once the charge has been framed, the question of resorting to Section 239 of Cr.P.C. does not arise. From the order dated 10.07.2012 passed by learned Civil Judge cum Chief Judicial Magistrate, Chatra, the main contention of the petitioner was with respect to grant of sanction by an incompetent authority and although charge had already been framed on 1.2.2010, the contention of the petitioner was considered after giving him an opportunity of hearing and having not been satisfied with the said contention of the petitioner, the application filed on 13.03.2012 was rejected. Therefore, it cannot be said that the petitioner was not given an appropriate opportunity to explain to get

him discharged from the criminal case as in spite of the order dated 1.2.2010, the application of the petitioner dated 13.03.2012 was considered in its proper perspective and thereafter necessary orders were passed. So far as the contention of learned counsel for the petitioner that the Deputy Commissioner, Chatra was not the competent authority, the learned C.J.M., Chatra had considered the notification of the Government of Bihar dated 17.11.1986 and has come to a conclusion that the Deputy Commissioner, Chatra was the competent authority to accord sanction for prosecution. Learned counsel for the petitioner had also resorted to the provisions of Section 30 of Mahatma Gandhi -4- National Rural Employment Guarantee Act, 2005, which deals with protection of action taken in good faith but the said protection in view of the allegations of defalcating a huge amount of government money is not attracted so as to include the petitioner within its ambit. The learned C.J.M., Chatra in his order dated 10.07.2012 has clearly recorded that the Court does not have the power to recall an order, which has been passed earlier. Since the charge was already framed more than 2 years prior to filing of the application under Section 239 of Cr.P.C. read with section 44 of the Evidence Act, the learned C.J.M., Chatra was legally justified in not entertaining the said application by giving sufficient reasons thereto. This Court in view of what has been discussed above does not find any illegality with the impugned order dated 10.07.2012 and accordingly there being no merit in this application, the same is hereby dismissed. (Rongon Mukhopadhyay, J) Rakesh/-