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Court : Jharkhand

Decided On : Jun-11-2001

Reported in : 2001(3)BLJR2071

Judge : Chy. S.N. Mishra, J.

Appeal No. : Criminal Revision No. 274 of 2000 (R)

Appellant : Yashpal Singh

Respondent : State of Bihar

Disposition : Application Dismissed

Judgement :

Chy. S.N. Mishra, J.

1. The petitioner, in this revision application, has challenged the order dated 13-6-2000, passed by the learned Special Judge, C.B.I., Dhanbad, whereby, the learned trial Court has rejected the application, Tiled by the petitioner under Section 232 of the Code of Criminal Procedure, for passing an order of acquittal, in favour of the petitioner. The learned Counsel, appearing on behalf of the petitioner, has challenged the order mainly on the ground that the moment a petition under Section 232 of the Code of Criminal Procedure is filed, the trial Court is bound to pass an order of acquittal, if there is no evidence available on

the record. In support of his contention, learned Counsel has relied upon a decision of Bombay High Court in the case of Arun and Ors. v. State of Maharashtra 1978 Cr. L.J. 1168. Before I consider the submission of the learned Counsel, it is necessary to mention some relevant facts. Admitted position in this case is that there are altogether 14 accused-persons, wherein as many as 37 prosecution witnesses, including the informant and the Investigating Officer have been examined so far. On 19-11-1999, the accused-persons were also examined and their statements have been recorded under Section 313 of the Code of Criminal Procedure. On 20-12-1999, the Petitioner, who is one of the accused, has filed a petition for time, in order to produce the defence witnesses and the case was adjourned to 20-12-1999. Again the case was adjourned from 20-12-1999 to 21-1-2000, at the request of the petitioner, for examining the defence witnesses. On 21 -1 -2000, the petitioner filed the list of defence witnesses. Again, at the instance of the petitioner, the case was adjourned from 21-1-2000 to 29-2-2000, only on the ground for issuing summonses to the defence witnesses. Again the case was adjourned at the instance of the petitioner from 29-2-2000 to 8-3-2000, for examining the defence witnesses. The case was again adjourned, at the instance of the petitioner, from 8-3-2000 to 28-3-2000, for examining the defence witnesses and argument. Again on 28-3-2000, a petition was filed on behalf of the petitioner for time, in order to enable him to get the defence witnesses examined. Again at the instance of the petitioner, the case was adjourned from 28-3-2000 to 18-4-2000, for examining the defence witnesses. It may be mentioned here that similar petition was filed on behalf of other accused-persons. In the background aforesaid, the question arises as to whether the trial Court is bound to record an order of acquittal, in terms of Section 232 of the Code of Criminal Procedure, as submitted by the learned Counsel for the petitioner. The question has to be answered in negative for the reasons, firstly that the accused-persons, including the petitioner, themselves having entered into defence, as envisaged under Section 233 of the Code of Criminal Procedure, after knowingly skipping the provisions of Section 232 of the Code of Criminal Procedure, the petitioner cannot be allowed to go back and pray for passing an order of acquittal, in terms of Section 232 of the Code of Criminal Procedure and secondly, the learned trial Court, on going through the evidence on record, has recorded a finding to the

effect that a prima facie case is made out against the petitioner. As such in view of the findings, recorded by the trial Court, as aforesaid, it is not incumbent upon the trial Court to record an Order of acquittal. The decision in the case to Arun and Ors. v. State of Maharashtra (supra), relied upon by the learned Counsel, will not help him in the facts and circumstances of this case, inasmuch as it relates to the transfer of the trial under Section 407 of the Code of Criminal Procedure, wherein, incidentally the scope of Section 232 of the Code of Criminal Procedure was also dealt with. The ratio laid down in the aforesaid decision is that while recording an order in terms of Section 232 of the Code of Criminal Procedure, it is not necessary to consider the evidence in detail. Suffice it to say that if the Court decides not to acquit the accused at the stage, in that event only a mental notice has to be taken. On the contrary, it is absolutely necessary for the Court to write an order of acquittal, when it is found that the accused is not guilty. Further while dealing with the aforesaid provision, the learned Judge has recorded a finding, as follows:

9. It is to be observed that under Section 232, as it now stands, there is nothing to indicate that the question whether he means to adduce evidence has to be asked while exercising the powers under Section 232. On the contrary, the hearing of the prosecution and the defence on the point of acquittal is necessary. It is after considering the answers given by the accused in his examination and listening to the addresses of the prosecution and the defence that the Judge has to consider whether an order of acquittal should be passed.

Heard learned Counsel for the petitioner and perused the materials on record, including the order under challenge. I do not find any illegality in the order impugned. Accordingly, this revision application is dismissed.

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