

Dr. Krishna Kumar Sharma and ors. Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Sep-03-2004

Reported in : 2004(3)BLJR1893; [2004(4)JCR568(Jhr)]

Judge : M.Y. Eqbal, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 227; [Indian Penal Code \(IPC\), 1860](#) - Sections 120B, 406, 408 and 420

Appeal No. : Cr. Revision No. 860 of 2003

Appellant : Dr. Krishna Kumar Sharma and ors.

Respondent : State of Jharkhand

Advocate for Def. : K.K. Jhunjhunwala, Adv.

Advocate for Pet/Ap. : V.P. Singh, Sr. Adv. and; R. Shankar, Adv.

Disposition : Revision application dismissed

Judgement :

ORDER

M.Y. Eqbal, J.

1. This revision application is directed against the order dated 6.8.2003 passed by Sessions Judge, Dhanbad in Criminal Revision No. 78 of 2003 whereby he has set

aside the order dated 6.1.2003 passed by the Judicial Magistrate. Ist class, Dhanbad by reason of which all the petitioners were discharged from the offence levelled against them under Sections 406/408/420/120B of the IPC.

2. The facts of the case lie in a narrow compass.

3. The informant namely, Manohar Ram the then Additional District Magistrate (Law and Order, President, B.S.S. MaHila College, Dhanbad) submitted FIR to the police of Dhanbad alleging certain financial irregularities of the college namely, Bharatiya Sewak Samaj Mahila Mahavidyalaya, Dhanbad. On receipt of complaint the Managing Committee of the college which includes Deputy Commissioner, Dhanbad vide memo dated 26.8.1995 intimated the informant for making inquiry in respect of the said financial irregularities of the College. Pursuant to the said order of the Deputy Commissioner. Dhanbad, the informant vide his memo dated 26.8.1995 deputed one Sri Maharshi Ram, Executive Magistrate, Sadar Sub-division, Dhanbad for making seizure of related accounts papers, Accordingly, all the accounts papers were seized. From the audit report of the accounts in the year 1993-94 and 1994-95, it transpires that it was not signed by the principal. On examination of the papers by the Executive Magistrate, it was found that some amount was misappropriated. It further transpired from the record that the police after completion of investigation submitted charge-sheet against the petitioners under Sections 406/408/420/120B of the IPC and accordingly cognizance was taken. Thereafter, discharge petition was filed by the accused persons and the Judicial Magistrate, Ist Class. Dhanbad by order dated 9.11.1998 rejected the prayer of the petitioners for their discharge. Petitioners then challenged the said order before this Court in Criminal Revision No. 413 of 1998(R). This Court, after hearing the parties, by order dated 20.10.2000, set aside the order dated 9.11.1998 passed by the Magistrate and remanded back the case for passing fresh order after hearing both the parties. In compliance of the said order the Magistrate again heard both the parties on the discharge petition and passed order on 6.11.2003 allowing the petition of discharge of the accused persons from the proceeding of the case. The said order of discharge was challenged by the opposite parties before the Sessions Judge, Dhanbad in Criminal Revision No. 78/2003. The Sessions Judge after reappreciating the entire facts and the material

and also evidence brought on record came to a finding that there were sufficient materials for framing charge against the accused persons and the Magistrate committed serious error in discharging them. Hence this revision application by the petitioners against the order of the Session Judge, Dhanbad.

4. Mr. Rajesh Shankar, learned counsel for the petitioners assailed the impugned order of the Sessions Judge mainly on the ground that the revision application before the Sessions Judge was itself not entertainable in as much as the said revision application was filed by Additional Public Prosecutor and not by the State. Learned counsel drawn my attention to the copy of the revision application which has been annexed as Annexure-7 to the instant application to show that revision application was filed through the Addl. Public Prosecutor and the affidavit portion was also signed by him. Learned counsel then submitted that the Magistrate rightly discharged the petitioners from the case on the basis of finding that allegation made against the accused persons were not proved.

5. The moot question that falls for consideration is as to whether the Sessions Judge, Dhanbad has committed error of law and error of jurisdiction in entertaining criminal revision filed by the Additional Public Prosecutor. In this context, Section 397 of the Criminal Procedure Code, is worth to be quoted herein below, which reads as under :

'Calling for records to exercise powers of revision--(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior criminal Court situate within its or his local Jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation--All Magistrates, whether executive or judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of Section 398.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, Inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.'

6. It would also be appropriate to quote Section 401 of the Criminal Procedure Code, which reads as under :

'High Court's Powers of Revision-(1) in the case of any proceeding the record of which has been called for by itself or of which otherwise comes to its knowledge the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by Sections 386, 389, 390 and 391 or on a Court of session by Section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by Section 392.

(2) No order under this section shall, be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained to the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.'

7. From bare reading of the aforesaid provisions, it is manifest that these provisions empower the High Court or any Session Court to call for and examine records of an inferior Court for the purpose to satisfy the legality of the order of any proceeding or order made therein. The object is to set right patent defect or error and to scrutinize the orders. Both the High Court and the Court of Sessions have been empowered to call for the record either on the application of the party or on its own motion. Even the Court can Act on any information received through newspaper or unanimous letter.

8. It transpires from the copy of the revision application filed before the Sessions Judge that in the cause title the name of State of Bihar was mentioned but it was filed through one Sri Gauri Shankar Singh, Addl. Public Prosecutor. By the said revision application, it was brought to the notice of the Sessions Judge that the Magistrate in G.R. No. 4698/95 illegally and erroneously discharged the accused persons which is serious miscarriage of Justice. The said revision was entertained by the Sessions Judge and after giving notice and opportunity of hearing to the accused persons the same was disposed of by passing a reasoned order holding that the Magistrate has overlooked the materials available on record, which were sufficient for framing charge against the accused persons. The Sessions Judge further held that the report of the Chartered Accountant disclosed several irregularities and that is why the Magistrate has committed grave error in discharging the accused. In my considered opinion therefore, the impugned order passed by the Sessions Judge cannot be vitiated in law merely on the ground that the revision application was filed through the Additional Public Prosecutor.

9. It is well settled that the Court while considering the question of framing charge shall consider the evidence for the limited purpose of finding out whether or not prima facie case against the accused has been made out. Where the material placed before the Court disclosed grave suspicion against the accused, the Court has no option but to pass an order of framing charge.

10. In the facts and circumstances of the case. I do not find any illegality in the impugned order passed by the Sessions Judge, Dhanbad whereby he has set aside the order of the Magistrate and held that there are sufficient materials on

record for framing charge against the accused persons. This revision application has, therefore, no merit and is liable to be dismissed.

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