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Court : Jharkhand

Decided On : Jul-26-2006

Reported in : [2007(1)JCR400(Jhr)]

Judge : D.P. Singh, J.

Appellant : Rameshwar Singh and anr.

Respondent : State of Jharkhand and anr.

Disposition : Petition allowed

Judgement :

D.P. Singh, J.

1. Heard the parties.

2. This petition under Section 482 of the Code of Criminal Procedure has been preferred to quash order dated 29.5.2002 parsed by the learned Additional Sessions Judge XIth, Dhanbad in Criminal Revision No. 125 of 2001 and further to stay the proceedings in Complaint Case No. 185 of 2000 filed by the opposite party No. 2.

3. Briefly stated the facts leading to this petition are that complainant, I.D. Prasad, was Train Examiner with railways and he was allotted a railway quarters numbered as 44/A, M Type. Further stated that the said quarters though allotted to

hint he applied for better quarters and thereafter quarters No. 38-C Type II was allotted to him, in which he shifted. As per assertions of the opposite party No. 2, he vacated the said quarters No. 44/A, M Type on 30.3.1985. However, the petitioners served four! notices on him on different dates from September, 1999 to January, 2000 alleging therein that he remained in unauthorized occupation the said quarters No. 44/A, M Type. According to the opposite party No. 2, he has already informed the concerned office regarding vacation of this quarter, but the petitioners were trying to implicate him; on false grounds and giving notices without any valid cause of action.

4. Accordingly, Complaint Case No. 185 bf 2000 was filed before the Court of Chief Judicial Magistrate, Dhanbad and after enquiry cognizance was taken against the petitioners under Section 167 of the Indian Penal Code by order dated 29.9.2000. The petitioners moved before the Court of Sessions Judge in Criminal Revision No. 125 of 2001 against the said order, which was heard by the Court of Additional District Judge XIth, Dhanbad and finally decided against the petitioners on 29.5.2002.

5. As such, the present petition on the grounds that the petitioners were employees of Indian Railways and they have only issued notices to opposite party No. 2, who was keeping the said quarters under unauthorized occupation. It is further asserted that the complainant has filed this false case just to pressurize them and avoid to vacate the said quarter No. 38-C Type II for which he has filed Title Suit No. 80 of 1999 praying therein for permanent injunction and restraining the railways evicting him from the said quarter. However, the Munsif 2nd, Dhanbad refused his prayer for injunction against the railways. The complainant opposite party No. 2 filed Title Appeal, which has also been dismissed after which, this false case has been lodged. The petitioners further asserted that the complainant was a railway employee and occupying one railway quarter unauthorizedly, for which eviction under Section 5 of the Public Premises (Eviction of Unauthorized Occupant) Act, 1971 vide Eviction Case No. E-53/1998 was initiated and finally evicted in 1999. It is also asserted that the complainant has been removed from services on railways on 10.9.1985 against which the complainant has moved before CAT, Patna in OA-310/87, which was dismissed finally on 22.6.1988.

Thereafter he filed a Special Leave Petition before the Apex Court, which was also dismissed. Accordingly, it has been asserted that in view of the facts stated above, the complaint case filed by the opposite party No. 2 was by way of vengeance and frustration.

6. During arguments, learned Counsel for the petitioners submitted that simply issuing notices for unauthorized occupation as alleged by the opposite party No. 2, no offence can be made out under Section 167 of the Indian Penal Code.

7. Learned Counsel for the opposite party No. 2 has relied upon the decisions rendered in the case of Shambhoo Nath Misra v. State of U.P. and Ors. : 1997 CriLJ2491 and in the case of Raj Kishore Roy v. Kamleshwar Pandey and Anr. 2002 (3) JLJR 154 : 2002 (3) East CrC 103 (SC), to stress upon the points that question of sanction can be decided at the time of delivering judgment and that the order of sanction for prosecution on account of fabrication of records and misappropriation of public fund by public servant is not necessary.

8. From bare perusal of Section 167 of the Indian Penal Code, it appears that when a public servant is charged with the preparation or translation of any document in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

9. In the facts discussed above, issuing of notices cannot be said to have been done believing the same to be incorrect with intention to cause injury to the complainant. It is admitted fact between the parties that eviction processes have been taken up by the railways for eviction of the complainant, who challenged it in a Court of law by filing Title Suit No. 80 of 1999, in which he has not succeeded. The notices as alleged have been issued from September, 1999 to January, 2000 and this complaint case was filed in February, 2000. It is also admitted fact that the petitioners are A.E.N. (Special) and the Section Engineer employed by the railways, as such it is found and held that they have acted in accordance with rules and issued notices which cannot be said after creating and forging documents. Under these circumstances. I find that it is fit case in which this Court requires to

interfere with the proceedings pending before the Court below in Complaint Case No. 185 of 2000.

10. Having considered the above facts and circumstances, I find that the cognizance taken by the Court below vide order dated 29.2.2000 cannot be sustained and deserves to be quashed.

11. In the result, this petition is allowed. The order dated 29.2.2000 taking cognizance is hereby quashed.

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