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Court : Orissa

Decided On : Jul-31-2007

Reported in : 104(2007)CLT706; 2008CriLJ2722

Judge : Pradip Mohanty, J.

Appellant : Sanjay Kumar Panda

Respondent : State of Orissa

Judgement :

Pradip Mohanty, J.

1. This revision is directed against the Order Dated 05.08.2005 passed by the Special Judge (Vigilance), Bhubaneswar in T.R. No. 59 of 2002 framing charge against the Petitioner under Sections -13(1)(c)(d) and 13(2) of the P.C. Act read with Sections 419/420/468/471/409/114/120B IPC. By the said order, the Learned Special Judge (Vigilance) has also framed charge against the co-accused under Sections 13(1)(c)(d) and 13(2) of the P.C. Act read with Section 409 IPC.

2. The allegation of the prosecution is that the present Petitioner while functioning as Addl. Manager, Finance in Orissa State Police Housing and Welfare Corporation Limited Bhubaneswar appointed one Siba Charana Parida as his follower orderly (F.O.) on 24.06.1998. Since then, he was taking the salary of the said F.O. every month for payment to the said orderly and was submitting the

voucher the next day after showing disbursement of the amount to the' said P.O. The Petitioner himself was attesting the payments shown to have been made by him. On vigilance enquiry, it was proved that the said Siba Charan Parida was a fake person and the Petitioner being a public servant has misappropriated an amount of Rs. 44,319.00 towards the salary of the said fake Follower Orderly for the period from 01.06.19.88 to 30.04.1994.

3. Mr. Rath, Learned Counsel for the accused-Petitioner submitted that the Petitioner was not present at the time of framing of charge. Therefore, there was non-compliance of the provisions of Section 228 Cr.P.C. He further submitted that the Petitioner had certain documents in his possession, which he wanted to file before the Trial Court. Had those documents been filed, innocence of the Petitioner would have been proved. Non-affording of opportunity to do so has caused great prejudice to the accused-Petitioner.

On the other hand, Mr. Mohapatra, Learned Standing Counsel for the Vigilance Department, submitted that the order framing charge is an interlocutory one. Therefore, the revision is not maintainable. He further submitted that in the meantime more than 18 months have elapsed and one witness has already been examined by the prosecution. Therefore, in view of the provisions contained in Section 19(3)(c) of the P.C. Act, 1988, the revision is not maintainable.

4. The crux of the case is whether the presence of the accused at the time of framing of charge is necessary or not. There is no provision in the Code of Criminal Procedure, which speaks that the accused must be present at every hearing of the case, though there are several Sections in the said Code which specifically provides for the presence of the accused at certain stages of the proceedings. It is, however, one of the vital principles of administration of the criminal justice, which has universally acknowledged that in a criminal trial the Court should not proceed ex parte against an accused. The cardinal principle of criminal law is that the trial should be conducted in presence of the accused mainly for the protection of his interest. If, however, an accused person has prayed for exemption and the Court has granted him exemption from personal attendance, it is not open to the accused to whom such exemption was granted to

complain that the exemption was wrongly granted to him and the trial, therefore, should be held to be null and void. The Trial Court has discretion in certain circumstances to exempt the personal attendance of the accused. But if the accused is represented, the Trial Court can pass an order of exemption of his presence in certain circumstances. For ready reference, Section 228 of the Cr.P.C. is quoted below:

228, Framing of charge.-(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Sessions, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under Clause (b) of Sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

A bare reading of Section 228(2) goes to show that the charge shall be framed in presence of the accused and explained to the accused. But in the instant case, the impugned order reveals that the Petitioner and another co-accused were absent at the time of framing of charge and a petition was filed for their representation and the defence Counsel were also present. From the affidavit filed by the Counsel for the Petitioner together with a copy of the petition filed on 05.08.2005 before the Trial Court it appears that a prayer was made for adjournment. The impugned order shows that the Petitioner made a representation to exempt his personal attendance, but no order was passed by the Trial Court regarding exemption of the appearance of the accused persons at the time of framing of charge.

5. Without going into the maintainability of the revision, even though this application is construed to be one under Section 482 Cr.P.C, in the normal circumstances the appropriate course would have been to set aside the impugned order and to remit the matter to the Trial Court to insist upon the presence of the Petitioner at the time of framing charge and to record his plea to the charge. But, since one of the witnesses has already been examined by the prosecution and charge was framed 18 months before filing of the revision, this Court is not inclined to interfere with the impugned order at this stage. If there is any legal infirmity in the conduct of the trial like answering of the charge without due compliance of Section 228 Cr.P.C, the accused-Petitioner may, if so advised, plead prejudice in the event the case ends in conviction. This Court is of the opinion that at this stage when the impugned order has already been given effect to and the case has advanced considerably and one witness has already been examined, it would not be proper to interfere with the impugned order.

The revision is accordingly disposed of.

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