

Ainul Haque Vs. Union of India and Ors

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Court : Jharkhand

Decided On : Aug-03-2016

Appellant : Ainul Haque

Respondent : Union of India and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI. Cr. M.P. No. 735 of 2011
Ainul Haque,s/o Late Zahoor Hassan Khan,Risaldar Nagar,Doranda, Ranchi
Petitioner. versus 1. Union of India, through CBI, New Delhi.

2. State of Jharkhand, Ranchi 3. Superintendent of Police,CBI,Delhi Respondents.
----- CORAM : THE HON'BLE MR. JUSTICE RAVI NATH VERMA ----- For the
Appellants : Mr. Vishnu Kumar Sharma For the C.B.I : Mr. K.P. Deo ----- Reserved
on 22.07.2016 Delivered on:

03. 08/2016 R.N.Verma,J.

Invoking the inherent powers of this court under section 482 of the Criminal Procedure Code (in short the 'Code'), the petitioner has prayed for quashing of the entire criminal proceeding including the order taking cognizance dated 08.05.2001 and the order dated 30.10.2010 passed by learned Special Judge,C.B.I.(A.H.D.) Ranchi in R.C.Case no.47(A) of 1996.

2. Bereft of unnecessary details, the facts which are necessary for the proper adjudication of this case,in short, is that after institution of the aforesaid case, the

investigation was finally handed over to the Central Bureau Investigation(in short C.B.I.), Ranchi and on completion of investigation, the C.B.I. filed the charge-sheet on 08.05.2001. Whereafter cognizance of the offence was taken by the court against several accused persons, including this petitioner to face trial under sections 409/420/467/468/471/472/120B of the Indian Penal Code and also under section 13(2) read with section 3(1) (c)(d) of the Prevention of Corruption Act.

3. Aggrieved by the said order taking cognizance the petitioner filed W.P.(Cr.) No.48 of 2007 in this court with prayer to quash the F.I.R., charge-sheet and the order taking cognizance dated 08.05.2001, but later on petitioner preferred to withdraw the said writ petition which was allowed and the writ was dismissed as withdrawn vide order dated 04.04.2008, with liberty to raise all the points before the concerned court. Apparently, the -2- order taking cognizance was challenged by the petitioner earlier also before this court. The petitioner thereafter filed a petition before the court concerned for his discharge in the light of the observation made by this court and the said petition was dismissed as not maintainable by the concerned court vide order impugned dated 30.10.2010 holding that the charges against the petitioner and other accused persons have already been framed vide order dated 26.09.2005 i. e. much before filing of the petition for discharge and several witnesses have been examined and the petitioner is dismissed as not maintainable. Aggrieved by the said order petitioner filed the instant application with prayer to quash the said order, including the order taking cognizance dated 08.05.2001 and the entire criminal proceeding. It is pertinent to mention here that by order dated 04.04.2008 passed by this Court in W.P.(Cr.) No. 48 of 2007, the Hon'ble Court dismissed the writ petition relying on the fact that number of witnesses had already been examined with liberty to raise all the points before the court below, which have been taken in this writ application. So factually, in the year 2008 itself several witnesses had been examined and after the said order several other witnesses have been examined by the court and in the midst of examination of prosecution witnesses, petitioner filed the said petition for his discharge.

4. Mr. Vishnu Kumar Sharma, learned counsel appearing for the petitioner assailing the order impugned as bad in law, seriously contended that when liberty was given to the petitioner to raise all the points in the court below, petition for

discharge was filed but the court below erred in rejecting the prayer by simply holding that several witnesses have been examined, the petition filed by the petitioner is not maintainable. It was also submitted that petitioner is more than 80 years old and the documents, relying upon which the C.B.I. has filed charge-sheet against the petitioner were all of the period after superannuation of the petitioner as Accountant from Doranda Treasury, Ranchi that being the position, the proceeding against the petitioner is an abuse of the process of court with only intention to harass the petitioner. It was also submitted that the copy of those bills, which were alleged to be passed by the petitioner even after his superannuation were never given to the petitioner as mandatorily required under section 207 of the Code and the non-supply before -3- framing charge vitiates the entire criminal proceeding.

5. Per contra, Mr. K.P.Deo, learned counsel appearing for the C.B.I. submitted that this application is not maintainable in view of the prayer made by the petitioner for quashing of the order taking cognizance dated 08.05.2001 and subsequent order dated 30.10.2010 by which the court below refused to discharge the petitioner, as most of the witnesses have already been examined and petitioner should have filed this petition for discharge at an appropriate stage.

6. It is well settled that prayer for quashing criminal proceeding has to be exercised on various parameters and that too in the rarest of rare case and the court cannot be justified in embarking upon the genuineness or otherwise of the allegation made in the FIR/complaint unless allegations are so absurd and inherently improbable. The extraordinary and inherent powers of the court do not confer arbitrary jurisdiction to the court to act according to its whims or caprice and it is equally settled principle of law that the court under inherent powers neither intervene at an uncalled stage nor at any stage of the proceeding unless there is probability of injustice or misuse of powers of the court.

7. Apparently, in the earlier writ petition filed at the instance of this petitioner, the prayer was made for quashing of the entire criminal proceeding, charge-sheet and the order taking cognizance which was subsequently withdrawn by the petitioner with permission of the court and the present application has also been filed with

almost same prayer except one. In the instant case, I have already discussed above that earlier almost same issues were raised before this court . Hence, petitioner cannot be allowed to raise those issues again. So far as the petition filed by the petitioner in the court below for his discharge is concerned, since most of the witnesses have already been examined, this court in its inherent power can not intervene at this uncalled for stage. The provisions of section 482 of the Code is a device to advance justice and not to frustrate. At the fag end of the trial the question raised for discharge of the petitioner cannot be said to be maintainable in the eye of law. The court below has rightly rejected the petition filed for discharge of the petitioner. Mr. Sharma, learned counsel appearing for the -4- petitioner has not pointed out any cogent ground to interfere in the proceeding of the court below at this stage.

8. Accordingly, this petition, being devoid of any merit, is hereby, dismissed. (R.N. Verma ,J.) Raman/

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