

Shankar Mandal. Vs. State of Bihar.

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Court : Patna

Decided On : Jul-15-2010

Judge : Rakesh Kumar, J.

Acts : Code of Criminal Procedure (CrPC) - Section 482;

Appeal No. : CRIMINAL MISCELLANEOUS No.17669 OF 2000

Appellant : Shankar Mandal.

Respondent : State of Bihar.

Advocate for Def. : Mr. Pronoti Singh, Adv.

Advocate for Pet/Ap. : Mr. Krishna Mohan, Adv.

Judgement :

1. Sole petitioner, while invoking inherent jurisdiction of this court under section 482 of the Code of Criminal Procedure, has prayed for quashing of an order dated 1.5.2000 passed by Sri M.M.Sharan Lal, Judicial Magistrate, Ist Class, Bhagalpur, in Kotwali P.S. Case No.27 of 1993. By the said order the learned Magistrate has rejected the petition for discharge filed on behalf of the petitioner.

2. Short fact of the case is that first information report was lodged on the basis of written complaint submitted by Executive Engineer, Public Health Department, and Bhagalpur Division. It was alleged that the petitioner was Accounts Clerk and in the said capacity he had forged the document whereby the government exchequer

had suffered a loss of more than Rs.50,000/-. It further appears that the petitioner was accused in other cases also in case of similar nature. After investigation the police submitted charge sheet and when the case reached to the stage of charge, a petition for discharge was filed on behalf of the petitioner and the same has been rejected by the impugned order.

3. Aggrieved with the order of rejection of discharge petition, the petitioner approached this court by filing the present petition. The petition was admitted on 14.12.2000 and while admitting the petition, this court directed that during the pendency of this application, further proceeding of Kotwali P.S. Case No.27 of 1993 (G.R. No.83 of 1993) pending in the court of Sri M.M.Sharan Lal, Judicial Magistrate, 1st Class, Bhagalpur, shall remain stayed.

4. While challenging the impugned order, Mr. Krishna Mohan, learned counsel appearing on behalf of the petitioner, submits that without any material the police submitted charge sheet and the learned Magistrate in a mechanical manner has passed the impugned order. It was submitted that during investigation original record was not traced by the investigating officer. It was also submitted that the Executive Engineer, regarding forging of whose signature allegation was levelled against the petitioner, was also not examined by the investigating officer, even then the petitioner was charge-sheeted. Learned counsel for the petitioner, while referring to annexure-1 to the petition i.e. copy of the first information report, submits that the first information report itself shows that 31.12.1979 was the last date of occurrence and the first information report was lodged on 13.1.1993 i.e. after a lapse of fourteen years. Accordingly, learned counsel for the petitioner submits that the order of rejection of discharge petition is liable to be set aside.

5. Mrs. Pronoti Singh learned Additional Public Prosecutor, appearing on behalf of the State, has opposed the prayer of the petitioner. It was submitted on behalf of the State that at time of passing of the order of rejection of discharge petition, there is no statutory requirement to assign a detailed reason. It was submitted that the order does not indicate any defect.

6. Besides hearing learned counsel for the parties, I have also perused the materials available on the record. Prima facie the court is satisfied that there is no

defect in the order of rejection of discharge petition. So far as point of delay which has been raised by the learned counsel for the petitioner is concerned, it may be indicated that the fact as to how delay had occurred in filing the first information report can be examined during trial. So far as question of non-availability of original record is concerned, this court is of the opinion that, while hearing a petition under section 482 of the Code of Criminal Procedure, it is not required for this court to look into all those things. Those things can be considered as a defence which can be looked into during trial by the trial court.

7. Accordingly, I do not find any defect in the impugned order and the petition stands rejected.

8. In view of rejection of the present petition, interim order of stay stands automatically vacated.

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