

Ram Tapeswar MishrA. Vs. State of Bihar.

Ram Tapeswar MishrA. Vs. State of Bihar.

SooperKanoon Citation : sooperkanoon.com/915920

Court : Patna

Decided On : Aug-11-2010

Judge : Rakesh Kumar, J.

Acts : Code of Criminal Procedure (CrPC) - Section 239

Appeal No. : CRIMINAL MISCELLANEOUS No.23883 OF 2000

Appellant : Ram Tapeswar MishrA.

Respondent : State of Bihar.

Advocate for Def. : Smt. Indu Bala Pandey, Adv.

Advocate for Pet/Ap. : S/Sri Ajay Kumar Thakur; Kumar Kaushi, Adv.

Judgement :

1. The sole petitioner, who was at the relevant time posted as Dy. Collector, Madhubani Collectorate has come before this Court for quashing of an order, i.e. order dated 4.8.2000 passed by the learned Judicial Magistrate, 1st Class, Madhubani in G.R. Case No.327 of 2000 arising out of Madhubani Town P.S. Case No.191 of 1990. By the said order the learned Magistrate has rejected the petition filed on behalf of the petitioner for his discharge under Section 239 of the Code of Criminal Procedure. It is second attempt by the petitioner to delay the commencement of the trial. Initially, after the order of cognizance, the petitioner approached this Court by filing a quashing application vide Cr.Misc.No.12418 of 1995, which was initially admitted on 5.9.1995. However, finally this Court did not

interfere with the proceeding and the petition was disposed of on 11th November, 1999,

2. Sri Ajay Kumar Thakur, learned counsel appearing on behalf of the petitioner submits that the F.I.R. itself was lodged as per initiative taken by the petitioner since at the relevant time he was posted as Deputy Collector. The F.I.R. was lodged against Nazir of the Collectorate. Allegation was made in the F.I.R. that the Nazir, namely, Sri S.Hoda, while he was going to retire, had misappropriated the Government fund to the tune of Rs.5,86,159.22. It was submitted that though during investigation no material was found against the petitioner, the police submitted chargesheet against the petitioner also and thereafter, at the time of charge, the petitioner filed a discharge petition, which was rejected by the learned Magistrate. It was submitted that the learned Magistrate without application of his mind has passed the order of rejection of discharge petition. It was vehemently argued by Sri Thakur, learned counsel for the petitioner that even for the time being if it is assumed that during the trial, if witnesses are even not cross-examined, there is no possibility to convict the petitioner. On the ground of no evidence, prayer was made to quash the rejection of discharge petition.

3. Smt.Indu Bala Pandey, learned Addl.Public Prosecutor appearing on behalf of the State has vehemently opposed the prayer of the petitioner. It was submitted that the order of rejection is itself very specific, which assigns reasons for rejection of discharge petition.

4. Besides hearing learned counsel for the petitioner and the State, I have also perused the materials available on record, particularly the impugned order. Prima facie, on perusal of the impugned order, the Court is satisfied that the learned Magistrate has committed no error, while rejecting the discharge petition. The learned Magistrate, while rejecting the discharge petition in its order dated 4.8.2000, has categorically stated that he had examined certain paragraphs of the case diary and thereafter discharge petition was rejected.

5. In the case, occurrence had taken place long back in the year 1990, an F.I.R. was also lodged, investigation was conducted and chargesheet was submitted even against the petitioner, who was a Dy. Collector. It has been held by the

Hon'ble Supreme Court in a case reported in 1995 (3) Cr.L.J. 2395 (G.N.Hedge Vs.S.Bangarappa) that if the influential persons are made accused, there is every chance of delay in conclusion of the trial. The Hon'ble Supreme Court had even admonished the superior court from interfering with the criminal proceeding at its initial or interlocutory stage. This is a glaring case of adopting the method of delaying even the commencement of the trial. After the order of cognizance, the petitioner approached this Court. Thereafter, the matter remained pending for about four years before this Court and no relief was granted to the petitioner. At the stage of charge, petition for discharge was filed, which too was rejected and the same was challenged before this Court by filing the present petition and this Court by order dated 20.2.2002, while admitting the case, directed stay of the proceeding before the court below and the matter remained pending for more than eight years before this Court. So, the trial in the present case has not commenced till date since charges could not be framed. Keeping in view the fact that the petitioner, who was a public servant and holding an important post was indulged in misappropriation of the Government fund, this Court is of the view that while rejecting the present petition, it is necessary to direct the court below to proceed with the case expeditiously and conclude the same preferably within a period of nine months. The learned Magistrate is also directed to take up the present case at least thrice in a week. The petitioner is directed to render full assistance to the court below.

With the above observation and direction, the petition stands rejected.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com