
(2009) 04 JH CK 0091
In the Jharkhand High Court

Basant Kumar Jhawar

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 18-04-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 409, 420, 467

Citation : (2010) CriLJ 265 : (2010) 7 RCR(Criminal) 760

Hon'ble Judges : Jaya Roy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Jaya Roy, J.—In this case office has pointed out as to whether the instant two restoration petitions are maintainable or not. In view of this office note, heard the counsel for the petitioner and the counsel for the opposite parties on the point of maintainability of this petition.

2. The petitioner has filed the instant two applications u/s 482 of the Code of Criminal Procedure for restoration of Criminal Revision No. 646 of 2006 and Criminal Revision No. 777 of 2006 which were dismissed for non appearance of the petitioner vide order dated 29.7.2008 by this court. The petitioner has filed above mentioned Criminal Revision No. 646 of 2006 for setting aside the order dated 18.3.2006 passed by Sri K.K.Srivastava, learned Special Judge (Vigilance), Ranchi, in Special Case No. 30/89 (Patna Vigilance Case No. 005/89) registered under Sections 409/420/467/468/471/120B/201 I.P.C. and Section 13(2) of the P.C. Act 1988 whereby the petitioner's prayer for discharge was rejected.

3. The petitioner has filed another Criminal Revision No. 777/06 for setting aside the order dated 03.07.06 passed in Special Case No. 30/89 by Sri K.K. Srivastava, Special Judge (Vigilance) Ranchi, whereby the charge has been framed against the petitioner alongwith seven other persons u/s 120B of the Indian Penal Code read with Sections 409, 420, 467, 468, 471 and 201 of the Indian Penal Code and Section 39 of the Electricity Act as well as SECTIONS

13(2) read with Section 13(1)(C)(d) of the P.C. Act.

4. Mr. K.T.S. Tulsi, Sr. Counsel appearing for the petitioner submits that the aforesaid Criminal Revision No. 646 of 2006 was listed under the heading "For Admission" in the daily cause list dated 29.7.2008 in this High Court with another Criminal Revision No. 777 of 2006 filed by the petitioner. On that very date Mr. K.T.S. Tulsi, Sr. Advocate of the petitioner could not come from the Delhi to argue the said case due to some unavoidable circumstances. Mr. N.N. Sinha Advocate of the petitioner who is conducting his case in this Court and also in the court of Special Judge (Vigilance), Ranchi was coming to High Court from Civil Court Ranchi to attend the aforesaid case and also to seek to adjournment and fix the case on particular date so that Mr. Tulsi, Sr. Advocate could come and argue the case but unfortunately Mr. N.N. Sinha was stuck in a Road Jam at Main Road for considerable period of time and in the meantime the aforesaid Revision was called out and as no body appeared on such calls on behalf of the petitioner, the same was dismissed vide the order dated 29.7.2008 for such non appearance on behalf of the petitioner and observed:

Nobody appears on behalf of the petitioner in spite of repeated calls to press this revision petition.

Mr. A.K. Kashyap learned Counsel appears on behalf Vigilance department as well as Sri Prashant Kumar Singh appears on behalf of Jharkhand State Electricity Board and learned Counsel Sri Manoj Tandon appears on behalf of Bihar Stated Electricity Board:

This matter remains pending for last two years. The matter has yet not been admitted in spite of several adjournments. It is submitted on behalf of the Vigilance department by filing counter affidavit that the charges have been framed on 3.7.2006 and the prosecution is taking positive steps for the conclusion of the trial.

In such view of the facts, this petition appears to have become in fructuous. Accordingly this petition is dismissed.

5. It is further submitted that the aforesaid revision was earlier placed before this court for a number of times and on each date the counsel of the petitioner was present. It was the only date when none of the counsels of the petitioner was able to present and to pursue the case for unavoidable circumstances.

6. Mr. Tulsi, senior Counsel, submitted that the aforesaid revision i.e. Cr.Rev. No. 646 of 2006 was filed u/s 397 and 401 Cr.P.C. Sub-section (2) of Section 401 reads as follows:

Section 401(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

The order passed u/s 401 Cr.P.C. dismissing the revision application is prima facie

a final order and it is true, it can not be quashed u/s 482 Cr.P.C. But if the conditions precedent as laid down in Sub-clause (2) of Section 401 is not fulfilled, the High Court certainly power to interfere u/s 482 under its inherent jurisdiction. In support of his contention he relied upon a decision reported in 1989 BLJR 323 Kkashinath Singh v. State of Bihar. In case of Kashinath Singh v. State of Bihar the Hon?ble Patna High Court has allowed the restoration application and held:

Having considered all the facts and circumstances of this case and having heard the learned Counsel on behalf of the petitioners and the State I am of the opinion that it is a fit case where the impugned order passed in Cr. Revision No. 247 of 1980 be set aside and the aforesaid application be restored to its original file. Let the aforesaid cases be listed for fresh hearing before an appropriate Bench as early as possible.

7. The counsel of the opposite party No. 2 submits that the revision petition was dismissed on 29.7.2008 on merit, which is evident from the concluding portion of the order. Therefore, the restoration application is not at all maintainable inasmuch as following the petition would amount to review of the order, which is barred u/s 362 of the Code of Criminal Procedure, which reads thus:

Section 362 Court not to alter judgment save as otherwise provided by this Code or any other law for the time being in force, no court when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.

He has relied on the decision on the Apex court in the case of Hari Singh Mann v. Haribhajan Singh Bajwa reported in (2001) 1 SCC 169.

8. Mr. V.P. Singh Senior counsel appearing for the opposite party No. 3 J.S.E.B has also reiterate that as the final order has passed after considering the fact that the charges have already been framed, the restoration petition is not at all maintainable.

9. The decision relied upon by the counsel of the opposite party No. 2, i.e. (2001) 1 S.C.C 169 Hari Singh Mann v. Harribhajan Singh Bajwa is absolutely not applicable in the present case. In the case Hari Singh Mann (Supra) the order dated 7.1.1999 was passed after hearing the counsel of the petitioner. In the case at hand the order dated 29.7.2008 was admittedly passed without hearing the counsel of the petitioner as mentioned above or in other words it can be said that the criminal revision was dismissed as infructuous in the absence of the petitioner?s counsel.

10. It is further significant to mention here that after the order was passed on 29.7.2008 by this Hon?ble court till the date of hearing the instant Cr.M.P. not even a single prosecution witness has been examined.

11. Mr. K.T.S. Tulsi, the learned senior counsel appearing for the petitioner fortified his argument by placing reliance on Madhumilan Syntex Ltd. and Others

Vs. Union of India (UOI) and Another, Para 17. According to me this decision (Supra.) Squarely covers the facts and circumstances of the case at hand. Further more the learned counsel placed reliance on the case reported in 1989 B.L.J.R. 323 Kkashinatgh Singh v. State of Bihar Para 6 at Page 325 supports the contention of the petitioner's case. According to me the order dated 29.7.2008 at the face of it was dismissed for non prosecution/not pressing the petitioner as the very first line of the order reads; No body appears on behalf of the petition so at any stretch of imagination it can not be said that by order dated 29.7.2008 was passed by hearing the counsel of the petitioner.

12. Having considered all the facts and circumstances of this case and having heard the learned Counsel on behalf of the petitioner and the opposite parties, I am of the opinion that it is a fit case where the impugned order dated 29.7.2008 passed in Criminal Revision No. 646 of 2006 and Cr. Rev. No. 777 of 2006 should be set aside. Therefore the impugned Orders dated 29.7.2008 passed in Cr. Rev. No 646 of 2006 and Cr. Rev. No 777 of 2006 are set aside and the aforesaid Cr. Rev. Nos.646 of 2006 and Cr. Rev. No. 777 of 2006 are restored to their original files. In the result these two applications are allowed.

Office is directed to place the records of Criminal Revision No. 646 of 2006 and Cr. Rev. No. 777 of 2006 under the heading "For Admission" before the appropriate Bench as earlier as possible.