

(2012) 05 JH CK 0087

In the Jharkhand High Court

Case No : Writ Petition (Cr.) No. 175 of 1998 (R)

Bhola Nath Prasad @ Bhola Prasad

APPELLANT

Vs

The State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 06-05-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197
Penal Code, 1860 (IPC) — Section 21

Citation : (2012) 4 JCR 242 : (2012) 3 JLJR 275

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : A.K. Kashyap and Mr. S. Kumar, for the Appellant;

Final Decision : Allowed

Judgement

H.C. Mishra

1. Heard learned counsel for the petitioner and learned counsel for the State. In this writ application, the petitioner has challenged the order dated 4.5.1998 passed by the learned A.C.J.M., Ghatshila in G.R. No. 95 of 1992 (S) whereby, the warrant of arrest was ordered to be issued against the petitioner. Petitioner has also prayed for a direction against the respondent State not to proceed against the petitioner in the said G.R. Case No. 95 of 1992, arising out of Dumaria P.S. Case No. 29 of 1992.

2. The facts of the case lie in a short compass. One FIR was lodged bearing Dumaria P.S. Case No. 29 of 1992, corresponding to G.R. No. 95 of 1992, against one contractor Bagh Singh Besra, on the allegation that he was advanced Rupees three lacs for construction of a school building and the same was not constructed. The petitioner was not named in the F.I.R.

3. It appears that during investigation, role of the petitioner was found. as, at the relevant time the petitioner was posted as Block Development Officer at Dumraria and it transpired that Rs. 65,000/- and 500 bags of cement were

advanced by the petitioner to the accused contractor without there being recommendation of the Junior Engineer. It further appears that charge-sheet was submitted in this case on 16.1.1993 against the named accused Bagh Singh Besra. So far as this petitioner is concerned, the investigation was kept pending. Subsequently, on 2.5.1998, an application was filed by the I.O. of the case before the Additional Chief Judicial Magistrate, Ghatsila, praying for issuance of warrant against the petitioner and in the memo of evidence, it was mentioned that Rs. 65,000/- and 500 bags of cement were advanced to the concerned contractor by this petitioner without there being any recommendation of the Junior Engineer and that no inspection of the construction was made by the petitioner. On the application, filed by the I.O. of the case, the Court below by order dated 4.5.1998, ordered for issuance of warrant of arrest against the petitioner, which has been challenged by the petitioner by filing this writ application.

4. The counter affidavit has been filed by the respondent State wherein, it finds mentioned that the charge-sheet could not be filed against the petitioner due to the fact that the petitioner was being transferred from the one place to another during his service period and accordingly, the I.O. could not get the correct address of the petitioner. It has also been stated in the counter affidavit that the petitioner being a public servant, within the meaning of Section 21 of the Indian Penal code, sanction was required to be obtained for the prosecution of the petitioner u/s 197 of the Cr.P.C, and several letters had been written to the State Government for obtaining sanction for the prosecution of the petitioner. Thereafter, the counter affidavit is silent whether the sanction was ever accorded by the State or not, the only inference whereof is, that the sanction was never accorded.

5. Learned counsel for the petitioner submitted that the impugned order dated 4.5.1998 passed by the learned ACJM, Ghatsila in G.R. Case No. 95 of 1992 (S) is absolutely illegal, in as much as, from the Memo of the evidence as submitted by the I.O. of the case as contained in Annexure - 3 to the writ application, it would be apparent that there is no allegation against the petitioner so as to make out any offence against him, to have been committed not in discharge of his official duties. Learned counsel further submitted that there is no other allegation against the petitioner except that the money and cement were advanced to the contractor and the said allegation squarely comes within the discharge of the official duty of the petitioner as a Block Development Officer. Admittedly, the petitioner was a public servant at the relevant time and accordingly, the sanction was required in this case but the sanction was not given for prosecution of the petitioner, even though several letters were written to the State Government. It also appears that the charge-sheet has not be filed against the petitioner in the said case.

6. Learned counsel for the State on the other hand has submitted that the charge-sheet could not be filed in this case as the proceeding/ investigation in

this case was stayed by this Court. Learned counsel further submitted that there was no illegality in the impugned order issuing warrant of arrest against the petitioner, nor in filing the FIR against the petitioner, and they cannot be quashed at this stage.

7. Having heard learned counsels for both the sides and upon going through the record, I find that it is an admitted fact by the respondent State in its counter affidavit that sanction u/s 197 Cr.P.C. was required to be taken in the case of the petitioner as the petitioner was public servant and accordingly, several letters had been issued to the State Government for granting the sanction. This apparently is an admission of the fact that whatever allegation against the petitioner was there, the same was for an offence clearly committed in discharge of the official duties of the petitioner. It further appears that no sanction had been accorded for the prosecution of the petitioner as there is no mention about the same in the detailed counter affidavit filed by the State Government.

8. In the facts and circumstances of the case, I am of the considered view that the petitioner could not be prosecuted in absence of any sanction by the State Government. I further find that the FIR was lodged in the year 1992 itself, and as such, no useful purpose is going to be served by keeping the criminal proceeding pending against the petitioner in absence of any sanction by the State Government till the current year 2012. In view of the aforementioned discussions, the impugned order dated 4.5.1998 passed by the learned ACJM, Ghatshila, in G.R. Case No. 95 of 1992 (S) as also, the proceedings against the petitioner in Dumaria P.S. Case No. 29 of 1992, corresponding to G.R. Case No. 95 of 1992 (S), are hereby, quashed. This application is accordingly, allowed.