

(2016) 02 JH CK 0122
In the Jharkhand High Court
Case No : Cr. M.P. No. 137 of 2015

Bindeshwari Prasad Roy

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 05-02-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2017) 1 JLJR 501

Hon'ble Judges : Mr. Rongon Mukhopadhyay, J.

Bench : Single Bench

Advocate : Mr. S. N. Das, Advocate, for the Petitioner; Mr. Dr. Shyam Raman Pandey, (In person), for the Opposite No. 2

Final Decision : Disposed Off

Judgement

Mr. Rongon Mukhopadhyay, J.—In this application, the petitioner has prayed for quashing the entire criminal proceedings in connection with Complaint Case No. 416 of 2002 including the order dated 24.02.2014 passed by the learned Chief Judicial Magistrate, Ranchi whereby and where under cognizance has been taken for the offence punishable under Section 406 of the Indian Penal Code as also the judgment dated 29.11.2014 passed in Criminal Revision No. 92 of 2014 by which the revision application preferred by the petitioner against the order dated 24.02.2014 was also dismissed.

2. A complaint case was instituted by the opposite party No. 2 in which it was stated that the complainant was initially appointed as Lecturer and posted at St. Columbus College, Hazaribagh, from where he was transferred to Post Graduate Department of Sanskrit, Ranchi University, Ranchi and was promoted to the rank of Reader and then to University Professor.

3. It has been averred that after one year according to the rule the complainant started continuing with 10% deduction of his salary pay per month in the Provident Fund Account in the United Bank of India, Hazaribagh. Subsequently,

the Provident Fund amount was transferred to S.B./P.F. A/C No. 50 of United Bank of India, Ranchi. It has been stated that the complainant took an Insurance Policy from L.I.C. of India with yearly premium of Rs. 301/- only from the Provident Fund Account of the petitioner. The policy was pledged to Registrar of Ranchi University who had ordered the office to pay the premium of the Policy from the account of Provident Fund which was contributed regularly by the complainant. It is alleged that although the L.I.C. Policy matured on 31.12.1991 but the same have lapsed on account of non-payment of the premium from his Provident Fund Account. Subsequently complainant could learn that on non-payment of the L.I.C. premium in time the Policy had lapsed in the year 1999. The complainant has further alleged that criminal breach of trust has been committed by the accused persons for not depositing the Provident Fund amount deducted from his salary to the L.I.C. Office.

4. Based on the aforesaid allegations Complaint Case No. 146 of 2002 was instituted.

5. Upon enquiry conducted under Section 202 of the Cr.P.C. cognizance was taken for the offence punishable under Section 406 of the Indian Penal Code. An application was filed by the petitioner under Section 245 of the Cr.P.C. for the discharge which was rejected on 24.02.2014 by the learned Chief Judicial Magistrate, Ranchi. Against the same the petitioner had preferred a revision before the learned Additional Judicial Commissioner - XII, Ranchi in Criminal Revision No. 92 of 2014 which was also dismissed vide judgment dated 29.11.2014.

6. Heard Mr. S.N. Das, learned counsel appearing for the petitioner and Dr. Shyam Raman Pandey, the opposite party no. 2 who is appearing in person.

7. Mr. S. N. Das, learned counsel appearing for the petitioner has submitted that there has been an inordinate delay in instituting a criminal case against the petitioner since although L.I.C. Policy is said to have lapsed in the year 1979 but the complaint case was instituted in the year 2002 without there being any reasonable explanation for such delay. It has been submitted that even otherwise from the complaint petition no case is made out against the petitioner and, therefore, the petitioner deserves to be discharged from the criminal case.

8. At this, the opposite party no. 2 appearing in person has submitted that the petitioner has deliberately failed to deposit the premium amount which would clearly make the petitioner liable to be prosecuted under Section 406 of the Cr.P.C. It has been submitted that the petitioner being entrusted with respect to discharge of the Provident Fund amount had wilfully and deliberately failed to perform such act and, therefore, the same is a criminal breach of trust as per Section 405 of the Cr.P.C.

9. After having heard both the parties, I find that initially the petitioner had preferred an application under Section 482 of the Cr.P.C. challenging the order taking cognizance in Cr.M.P. No. 1253 of 2004 which was, however, dismissed

vide order dated 16.08.2010. The petitioner preferred an application for his discharge under Section 245 of the Cr.P.C. which was dismissed by the learned Chief Judicial Magistrate, Ranchi on 24.02.2014. The revision application preferred by the petitioner also was dismissed vide judgment dated 29.11.2014. From the impugned orders which are under challenge in the present application, it appears that several witnesses were examined before charge who had supported the factum of occurrence. The revisional order has addressed the issue in some details and, thereafter, has dismissed the revision. In the compliant case also there prima facie appears to be allegations against the petitioner of deliberately and wilfully not depositing the premium amount and have made another person suffer and, therefore, wilful sufferance of the complaint at the hands of the petitioner would make the petitioner liable to face prosecution.

10. Moreover, the present application has been filed by way of a second revision and since no illegality could be pointed out in either of the orders under challenge, I am not inclined to entertain this application which is, accordingly, dismissed.

11. I.A., if any, pending shall stands disposed of.