
(2012) 03 JH CK 0043

In the Jharkhand High Court

Case No : Criminal Miscellaneous No. 6254 of 2000 (R)

Bishwajit Mukherjee

APPELLANT

Vs

The State of Bihar (Now Jharkhand) and Kishore Kumar
Udani and Harshad Rai Udani

RESPONDENT

Date of Decision : 28-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 245
Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2012) 3 JLJR 475

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : Anil Kumar, for the Appellant; Shashank Shekhar Prasad, for the Respondent

Final Decision : Allowed

Judgement

H.C. Mishra

1. Heard learned counsel for the petitioner and learned counsel for the State. No one appears for the O.P. No. 2 in spite of repeated calls, even though the O.P. No. 2 has appeared through advocate in this case. On earlier occasion also no one had appeared in spite of repeated calls. In this application the petitioner has prayed for quashing the entire criminal proceeding in connection with C/1 Case No. 154 of 1996 including the order dated 22.07.2000 passed by Sri M. K. Srivastav, learned judicial Magistrate, Jamshedpur, whereby, the petition filed under Sections 245 of the Code of Criminal Procedure by the petitioner was rejected by the Court below.

2. It appears that the complaint petition was filed by the opposite party-complainant in the Court of Chief Judicial Magistrate, Jamshedpur which was registered as complaint Case No. 154 of 1996, in which the father of the petitioner was one of the accused in the case, besides Smt Uma Chatterjee, who were engaged in construction work. The complaint was filed with respect to

breach of an agreement for construction of shop by the accused persons, which was to be let out to the complainant. The petitioner was not made accused in this case and there is no whisper about any allegation against the petitioner in the entire complaint petition. However, it appears that the witnesses were examined before charge, including the complainant and his brother, who have stated that the agreement was entered between the accused persons and the complainant in which the petitioner was the attesting witness and they also stated that the money was advanced on several occasions to the accused persons and the accused persons had also given the receipts to the complainant and the petitioner had signed on the receipts also as witness. On that basis alone the petitioner has been made accused in this case and it also appears that when the petitioner filed application for discharge, his application was dismissed by the learned Court below by the impugned order dated 22.07.2000 stating that the petitioner had signed the agreement and he is also one of the beneficiaries and, accordingly, it is not proper to discharge the petitioner. It has also been stated that there are specific materials in the records for framing the charge against the petitioner for the offence u/s 406/420 of the Indian Penal Code. Accordingly, the prayer for discharge was rejected.

3. Learned counsel for the petitioner has submitted that the impugned order passed by the Court below cannot be sustained in the eyes of law, inasmuch as, there is no allegation against the petitioner in the entire complaint petition and even in the evidence of the witnesses including the complainant, who were examined by the court below before charge, there is no material against the petitioner, except that he is an attesting witness to the agreement between the accused persons and the; complainant, as well as, he had also signed the money receipts issued by the accused persons as a witness. Learned counsel has submitted that only on that basis the petitioner cannot be said to be a beneficiary and he cannot be made accused in this case and, accordingly, he has submitted that the impugned order passed by the Court cannot be sustained in the eyes of law.

4. Learned A.P.P. opposed the prayer and submitted that the Court below has come to the conclusion on the basis of the material brought on record that the offence is made against the petitioner.

5. After having heard learned counsels for both the Sides and upon going through the record, I find that in the complaint petition there is no whisper of any allegation against the petitioner. Whatever the allegation is there, it is against the father of the petitioner and the other co-accused. So far as, this petitioner is concerned, the only material which has been brought on record during enquiry is that the petitioner was the attesting witness to the agreement and he had put his signatures as witness on the money receipts which were granted by the named accused persons. The evidence brought on record before the charge clearly shows that the complainant and the witnesses have only stated that the petitioner had put his signatures on the money receipt only as

witness and there is no other allegation against the petitioner.

6. In my considered view, the statements made in the complaint petition and in the evidence brought on record before charge, even if accepted in their entirety, do not constitute any offence against the petitioner. Accordingly, the petitioner could not have been made accused in this case and the impugned order, rejecting the discharge petition by the Court below cannot be sustained in the eyes of law. I also find that the continuation of the criminal proceeding against the petitioner is absolutely illegal and it cannot be maintained, besides amounting to unnecessary harassment to the petitioner. In view of the aforementioned discussions, the entire criminal proceeding in C/1 Case No. 154 of 1996 including the order dated 22.07.2000 passed by Sri M. K. Srivastav, learned judicial Magistrate, Jamshedpur, are hereby, quashed and, accordingly, this application is allowed.