

(2011) 11 PAT CK 0117
In the Patna High Court
Case No : Criminal Writ No. 123 of 2006

Jagdish Prasad Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468
Penal Code, 1860 (IPC) — Section 34, 406

Citation : (2012) 1 PLJR 529

Hon'ble Judges : Aditya Kumar Trivedi, J

Bench : Single Bench

Advocate : Mrityunjay Kumar Gauta, Yogendra Kumar, Durgesh Kumar and Ram Naresh Roy, for the Appellant; Prashant Pratap, Lala S.N. Rais for the State, for the Respondent

Final Decision : Dismissed

Judgement

Aditya Kumar Trivedi, J.—Petitioner Jagdish Prasad Singh has prayed for quashing of entire proceeding arising out of K. Hat P.S. Case No. 457 of 1997, instituted u/s 406/34 of the IPC. Shorn of unnecessary details, K. Hat P.S. Case No. 457 of 1997 under Sections 406/34 been out on the basis of the written report submitted by Ramji Sinha, Electrical Executive Engineer on the allegation that there has been theft/criminal breach of trust of copper coils from the Store of Meter Relay Testing Division (I) in between 28.5.1992 to 15.7.1997, the period during which Jagdish Prasad Singh was the Incharge being Assistant Engineer, Bihar State Electricity Board to the tune of Rs. 1,26,105/- approximately.

2. Contention on behalf of the petitioner is that the Executive Engineer himself happens to be defaulter and to save his skin, has filed instant case. It has further been submitted that, that happens to be the reason behind that since 1997, the investigation is in progress but the investigating authority failed to submit police report and that shows that actually uptil now, no definite material has been

collected which could justify complicity of petitioner as an accused. Also submitted that petitioner who now has retired, faced severe trauma on account of pendency of the case as well as now he has been continuously deprived of monetary benefit, which the petitioner is entitled for on account of his retirement/superannuation. Then submitted that admittedly during the relevant period petitioner was Incharge of Store No. 1. Also submitted that for the purpose of crystallizing allegation against the petitioner, the informant was under obligation to produce stock register, receiving register, issuing register, gate pass so that any unscrupulous activity as alleged, at the hands of petitioner could be tested and verified. It has further been submitted that now the prosecution is barred u/s 468 of the Cr.P.C.

3. Surprisingly, with ulterior motive the prosecution has to its best knowledge, withhold those documents as such, the prayer of the petitioner appears to be bona fide. Consequent thereupon, the instant petition is fit to be allowed.

4. The State has filed counter affidavit and from perusal of the same as well as from the submission so raised on behalf of the State, the investigation of K. Hat P.S. Case No. 457/1997 is already completed and charge-sheet had already been filed in the year 2006 itself followed with other legal formalities. Therefore, the prayer of the petitioner, for the present, is non-tenable. Apart from this, it has also been submitted that petitioner had come up before this Court at an earlier occasion vide Cr. Misc. No. 37144 of 2004 and during hearing of aforesaid Cr. Misc. Petition, the Court was not pleased to accede with the submission as a result of which it was dismissed as withdrawn on 1.12.2005. Then, it has been submitted that petitioner himself carries dubious character whereunder to defeat the process of law filed instant petition because of the fact that at an earlier occasion vide Cr. Misc. No. 701/1998 was granted provisional anticipatory bail with a direction to surrender before the learned lower court but instead thereof, petitioner is evading his presence before the learned lower court.

5. Though charge-sheet had already been submitted in the year 2006 even then, the petitioner cannot claim as a matter of right for quashing of the investigation on account of delay as has been held and reported in (2009)16 SCC 393 and the relevant para is para no. 3 which runs as follows:-

"The decision in Abdul Rehman Antulay vs. R.S. Nayak stands considered in the latter pronouncement of this Court in P. Ramachandra Rao vs. State of Karnataka wherein "Common Cause" A Registered Society vs. Union of India, "Common Cause" A Registered Society vs. Union of India, Raj Deo Sharma vs. State of Bihar and Raj Deo Sharma(II) vs. State of Bihar were stated to be no longer good laws. This Court has had the opportunity to lay down certain specific guidelines in the matter of quashing of criminal complaints. Since the decision in King Emperor vs. Khwaja Nazir Ahmad and subsequent pronouncement of this Court in State of W.B. vs. Swapan Kumar Guha there is one clear thread of continuity that the prosecution ought not to be quashed unless the same can be termed to be illegal, perverse or mala fide in nature. We wish to indicate that the

writ jurisdiction is not available for quashing the criminal investigation unless there is error apparent on the face of the record or the proceedings can be termed to be mala fide in nature. Mere lapse of time ought not be permitted to be meant for intervention of the writ court to quash a proceeding."

6. Here I would like to take a passage incorporated by Hon"ble Apex Court in a decision reported in 2006 Cr.L.J. 1258 and the relevant para happens to be para-17 which goes in the following manner;-

"In conclusion, we may quote Law of Crimes by Ratanlal and Dhirajlal page 2069:

"In a case u/s 406 the question of trust must be fully inquired into. For this purpose it is essential that the whole prosecution evidence should be recorded. It is impossible to guess at an in-term stage, what will be the result of the inquiry. Consequently, when only a few of the prosecution witnesses have been examined, it is too premature to decline to examine any more witnesses for the prosecution and discharge the accused on the ground that the case is of a civil nature."

7. In another decision reported in 2010 (7) SCC 667 [: 2010(4) PLJR (SC)36] at para-19 it has been observed as follows:-

"The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage."

8. Now coming to the factual aspect, though the sheet anchor of contention on behalf of the petitioner happens to be delay in investigation which is already found to be exhausted on account of submission of charge-sheet in the year 2006 itself. Other point deals with the factual aspect which cannot be taken into consideration at the present moment because it happens to be the matter of trial. In the aforesaid facts and circumstances, the petition is found to be devoid of merit and is accordingly, dismissed.