
(2007) 08 JH CK 0021
In the Jharkhand High Court

Kamal Kant Singh @ K.K. Sinha and Another	APPELLANT
Vs	
State of Jharkhand	RESPONDENT

Date of Decision : 27-08-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 239
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468, 470

Citation : (2008) 1 JCR 74

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.K. Sinha, J.—The present Cr. Revision is directed against the order impugned dated 1.7.2006 passed by the learned S.D.J.M., Jamshedpur in Sidgora P.S. Case No. 70 of 2004 corresponding to G.R. No. 15125 of 2004 whereby and whereunder the application filed on behalf of the petitioners u/s 239 of the Code of Criminal Procedure for their discharge was rejected.

2. The prosecution story in brief is that the petitioner No. 2 Bibhash Kumar Jha was intercepted by the police on the tip-off that he was carrying forged certificates of Jharkhand Academic council which was to be distributed. On search various documents as such, photo copies of the registration of Jharkhand Academic Council, pages 1 to 36 bearing seal of Principal of S.S. High School, Chandil with the signature of one Ashok Kumar, Photocopy of registration of Jharkhand Academic Council from pages 29 to 72 bearing seal of Principal of High School, Raghunathpur with the signature of one Sribas Chandra Mahato and other names were found. Besides, one register of High School, Raghunathpur and one original certificate of Jharkhand Madhyamik Pariksha Parishad, Ranchi with the numbers 029781 to 031720 in the name of different students issued on 12th June, 2002 were recovered and other register issued by the Jharkhand Madhyamik Pariksha Parishad. The petitioner No. 2 Bibhash Kumar Jha explained that he with the help and in association with Sribas Chandra Mahato, Principal of

High School, Raghunathpur, Ashok Kumar, Principal of S.S. High School, Chandil and Principal of Swamy Shardanand High School, Tikar got various students appeared in the examination and obtained the certificates which were to be distributed against them against payment of Rs. 500 to Rs. 2000 from each. Pursuant to such confessional statement before the police, Sidgora P.S. Case No. 70 of 2001 was registered on 12.9.2004 for the offence under Sections 467/468/470/471/420/120B, IPC against the petitioner No. 2 and three others. Petitioner No. 1 Kamal Kant Singh @ K.K. Sinha was not named.

3. Learned Counsel submitted that the petitioners are innocent and have been falsely implicated. Their discharge petition filed u/s 239, CrPC was rejected by the SDJM, Jamshedpur in limine without assigning any cogent reason and therefore, the dismissal order passed by him without application of judicial mind is illegal, uncalled for which is liable to be set aside.

4. Advancing his argument, learned Counsel submitted that there is no material at all against the petitioner No. 1 Kamal Kant Singh @ K.K. Sinha who is a lawyer of repute, practicing at civil Court Jamshedpur except the confessional statement of the co-accused i.e. the petitioner No. 2 Bibhash Kumar Jha leading to his complicity. But no recovery of any document or certificate or any incriminating material was made from the possession of the petitioner No. 1 Kamal Kant Singh @ K.K. Sinha pursuant to such confessional statement and therefore, the prosecution of the petitioner No. 1 is illegal which calls for interference of this Court. Learned Counsel attracted the attention of this Court that the certificates seized from the possession of petitioner No. 2 Bibas Kumar Jha were sent for its verification and the Jharkhand Academic Council, Ranchi after examining the same found the documents genuine and correct vide letter of the council dated 24.1.2005 (Annexure-2). But in spite of the clean chit given by the Jharkhand Academic Council the Investigating Officer submitted charge-sheet against the petitioners and cognizance of the offence was taken by the C.J.M. in the aforesaid sections without application of judicial mind and in mechanical manner. Similar mechanism was adopted, learned Counsel submitted, by the SDJM also who without discussing as to what prima facie materials were there on the record, dismissed the petition filed for their discharge u/s 239 of the Code of Criminal Procedure.

5. Heard learned APP.

6. Having regard to the facts and circumstances of the case, perusal of the order impugned passed by the SDJM Jamshedpur in G.R. No. 1525 of 2002, I find that the petition filed u/s 239, CrPC has been re-produced therein and it was dismissed with the following observation:

Having regard to the facts and circumstances of the case discussed above, I find prima facie sufficient material on the case record for framing of charge against the accused persons. Hence prayer made by the accused Kamal Kant Singh @ K.K. Sinha and Bibhash Kumar Jha for discharge is hereby rejected. The case is

fixed for framing of charge. The accused persons are directed to remain physically present for framing of charge.

7. The impugned order aforesaid indicates that neither circumstances were discussed nor prima facie materials were pointed out by the learned S.D.J.M. therein. It is settled law that whenever any discharge petition is filed, duty is cast upon the trial Court to point out prima facie materials against the accused, available on the record to proceed against them. But in the present case I find that the SDJM, Jamshedpur is silent as to what are the prima facie materials against the petitioners to proceed against them, as according to their argument they are innocent.

8. In the circumstances, I find that the order impugned cannot sustain and accordingly it is set aside with the direction to the SDJM, Jamshedpur to pass an order afresh on the petition filed by the petitioners u/s 239 of the Code of Criminal Procedure with the application of judicial mind and without prejudice.

This Cr. Revision is allowed with the above observation.