
(2011) 12 JH CK 0002
In the Jharkhand High Court
Case No : Writ Petition (Cr.) No. 218 of 2010

Lakhan Prasad Keshri

APPELLANT

Vs

The State of Jharkhand and Anr

RESPONDENT

Date of Decision : 20-12-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 409, 420

Citation : (2011) 12 JH CK 0002

Hon'ble Judges : P.P. Bhatt, J

Bench : Single Bench

Judgement

P.P. Bhatt

1. Heard the Learned Counsel appearing for the petitioner as well as the State.
2. Perused the papers.
3. This case is taken up for final disposal.
4. The present petition is directed against the respondents interalia praying that the entire criminal proceeding as against the petitioner arising out of Chauparan P.S. Case No. 180 of 2007 dated 30.11.2007 corresponding to G.R. No. 4401 of 2007(T.R. No. 963 of 2010) registered u/s 409 and 420 of the Indian Penal Code, presently pending in the court of Sub-divisional Judicial Magistrate, Hazaribagh be quashed/set aside. It is further prayed that during pendency of this petition, further proceeding of the aforesaid case be stayed.
5. The Learned Counsel appearing for the petitioner has relied upon the annexure 1 to the petition and submitted that the contents of the FIR does not disclosed any offence as alleged against the petitioner. It is submitted that on completion of the investigation chargesheet has been filed indicating offence under sections 409/420 of the Indian Penal Code against the present petitioner. The Learned Counsel for the petitioner has also referred the chargesheet which

was annexed as annexure-2 to this petition. He has also referred to sections 409/420 of the Indian Penal Code and submitted that ingredient of these two sections are not satisfied in the facts and circumstances of the present case against the present petitioner. The Learned Counsel counsel for the petitioner has also referred and relied upon the annexures 3 and 3/1 I.e. two receipts of purchase issued by the Agricultural Produce Market Committee to show that the petitioner has purchased rice to the tune of 60 quintal quantity on 29.11.2007. The Learned Counsel for the petitioner has also referred and relied upon the grounds taken in paragraph-18 of the petition and has also cited the judgment in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, and another S.W. Palanitkar and others Vs. State of Bihar and another, .

6. The Learned Counsel appearing for the State has referred to and relied upon the averments made in the counter affidavit and submitted that sufficient material was found against the present petitioner in the case diary and since the ingredient of the alleged offences were prima facie satisfied against the present petitioner and therefore charge sheet was filed before the court below accordingly. Therefore, this is not a fit case to quash/setaside the entire criminal proceeding against the present petitioner. The Learned Counsel appearing for the State has also invited the attention of this Court that at the time of investigation the petitioner could not produce any document to show that the material in question was purchased by him from the Agriculture Produce Market Committee. It is for the first time that the petitioner has produced two receipts before this Court.

7. Considering the aforesaid rival submissions and from perusal of the papers including the FIR this Court is of the view that there is substance in the arguments advanced on behalf of the petitioner. It is very difficult to make out prima facie ingredients of Section 409/420 of the India Penal Code from the FIR. Moreover, counter affidavit filed on behalf of the respondent-State does not indicate or disclose as to whether any restriction is imposed by the State for keeping quantity beyond certain limit and there is violation of any such rule or guideline framed by the State. The petitioner has produced two receipts of purchase to show that the material in question was purchased by him from the Agriculture Produce Market Committee, of courses the same could not be produced before the I.O. However, this fact cannot be overlooked while dealing with matter under Article 226 of the Constitution of India.

8. I have perused the judgment cited, as referred to above, by the Learned Counsel appearing for the petitioner. As per ratio laid down in the said judgment and looking into the facts of the present case this Court is of the view that this is a fit case where intervention of this Court is required. Accordingly, this petition is allowed and the entire criminal proceeding as against the petitioner arising out of Chauparan P.S. Case No. 180 of 2007 corresponding G.R. No. 4401 of 2007(T.R.No. 963 of 2010) registered under sections 409 and 420 of the Indian Penal Code, presently pending in the court of Sub-divisional Judicial

Magistrate, Hazaribagh is set aside.