
(2011) 06 JH CK 0127
In the Jharkhand High Court
Case No : Cr.M.P. No. 1190 of 2008

Lal Ranjan Nath Sahdeo

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 13-06-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167(2), 190, 482
Penal Code, 1860 (IPC) — Section 147, 148, 149, 201, 212

Citation : (2011) 7 RCR(Criminal) 2507

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.K. Sinha, J.—The Petitioner has invoked the inherent jurisdiction of this Court u/s 482 Code of Criminal Procedure for quashment of his entire criminal proceedings arising out of Lohardaga P.S. Case No. 57 of 2000, corresponding to G.R. No. 153 of 2000, pending before the CJM, Lohardaga and further for quashment of the order dated 30.11.2007 by which cognizance of the offence under Sections 147/148/149/364A/387/414/201/212, Indian Penal Code was taken against the Petitioner.

2. Prosecution story in short was that the informant Bijay Gopal Dutta on 20.5.2000 at about 4:30 hrs. (a.m.) left his house alone for morning walk and during course of such walk, he reached at the door of one Birendra Mittal, pressed his call bell and returned on the road. When Mr. Mittal did not come, he proceeded towards Harizan School where he witnessed a trekker in a static condition parked on the flank of the road and occupied by as many as six persons. When the informant Bijay Gopal Dutta proceeded on the road, the trekker followed him and as soon as he reached near the house of one Dr. N.K. Sinha, two culprits stepped down from the trekker, forcibly dragged him inside the trekker and took him towards the forest. The miscreants were in the age group of 24-25 years, who had masked their faces with muffler and shawl and

were armed with country made pistols and other arms. Demand of ransom was raised in kind of gun and cartridges. He was threatened to be killed in case of non-fulfillment of the demand. He was confined till midnight and he was released only after delivery of DBBL gun and cartridges to them by his staff Ras Bihari Dey. He returned back his home at about 3:40 a.m. on the next day. On the basis of the statement of the informant, Lohardaga P.S. Case No. 57 of 2000 was instituted on 21.5.2000 against unknown culprits for the alleged offence under Sections 147/148/149/364A/387/386/368, Indian Penal Code. In course of investigation. Chanhoo police arrested three persons, namely, Jahir Ansari, Meraj Alam and Mehndi Hasan and one DBBL gun was also recovered from their possession, which was suspected to be the ransom in kind, which was delivered to the culprits securing the release of the informant. All the three culprits had confessed their guilt before the police. Co-accused Jahir Ansari in his confessional statement delivered before the police took the name of Raju @ Meraj, Mumtaj, Ranjit Singh, Imamuddin, Neyaj, Niranjana Bharti @ Baba. Pawan and Rafique Ansari being the accomplice, who abducted the informant Bijay Gopal Dutta and received Rs. 3,80,000/- in cash as well as a gun and cartridges in kind as ransom for the release of the informant He further confessed in his statement before the police that after accepting the ransom all the accused went to the house of the Petitioner Lal Ranjan Nath Sahdeo and delivered him Rs. 1,00,000/- in cash out of ransom and the gun, which they had obtained from the employee of the informant as ransom in kind. Charge-sheet was submitted after investigation on 12.10.2000 against Neyaj Ansari, Niranjana Bharti @ Baba and Mukhtar Ansari. Supplementary charge-sheet was submitted by the Investigating Officer on 21.5.2001 against Pawan Verma and Mehndi Hasan. Second supplementary charge-sheet was filed on 11.8.2001 against the accused Jahir Ansari, Meraj Alam and Rafique Ansari. Petitioner was arrested on the basis of the confessional statement of the accused Jahir Ansari but he was released on bail by the CJM u/s 167(2), Code of Criminal Procedure as the charge-sheet could not be submitted against him within the stipulated period.

3. Learned Counsel Mr. Jitendra S. Singh submitted that the co-accused Jahir Ansari, on whose confessional statement complicity of the Petitioner was transpired, was put on trial along with other accused in S.T. Nos. 65/2002 and 65/2002(S) and was finally acquitted by the judgment dated 4.8.2006 for want of evidence, yet, investigation was shown to be pending against the Petitioner for long seven years and finally, charge-sheet was submitted against the Petitioner on 31.10.2007 for the said offence in which earlier charge-sheet was filed and the cognizance of the offence was taken on different dates. It could be evident from the Xerox copy of the judgment delivered by the Additional Sessions Judge, P.T.C., Lohardaga recorded in S.T. No. 65/ 2002 on 4.8.2006 as contained in para-3 that cognizance of the offence was taken against the accused persons, namely, Neyaz Ansari, Niranjana Bharti, Mumtaj Ansari, Pawan Verma, Mehendi Hassan, Md. Jahir, Meraj Alam and Rafique Alam on three different dates on 12.10.2000, 21.5.2001 and 13.8.2001 respectively on the basis of three different

charge-sheets by the learned CJM, Lohardaga and the case was committed to the Court of Sessions on 13.5.2002, which was registered as S.T. No. 65/2002.

4. Learned Counsel Mr. Singh pointed out that after seven years of long investigation, charge-sheet was submitted against the Petitioner without any legal evidence in the case diary except confessional statement of the co-accused Jahir Ansari, who was ultimately acquitted for the charge under Sections 147/148/149/364A/387/414/201/212, Indian Penal Code and fresh cognizance was taken for the 4th time on 30.11.2007 for the alleged offence, referred to hereinbefore, against the Petitioner and again the case was committed to the Court of Sessions, which was received in the court of Additional Sessions Judge, F.T.C., Lohardaga on transfer from the court of Sessions Judge.

5. Main contention of the learned Counsel is that other co-accused with the similar charges were acquitted and there was no legal evidence except the confessional statement of the co-accused Jahir, who was also acquitted and the charge could not be substantiated during course of trial against any of the accused. It would be now crystal clear that the cognizance of the offence was taken at four occasions by the CJM, Lohardaga without appreciating the legal position that the cognizance is taken of the offence and not against the offenders, in that event trial of the Petitioner would amount to miscarriage of justice as cognizance of the offence was taken on 30.11.2007 for the 4th time. As a matter of fact, the Court of CJM cease to function as becomes functus officio once the case is committed to the Court of Sessions after taking of the cognizance of the offence as such the CJM was within his competence to take cognizance of the similar offence for the 2nd, 3rd and 4th times. In view of the above submission, the learned Counsel, Mr. Singh submitted that the criminal prosecution of the Petitioner, therefore, would amount to miscarriage of justice and hence, his entire criminal prosecution may be quashed.

6. On the other hand, Mr. Shikarwar, the learned A.P.P. opposed and submitted that it is not a fit case for quashment of the entire criminal proceedings of the Petitioner, wherein there was direct evidence against him in the case diary that the subject matter of ransom in kind being the DBBL gun of the informant and certain amount being the ransom in kind were recovered from the possession of the Petitioner as contained in the charge-sheet No. 177/07 dated 31.10.2007. Criminal prosecution of the Petitioner cannot be quashed only on the ground that cognizance of the offence was taken as many as four times in this case by the CJM, Lohardaga and irregularity caused by the CJM may be cured by this Court in exercise of inherent jurisdiction u/s 482, Code of Criminal Procedure and accordingly, appropriate order may be passed.

7. Having regard to the facts and circumstances of the case and the arguments advanced on behalf of the Petitioner as well as State-opposite party, the main issue involved in this case is as to whether the CJM, Lohardaga, who was empowered to take cognizance of the offence u/s 190, Code of Criminal Procedure, was within his competence to take cognizance of the offence for the

4th time. Cognizance was taken of the offence and not against the offenders. When the case was once committed to the Court of Sessions according to severity of the punishment of the alleged offence, the CJM in the circumstances ceases to pass further order of cognizance as being functus officio in so far as his powers u/s 190, Code of Criminal Procedure in respect to the offence for which he had taken cognizance was concerned. What the Court of CJM was required to do to forward the charge-sheet with the case diary to the Court of Sessions with the accused either on bail or in custody, I find that the learned CJM has committed error of procedure which is in curable form by which he has taken cognizance of the offence on 30.11.2007 against the Petitioner and another and this Court in exercise of inherent jurisdiction u/s 482, Code of Criminal Procedure cures that error by setting aside the impugned order dated 30.11.2007 by which cognizance of the offence was taken for the fourth time and now it shall be deemed that the cognizance of the offence was already taken at the first instance by the CJM, Lohardaga on 12.10.2000 for the alleged offence under Sections 147/364A/148/387/149/414, Indian Penal Code. It is evident from the record of S.T. No. 93 of 2009, arising out of Lohardaga P.S. Case No. 57 of 2000, corresponding to G.R. No. 153 of 2000 that the learned Sessions Judge has already received the case record of the Petitioner on commitment on 27.8.2009 wherein the Petitioner who was on bail appeared in person on 18.2.2011. This Court in exercise of inherent jurisdiction cures all the irregularities in taking cognizance of the offence on different dates. I do not find it to be a fit case for quashment of the criminal proceeding of the Petitioner in view of the prima facie materials discussed hereinabove. This petition is accordingly dismissed.