

(2011) 11 JH CK 0019

In the Jharkhand High Court

Case No : Criminal Miscellaneous No. 3048 of 1999 (R)

Manoranjan Mukherjee

APPELLANT

Vs

State of Jharkhand and another

RESPONDENT

Date of Decision : 24-11-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 167, 409, 464, 465

Citation : (2012) 1 JLJR 131

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Prasad

1. Heard learned counsel appearing for the State.
2. This application has been filed for quashing the entire criminal proceeding of C.P. case No. 392 of 1996 arising out of Dhanbad P.S case No. 517 of 1996 including the order dated 1.9.1007 whereby and whereunder the then learned Chief Judicial Magistrate, Dhanbad took cognizance of the offences under Sections 167, 465, 409 read with Section 109 of the Indian Penal Code against the petitioner.
3. From perusal of the order, the facts emerging out are that the complainant-opposite party No. 2, a railway guard retired from service on 1.7.1994. He was residing in a quarter. On his retirement, he made a request to railway authorities to allow him to retain the quarter for further eight months. He was allowed to retain the quarter.
4. According to the case of the complainant, after expiry of that period, he vacated the quarter on 26.2.1995. On his vacating the quarter, clearance certificate was granted to him but in spite of that, retiral benefit was not paid for the reason that the complainant did not vacate the quarter in spite of lapse of

period during which he was allowed to retain the quarter for which D.R.M, Dhanbad and S.M, Dhanbad in connivance with H.R.Yaday got a case for eviction of the petitioner from the quarter was instituted under the provision of Public Premises (Eviction of Unauthorized Occupant) Act, though that quarter had been vacated by the complainant much earlier but it was lodged with a view to put the complainant to harm by not making the payment of retiral benefit under the garb of the plea that the complainant-opposite party No. 2 has not vacated the quarter. On such fact when the case was lodged as Dhanbad P.S. Case No. 517 of 1996 under Sections 109, 465, 409 of the Indian Penal Code, the case was investigated by the Investigating Officer and the the Investigating Officer submitted final form as mistake of fact. Thereupon, protest petition was filed, upon which cognizance of the offences as aforesaid was taken vide order dated 1.9.1997 by recording the fact that the complainant though had vacated the quarter, eviction suit was filed only for the purpose that retiral benefit be not paid to the complainant. In the aforesaid circumstances, this case has been filed for quashing of the entire criminal proceeding and also of the order taking cognizance of the offence as aforesaid against the petitioner.

5. It has been slated in the petition that in spite of expiry of the period for which he was allowed to retain the quarter when the complainant did not vacate the quarter, the eviction case vide case number E 203/96/DEN/HQ was filed on 12.1.1996. In that case, notice was given to the complainant to which he never responded and then the Estate Officer passed an order dated 20.5.1996 against the opposite party No. 2 for his eviction from the said quarter. In spite of that order, when the quarter was not vacated, the Estate officer made a request to Sub-divisional Officer, Dhanbad on 6.6.1996 to depute one Magistrate so that the quarter be vacated.

6. Further case is that only thereafter the complaint was lodged with false allegation that he has already vacated the quarter and as such, instant prosecution is tainted with malice and is fit to be set aside.

7. Without going into the case of the petitioner, it is to be seen as to whether first information report/complaint does make out any case under Sections 167, 465, 409 read with section 109 of the Indian Penal Code, even if the allegation made in the complaint are taken to be true or that the case of the complainant is quite improbable ?

8. As I have already recorded that the case for eviction was lodged when it was found that the complainant in spite of expiry of the period, during which he was permitted to retain the quarter did not vacate the quarter lodged the case and then lodgment of the case cannot bring the petitioner within the purview of Section 167 of the Indian Penal Coda which deals with the offence of framing incorrect documents by public servant with intent to cause injury. It appears quite improbable that the eviction suit would be filed only for the purpose of denying the complainant to have retiral benefit and as such, in my view, offence u/s 167 does not get attracted.

9. Further it be recorded that the aforesaid case would never constitute an offence either u/s 465 or 409 of the Indian Penal Code as the petitioner can never be said to have made false document in terms of Section 464 of the Indian Penal Code nor the petitioner can be said to have committed an offence of criminal breach of trust as the petitioner in the facts and circumstances can never be said to have dishonestly misappropriated, the amount which was to be paid to the complainant, for his own use.

10. Under the circumstances, entire criminal proceeding of C.P. case No. 392 of 1996 arising out of Dhanbad P.S case No. 517 of 1996 including the order dated 1.9.1997 passed by Chief Judicial Magistrate, Dhanbad taking cognizance of the offence is hereby quashed.

11. In the result, this application is allowed.