
(2007) 10 PAT CK 0049

In the Patna High Court

Case No : Criminal Miscellaneous No. 35246 of 2007

Md. Bhola Mian and Another

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 06-10-2007

Acts Referred:

Constitution of India, 1950 — Article 14
Criminal Procedure Code, 1973 (CrPC) — Section 227, 239, 245, 258
Essential Commodities Act, 1955 — Section 7

Citation : (2009) 2 PLJR 258

Hon'ble Judges : Mihir Kr. Jha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mihir Kr. Jha, J.—Heard Counsel for the petitioners and the State. This application has been filed by the two petitioners for quashing the order, dated 3.7.2007 in Trial No. 26 of 2001 whereby and whereunder the Sub-Divisional Judicial Magistrate, Bettiah, West Champaran has rejected the prayer of the petitioners to pass an order on their application, dated 14.11.2002 seeking discharge for the offences u/s 7 of the Essential Commodities Act.

2. From the impugned order, it transpires that the Court below has rejected the prayer of the petitioners in one line and that too on the ground that since the case in hand was a summon case, there was no need to pass the order on an application seeking discharge.

3. Learned Counsel for the petitioners, in this respect, has drawn my attention to the provisions of Section 258 of the Code of Criminal Procedure and has submitted that under the said provision, it is always open for the learned Magistrate to discharge an accused if there be no materials against him. In this regard, he has also placed his reliance in the case of Shaikh Ahmed Hussain and another Vs. State of Maharashtra, wherein it has been held that the procedure prescribed for trial of summon case envisages that the accused can be

discharged in exercise of power u/s 258 of the Code of Criminal Procedure. The Bombay High Court in the said judgment in fact has considered the whole scheme under the Code of Criminal Procedure for trial of summon cases and has come to a conclusion that it is true that Chapter-XX does not make any provision for discharge of the accused but Section 258 of the Code of Criminal Procedure very clearly specifies that at any stage of the trial, the Magistrate may stop the proceedings. The Bombay High Court has gone to hold that if it is brought to the notice of the Magistrate at any stage of the proceedings, that there is no evidence or that the charge is groundless, he may forthwith stop the proceedings and acquit the accused.

4. In my view, the aforementioned law laid down by the Bombay High Court though not a binding precedent for me has definitely a persuasive value. I also subscribe to the view that once the provisions made in Section 258 of the Code of Criminal Procedure for application of mind by the learned Magistrate empowering him to pass an order for stopping the proceeding at any stage without pronouncing any judgment, its consequence will definitely have the effect of discharge of the accused. Thus, it cannot be said that the Magistrate is powerless in a summon case to discharge the accused. The whole purpose of Section 258 itself would become meaningless even if the Magistrate is of the view or is made to realize on an application of the accused that there is absolutely no material to proceed in the trial or that the charge is totally groundless. Any contrary view on the scope of Section 258 of the Code of Criminal Procedure will in fact mean that the Magistrate must continue with the trial and conclude it by a judgment even if there is absolutely no material before him. To this extent, the power under Sections 227, 239 and 245 of the Code of Criminal Procedure empowering the Court to discharge in warrant cases in absence of any materials for offences having punishment of more than two years cannot withstand on the touchstone of Article 14 of the Constitution of India if it is held that for there is no provision for discharge having lesser sentence i.e. two years or less, Article 14 of the Constitution of India in fact is the fountain head of a source and guiding spirit of all the laws and strikes at the root of anything which is arbitrary and thus if it is held that for offences having lesser sentence i.e. less than two years triable as summons cases, there would be no provisions for discharge u/s 258 of the Code of Criminal Procedure, such provisions would have to be held shockingly arbitrary in view of the provisions made in Sections 227, 239 and 245 of the Code of Criminal Procedure. Thus, it is held that the Magistrate in exercise of power u/s 258 of the Code of Criminal Procedure has jurisdiction to discharge an accused in a summons case.

5. The Magistrate has thus committed an error in passing the impugned order rejecting the application for discharge of the petitioners which was kept pending for almost five years and was eventually disposed of by a cryptic one line order that there is no provision for discharge u/s 258 of the Code of Criminal Procedure in a summon case. Consequently, the impugned order dated 3.7.2007 is hereby quashed and the matter is remitted to the Court below which will now consider

the matter afresh and pass an appropriate order in accordance with law considering the materials in the application, dated 14.11.2002 filed by the petitioners seeking discharge u/s 7 of the Essential Commodities Act. It is, however, made clear that I have expressed no opinion on the merits of the case and it will be open for the learned Magistrate to pass an order on merit on the basis of the materials on record. In the result, this application is allowed to the extent indicated above and in terms of the aforementioned observations and directions.