
(2004) 01 JH CK 0011
In the Jharkhand High Court
Case No : Writ Petition (S) No. 5886 of 2002

Md. Zaki Ahmad	Vs	APPELLANT
State of Jharkhand and Others		RESPONDENT

Date of Decision : 06-01-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 1 JCR 431

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : A.K. Sahani, for the Appellant; Sanjay Kumar Singh, J.C. to A.A.G., for the Respondent

Judgement

Tapen Sen, J.—Heard Mr. A.K. Sahani, learned counsel for the Petitioner and Mr. Sanjay Kumar Singh, J.C. to AAG. and with their consent, this Writ Application is being disposed off at the stage of admission.

2. In this Writ Application, the Petitioner has prayed for issuance of a writ of certiorari in relation to an officer Order dated 31.08.2002 (Annexure-6) whereby and whereunder he has been put under suspension.

3. On 08.12.1981, the Petitioner was appointed as Peon in the office of the Deputy Commissioner at Chalbasa. Four years thereafter, i.e., on or about 17.04.1985, he was promoted to a Class-III post and posted as a clerk in the Majhari Block in the office of the Block Development Officer in the district of Singhbhum (West). Thereafter, in January, 2000, on being transferred, he joined as a Clerk in the office of the Block Development Officer at Ghatsila in the district of Singhbhum (East).

4. The Petitioner states that on 28.06.2002, he filed an informatory application in the Court of the learned Chief Judicial Magistrate, Jamshedpur wherein he stated that he was married to one Rehana Khatoon on 11.11.1990, through which he got two sons and one daughter but since the last two years, he had no

matrimonial relationships with her. This application was registered as Informatory Petition No. 78/2002 (Annexure-1) and it was filed against Rehana Khatoon as also against Abdul Majid and Haji Mohammad Ismail. It would be relevant to mention that at paragraph-4 of the aforesaid Informatory Application (Annexure-1), the Petitioner stated that for the last two years he had a "fair" relationship with one Mariam Begam @ Pinni staying at Haldipokhar and in paragraph-5, the Petitioner stated that after having come to know about the said relationship, there was misunderstanding and therefore, Rehana Khatoon (Opposite Party No. I therein) deserted and started neglecting him.

5. On 17.07.2002, the Petitioner filed a complaint (Annexure-2) before the Block Development Officer, Ghatshila against the aforementioned Rehana Khatoon and a copy thereof was forwarded to the Sub-Divisional Officer, Ghatshila Police Station wherein he made allegations that on 16.07.2002, some associates of Rehana Khatoon had come to their house and had threatened him.

6. Thereafter, on 12.08.2002, by Annexure-3 the Petitioner filed a complaint case in the Court of the Chief Judicial Magistrate at Jamshedpur which was registered as complaint Case No. 730 of 2002, This complaint was against Abdul Majid, Abdul Rashid, Haji Mohammad Ismail and Goolrej @ Motta. In the aforementioned complaint also, and at paragraphs 3 and 4 therein, the Petitioner stated that he had been having a "fair" relationship with one Mariam Begam @ Pinni and knowing this relationship, Rehana Khatoon had deserted him. He further stated that the accused persons of that complaint application named above, had gone to Mariam's house at the instance of Rehana Khatoon and had insulted her and had also used threatening language. In the Complaint Application, he has further stated of the breakdown of relationships and finally at paragraph 8, he stated that he decided for a second marriage with Mariam Begam and finally he married her which was legal in Muslim Law.

7. It appears that on 14.08.2002, apart from the aforementioned complaint, the Petitioner also lodged an FIR against the persons mentioned aforesaid which was registered as Bistupur P.S. Case No. 187/2002 dated 14.08.2002, under Sections 341/342/323/325/506 of the Indian Penal Code.

8. The Petitioner has further stated that having come to learn of the aforementioned cases having been lodged by the Petitioner, Rehana Khatoon then reacted and also lodged a criminal case against the Petitioner u/s 498A, IPC which was registered as Bistupur P.S. case No. 184/2002 dated 16.08.2002, i.e., two days after the FIR was lodged by the Petitioner being Bistupur P.S. Case No. 187/02 (Annexure-4). It is not understandable as to how a case lodged on 14.08.2002, was registered as P.S. Case No. 187, whereas a case lodged on 16.08.2002, was registered as P.S. Case No. 184. However, this Court refrains from making any observations because that is not a subject matter of this Writ Application.

9. It appears that pursuant to the lodging of the aforementioned case, the Petitioner was taken into custody on 19.08.2002, but by order dated 22.08.2002,

he was directed to be released on bail by the learned Chief Judicial Magistrate-in-charge by Annexure-5.

10. The learned counsel for the Petitioner has stated and submitted that from the narration of the sequence of events mentioned above, it would be evident that the FIR was lodged against the Petitioner was as a counter blast to the successive complaints filed by the Petitioner and for such an offence he should not be punished in the manner that has been done by Annexure-6 i.e., the impugned order passed by the Deputy Commissioner, Singhbhum (East) on 31.08.2002.

11. The Petitioner has further stated that there was no inquiry in the presence of the Petitioner and no opportunity of hearing was given to him and the Mariam Begam is his legally wedded wife.

12. A Counter Affidavit in the instant case has been filed wherein at paragraph-4, the Respondents have stated that the impugned order was passed on the basis of a inquiry conducted by a competent officer. It has further been stated that all the infor-matory petitions are a counter blast to the allegations of Rehana Khatoon made in her FIR lodged u/s 498A of the Indian Penal Code.

13. This apart, from the impugned order itself, the language used therein shows that there was an inquiry on the basis of which the Petitioner was found guilty. At paragraph-15 of the Writ application also, the Petitioner has stated that in fact there was no inquiry but at paragraph-19, he has himself stated that he had filed a cause before the inquiry officer. However, upon perusal of the facts and circumstances, it is evident that a, criminal case is pending investigation against the Petitioner and which was lodged by Rehana Khatoon. An order of suspension has been passed on 31.08.2002, i.e., much after release of the Petitioner on bail. The order of suspension clearly points out that inquiries were conducted and as has already been stated above, the Petitioner himself has accepted the fact that he filed a show cause before the inquiry officer. He has stated this at paragraph-19 of the Writ Application. The impugned order is also suggestive of the fact that the order of suspension is in contemplation of departmental proceedings. However, Mr. Sahani stated that till date, no charge-sheet has been issued.

14. However, it is evident that the complaints as also the F.I.Rs. lodged inter-se between the parties are subject matter of criminal adjudication and this Court, under Article 226 will not embark upon a path of making any observations that might prejudice either of the parties during the course of the trial. Moreover, this Court cannot lose sight of the fact that the Government has the right to put a Government servant under suspension against whom a criminal case is pending. This Court, therefore, is not inclined to pass any order in favour of the Writ Petitioner at this stage save and except to observe that the Respondents shall expeditiously take all steps so that the departmental proceedings are concluded soon. To that extent, therefore, the respondents are mandated to issue the

charge-sheet and conclude the proceedings within a period of one year from the date of receipt of a copy of this order failing which the Petitioner shall have the right and liberty to pray for revocation of order of suspension.

With the aforementioned observations and directions; this Writ Application is disposed off. There shall however be no order as to costs.