
(2013) 02 JH CK 0071
In the Jharkhand High Court
Case No : Criminal Revision No. 245 of 2003

Prince

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 01-02-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 239
Penal Code, 1860 (IPC) — Section 120B, 34, 409, 420, 465

Citation : (2013) 1 AJR 802

Hon'ble Judges : H.C. Mishra, J

Bench : Single Bench

Advocate : A.K. Das, for the Appellant;

Final Decision : Dismissed

Judgement

H.C. Mishra, J.—Heard learned counsel for the petitioner and learned counsel for the State. Petitioner is aggrieved by the order dated 18.2.2003 passed by Sri M.K. Tripathi, learned Judicial Magistrate, 1st Class, Gumla, in G.R. No. 639 of 1992, whereby the application filed for discharge u/s 239 of the Cr.P.C., was rejected by the Court below.

2. It appears that the petitioner has been made accused in G.R. Case No. 639 of 1992 for the offence under Sections 409, 420, 120-B, 465, 468, 471, 34 of the I.P.C. There is allegation against the petitioner in the FIR that two trucks were apprehended, which were illegally carrying Kendu leaves and so far as the petitioner is concerned, there is allegation against the petitioner, who was posted as Range Officer in the Jharkhand State Forest Development Corporation, to have exchanged of permits for illegally carrying the Kendu leaves, which were found to be forged. The FIR was lodged by the informant Range Officer of the Forest Department, stating that he was following the said trucks and he saw the petitioner, who came in the Maruti Van along with other persons, who were not identified by the informant, and he exchanged of permits with respect to the Kendu leaves. Subsequently, the trucks were apprehended and the permits,

which were seized, were found to be forged. On the basis of these allegations, the FIR was lodged. After investigation, the police submitted the charge-sheet against the petitioner also and cognizance was also taken against the petitioner. The petitioner thereafter filed application for discharge u/s 239 of the Cr.P.C., which was rejected by the Court below holding that there were materials against the petitioner in the case diary for framing the charge under the aforesaid sections.

3. Learned counsel for the petitioner has taken a short point for pressing the application, submitting that the petitioner is a public servant and accordingly, his actions are protected u/s 197 of the Cr.P.C., but no sanction u/s 197, Cr.P.C. was obtained for prosecution of the petitioner. Learned counsel for the petitioner has confined his arguments to this sole point and has submitted that in view of the non-obtaining of the sanction for prosecution of the petitioner, the petitioner being the public servant, ought to have been discharged. Learned counsel for the petitioner has further pointed out that the enquiry report dated 5.1.1993, which has been brought on record as Annexure-12 to the Supplementary Affidavit, shows that in the departmental proceeding, the petitioner was exonerated of the charge mainly on the ground that there was no shortage of stock of the Kendu leaves in the godown, of which the petitioner was in-charge, as also in view of the fact that on the date of occurrence, the petitioner was on leave and he was under medical treatment. However, it appears from this enquiry report also that permits were found to be forged.

4. Learned counsel for the State, on the other hand has submitted that after investigation, the police has submitted the charge-sheet against the petitioner and in the facts of this case, particularly taking into consideration the allegation against the petitioner, the offence cannot be said to have been committed by the petitioner by acting or purporting to act in the discharge of his official duty, as there is allegation of exchange of forged documents against of the petitioner. Learned counsel accordingly, submitted that Section 197 of the Cr.P.C. is not at all attracted in the facts of this case.

5. After having heard learned counsels for both the sides and upon going through the record, I find that there is direct allegation against the petitioner by the informant that there was exchange of forged permits by the petitioner facilitating the transportation of two trucks illegally carrying the Kendu leaves. It is apparent from the FIR itself that the informant had identified the petitioner to be the person, who had exchanged the permits, which were found to be forged. In the backdrop of this allegation. I am of the considered opinion that the offence of the petitioner cannot be said to have been committed while acting or purporting to act in discharge of his official duties and in that view of the matter, the protection of Section 197 of the Cr.P.C. is not at all available to the petitioner. So far as the claim of the petitioner that on the date of the occurrence he was not present and was under medical treatment, this is only an alibi claimed by the petitioner, which has to be proved by the petitioner during trial. I am of the considered

opinion that in view of the allegation against the petitioner, even the exoneration of the petitioner in the departmental proceeding is of no help to the petitioner in any manner. Accordingly, I do not find any illegality and/or irregularity in the impugned order worth interference in the revisional jurisdiction. There is no merit in this application and the same is accordingly, dismissed. Let the case diary called for in this case be sent back forthwith.