
(2019) 12 JH CK 0267

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petitions No. 1004 Of 2019, I.A. No. 9738 Of 2019

Ram Parvesh Pandit And Another

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 18-12-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 397, 397(1), 482
Indian Penal Code, 1860 — Section 120B, 420

Citation : (2019) 12 JH CK 0267

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Rajeev Kumar, Shafique Rahman, Rajiv Nandan Prasad

Final Decision : Dismissed

Judgement

I.A. No. 9738 of 2019 in Cr. M. P. No. 1004 of 2019

1. Mr. Rajeev Kumar, Advocate was heard on 17.12.2019 on the point of maintainability of I.A. No. 9738 of 2019 who had advanced his argument on

behalf of the petitioners by referring to the judgment passed by the Honâ??ble Supreme Court in the case of Raj Kapoor and Ors. Vs. State and

Others reported in (1980) 1 SCC 43 to submit that the courtâ??s inherent power can be exercised to quash the order refusing to discharge the

petitioner and the labelling of the Section may not be relevant.

2. Learned counsel for the C.B.I had opposed the maintainability of the said interlocutor application i.e. I.A. No. 9738 of 2019. The learned counsel

had submitted that the present petition was initially filed for quashing of the entire criminal proceedings including the order taking cognizance.

However, during the pendency of this case, the petitioner filed petition for

discharge before the learned court below, which has been rejected vide order dated 11.04.2019 and order refusing to discharge the petitioner has been challenged by filing the aforesaid I.A. No. 9738 of 2019 and the certified copy of the order refusing to discharge has been filed along with supplementary affidavit dated 06.11.2019. The learned counsel also submitted that the charge has also been framed by the learned court below. He submitted that the order refusing to discharge the petitioner is a revisable order under Section 397 of Code of Criminal Procedure and accordingly I.A. No. 9738 of 2019 may not be allowed, in view of the fact that there is specific provision under which the order refusing to discharge can be challenged. He also submitted that the scope of consideration for challenge to order taking cognizance is different from the scope of consideration of order refusing to discharge.

3. After hearing the counsel for the parties and considering the facts and circumstances of this case, this Court finds that initially the present petition was filed challenging the order taking cognizance dated 15.07.2017 and during the pendency of this case, the petition for discharge has been rejected vide order dated 11.04.2019 by the learned court below and the same is sought to be challenged by filing I.A. No. 9738 of 2019. The certified copy of the order dated 11.04.2019 has been filed by way of supplementary affidavit dated 06.11.2019.

4. From perusal of the status report as received from the learned court below vide letter No. 423/2019 dated 11.09.2019, it appears that charge has already been framed on 19.07.2019 for alleged offence under Sections 420/120-B of Indian Penal Code.

5. There is no dispute that a revision under Section 397(1) of Cr.P.C. is maintainable against the order refusing to discharge. In the judgment which has been relied upon by the learned counsel for the petitioner reported in (1980) 1 SCC 43 (supra), the Honâ??ble Supreme Court while considering the scope of jurisdiction of High Court under Section 482 of Cr.P.C. vis-Ã -vis revisional power under Section 397 of Cr.P.C. has held that nothing in the Code of Criminal Procedure, not even Section 397, can affect the amplitude of the inherent power prescribed in Section 482 of Cr.P.C., but easy resort to inherent power is not right except under compelling circumstances. There is no total ban of exercise of inherent power where abuse of the

process of the court or other extraordinary situation which excites the court's jurisdiction is involved. It has also been held that limitation is self-restraint and nothing more.

6. This Court finds that the present case was filed on 02.04.2019 challenging the order taking cognizance dated 15.07.2017. The defect in the petition was removed only by 17.05.2019 and in the meantime discharge petition was rejected on 11.04.2019 which has been challenged by filing I.A. No.

9738/2019. Upon perusal of order refusing to discharge, this Court does not find any extra ordinary situation or any allegation of abuse of the process

of court calling for any interference under Section 482 of Code of Criminal procedure to quash the order refusing to discharge the petitioner. The

order refusing to discharge be a revisable order, this Court is not inclined to allow this I.A. No. 9738/2019 so as to enable the petitioner to challenge

order refusing to discharge in the petition under Section 482 of Code of Criminal Procedure.

7. Accordingly, I.A. No. 9738 of 2019 is hereby rejected.

Cr. M.P. No. 1004 of 2019

8. Post this case on 28.01.2020.

9. The learned counsel for the State-C.B.I. is permitted to take back the case-diary.

10. Let this order be communicated to the learned court below through a FAX.