
(2002) 08 PAT CK 0011

In the Patna High Court

Case No : Criminal Miscellaneous No. 9087 of 2002

Rama Shanker Tiwary

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 20-08-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 239
Penal Code, 1860 (IPC) — Section 109, 120B

Citation : (2003) 1 PLJR 754

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Narayan Roy, J.—Heard Mr. J.P. Shukla, learned Senior Counsel for the Petitioner and Mr. B.P. Pandey, learned Senior Counsel for the Vigilance-Opposite party.

2. This application is directed against the order dated 15.1.2002 passed by the learned Special Judge, Vigilance, in Vigilance Case No. 52/90 whereby and whereunder the learned Special Judge refused to discharge the Petitioner and issued summons against him for his appearance on 4.2.2002.

3. Mr. J.P. Shukla, learned Counsel for the Petitioner at the ousel submitted that on reading of the impugned order, it would appear that the prayer of the Petitioner for his discharge in terms of Section 239 of the Code of Criminal Procedure (in short, "the Code") has been rejected though no such prayer was made on behalf of the Petitioner. In this connection, Mr. Shukla has drawn my attention towards paragraph 13 of the petition which reads as follows:

13. That on 15.1.2002, both the cases were placed before the learned Spl. Judge, Vigilance but in case No. 52/ 90, neither any petition for discharge was filed on behalf of the Petitioner nor any argument was advanced. Of course in case No. 87/90, argument was advanced on behalf of the Petitioner that since no case was made out u/s 120B and 109 of the I.P.C. and further since the

Petitioner is not to be put on trial for alleged offence under P.C. Act as such no criminal proceedings should continue against the Petitioner.

4. Mr. Shukla, learned Counsel, in this view of the matter, submitted that the order impugned is wholly without jurisdiction and the same is not sustainable in law.

5. Mr. B.P. Pandey, learned Counsel appearing for the Vigilance, on the contrary, submitted that on plain reading of the order impugned it would appear that a prayer was made on behalf of the Petitioner for his discharge and the same was declined as cognizance of the offence was earlier taken by the predecessor court and, therefore, it does not require any interference from this end.

6. I have perused the order impugned and also statement made in paragraph 13 of the petition. From the tenor of the order impugned, it appears that a prayer was made on behalf of the Petitioner for his discharge and the same was declined. At the same time, it appears that though cognizance of the offence against the Petitioner was taken by the predecessor court till passing of the order impugned on 15.1.2002, other five accused persons had not appeared in the court and the court directed to issue fresh processes against them. It, thus, appears from the order impugned that all the accused persons against whom cognizance was taken, had not appeared in the case whereas the Petitioner and two other accused persons were in appearance. It further appears from impugned order that the case of the Petitioner was not even split up to proceed with the trial and in my opinion, the stage of framing of charge had not yet reached. There is nothing in the order impugned to show that after passing of the order impugned, the learned court below has fixed any date for framing of the charge. In this view of the matter, I find some substance in the submission of the learned Counsel for the Petitioner. Mr. B.P. Pandey, learned Counsel for the Vigilance, faced with this situation, however, submitted that he would have no objection if the Petitioner moves the learned court below again for his discharge.

7. Considering the facts and circumstances of the case and for the reasons aforementioned, this application is allowed and the order impugned dated 15.1.2002 is set aside so far as the Petitioner is concerned. The Petitioner, if so advised, may pray before the learned court below for his discharge and in case any petition for discharge is filed by the Petitioner, the same shall be considered in terms of Section 239 of the Code of Criminal Procedure and necessary orders would be passed in accordance with law.