
(2011) 11 JH CK 0101

In the Jharkhand High Court

Case No : Writ Petition (Cr.) No. 28 of 2009

Ran Vijay Prakash Singh

APPELLANT

Vs

The State of Jharkhand and Ano.

RESPONDENT

Date of Decision : 25-11-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 385, 504
Railway Protection Force Act, 1957 — Section 20, 20(3)

Citation : (2012) CriLJ 953 : (2012) 1 JLJR 135

Hon'ble Judges : Prakash Tatia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prakash Tatia, C.J.—Heard learned counsel for the parties.

2. The petitioner has challenged the entire criminal proceedings initialed in connection with C.P. Case No. 1972/2007 and the order taking cognizance dated 16th September, 2008.

3. It is not in dispute that the petitioner was holding the post of Sub-Inspector in the Railway Protection Force and according to the petitioner, on 3rd October, 2007, he received information with respect to some materials, which were being transported through railway wagons, were found on the railway track and on the same day, he entered this fact in the Daily Diary of R.P.F. Out Post, Mahuda, and registered the case No. C51 etc. The complainant-respondent was arrested on 5th October, 2007/ itself and after registering formal F.I.R., which was a detailed F.I.R. the complainant was submitted before the court of Judicial Magistrate on 5th October, 2007 itself. According to the petitioner, confessional statement of the complainant respondent was recorded on 5th October, 2007, it self and other witnesses were also examined. Aggrieved by this action of the petitioner, which was taken in discharge of his official duty under the Railway Protection Force Act, 1957, the complainant, alter delay, on 10th December, 2007, submitted complaint in the court below, wherein the complainant and his witnesses were

examined and by the impugned order dated 16th September, 2009, cognizance was taken.

4. Learned counsel for the petitioner vehemently submitted that no action could have been initiated against the petitioner as his action is protected u/s 20 of the Railways Protection Force Act, 1957 and for any grievance of the complainant-respondent against the petitioner, he has not complied with section 20(3) of the Act, 1957, which mandates that any legal proceeding, whether civil or criminal, can be initiated against the member of the Railway Protection Force only after issuance of notice in writing for such proceeding and the proceeding could have been commenced within three months from the date the matter is complained of.

5. Learned counsel for the petitioner also submitted that if such protection is not made available to the petitioner, members of the Armed Force of the Railways will be demoralized. Learned counsel for the petitioner also submitted that the complaint has been lodged after an inordinate delay. It is submitted that the allegations levelled by the complainant constitute no offence at all in view of high improbability in the allegations levelled in the complaint as well as in view of the contradictions in the statements of the witnesses.

6. Learned counsel for the complainant-respondent submitted that the complainant was arrested on 5th October, 2007, but the manner, in which he was given beating and the fact of demanding bribe from the complainant, had been alleged in the complaint, it cannot be said that the complaint does not disclose the commission of offence. It is also submitted that the action of the arrest of the complainant may be official act but rest of the act, which constitute offence, are not the official act or act in colour of exercise of official act and therefore, section 20 of the Act 1957 has no application. It is also submitted that the complainant remained behind bars for more than one and half months, which fact he has already stated in the complaint and therefore, there is no delay in lodging the complaint.

7. I considered the submissions of the parties and perused the facts and the reasons given in the impugned order as well as the facts stated in the complaint, I am of the considered opinion that section 20 of the Act 1957 has no application for any offence punishable under the provisions of the Indian Penal Code and specifically in this case, section 323, 504 and 385 I.P.C. is alleged and for the aforesaid act, no protection is available and protection is available for lawful action and not for any unlawful action.

8. So far as delay is concerned, learned counsel for the complainant-respondent tried to explain the delay. But any comment on the merit of the case will be prejudicial to any of the parties; therefore, I wish to express no opinion on the merit of the case. The delay in filing the complaint and any contradiction in the statements of the witnesses etc. cannot be the ground for quashing the present complaint and therefore, this Court is not inclined to interfere with the criminal proceedings as well as the order taking cognizance. The trial court is directed to

proceed expeditiously and decide the matter without any delay.

With this observation, this petition is dismissed. Since the stay has been vacated and the petitioner did not appear before the trial court by virtue of the interim order passed by this Court, the petitioner is directed to mark his attendance before the trial court on or before 09.01.2012.