
(2012) 07 JH CK 0175

In the Jharkhand High Court

Case No : Criminal Revision No. 337 of 2000 (R)

Saheb Mian @ Kalimuddin Ansari

APPELLANT

Vs

The State of Bihar (Now Jharkhand) and Another

RESPONDENT

Date of Decision : 02-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145
Penal Code, 1860 (IPC) — Section 147, 323, 379, 427

Citation : (2012) 07 JH CK 0175

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : P.C. Roy, for the Appellant; Shree Prakash Jha, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Hon'ble Mr. Justice ##H.C. Mishra# 1. Heard learned counsel for the petitioner and learned A.P.P. for the State. The complainant-opposite party No. 2 has not appeared in spite of valid service of notice upon him. The petitioner has challenged the order dated 28.8.2000 passed by Shri M. Srivastava, learned Judicial Magistrate 1st Class, Giridih, in Complaint Case No. 1067 of 1996 [T.R. No. 263 of 2000, whereby the application filed by the petitioner for discharge has been rejected, having found sufficient materials against him for framing the charge for the offences under Sections 147, 427, 379 and 323 of the Indian Penal Code.

2. It appears that opposite party No. 2 had filed a complaint case before the Court of Chief Judicial Magistrate, Giridih, which was registered as Complaint Case No. 1067 of 1996, alleging therein that the accused persons had harvested away the paddy crop grown by the complainant from the land in question. It appears that on the basis of the enquiry made by the Court below, cognizance was taken against the petitioner for the offences under Sections 147, 427, 379 and 323 of the Indian Penal Code. The said order taking cognizance was

challenged by the petitioner and other co-accused persons before the Patna High Court, Ranchi Bench, in Cri. Misc. No. 4111 of 1997 (R), which was disposed of giving liberty to them to raise all the points at the time of framing of charge. The petitioner accordingly, filed application for discharge in the Court below, which was also rejected by the impugned order dated 28.8.2000, passed in Trial No. 263 of 2000.

3. Learned counsel for the petitioner has submitted that there is a dispute between the parties for the land in question, for which the petitioner has been falsely implicated in the case. It is submitted that with respect to the same land in question, there was a proceeding u/s 145 Cr.P.C. between the parties, in which, the petitioner was found to be in possession by order dated 19.10.1966, which has been brought on record as Annexure-4 to this revision application. It is also submitted that this order has been maintained even in revision, which was filed by the complainant's side. Learned counsel further submitted that from the impugned order itself, it is apparent that the Court below had considered these facts and has also taken note of the fact that a suit has also been filed by the complainant upon the petitioner, which is pending. Learned counsel accordingly, submitted that the complaint case was instituted by the complainant with absolute false allegations, inasmuch as, there was a dispute of possession between the parties with respect to the land in question and the petitioner has been found to be in possession of the said land. Learned counsel accordingly, submitted that it is a fit case, in which, the petitioner ought to have been discharged by the Court below.

4. Learned counsel for the State has opposed the prayer submitting that on the basis of allegations made in the complaint petition, the offence is clearly made out against the petitioner.

5. After having heard learned counsels for both the sides and upon going through the record, I find that the petitioner was found to be in possession over the land in dispute in a proceeding u/s 145 Cr.P.C. between the parties and this fact appears in the impugned order also, mentioning that the said order has been maintained even by the revisional Court. It also finds mentioned in the impugned order that with respect to the same land in question, a title suit is also pending between the parties. In the facts of the case, when the very possession of the parties over the land in question is disputed and the petitioner has been found to be in possession by the competent Court, I am of the considered view that no offence can be made out against the petitioner even if the entire allegation in the complaint petition is accepted to be true. In view of the aforementioned discussions, the impugned order dated 28.8.2000 passed by Shri M. Srivastava, Judicial Magistrate, 1st Class, Giridih, in Complaint Case No. 1967 of 1996| T.R. No. 263 of 2000, rejecting the application for discharge filed by the petitioner, is hereby set aside. Consequently, the petitioner also stands discharged. This revision application is, accordingly, allowed.