

(2002) 04 PAT CK 0058
In the Patna High Court
Case No : CWJC No. 150 of 2002

Shyam Chandra Chaudhary	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 29-04-2002

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 27, 34(1)
Constitution of India, 1950 — Article 226, 226(1)

Citation : (2002) 2 PLJR 742

Hon'ble Judges : T.P. Singh, J; S.N. Jha, J

Bench : Division Bench

Advocate : Neeraj Singh, for the Appellant; A.N. Singh and Balram Kapri, for the Respondent

Final Decision : Dismissed

Judgement

1. The maintainability matter has been put up for consideration. Heard counsel for the petitioner and Standing Counsel No. 8 for the State.
2. This writ petition has been filed seeking direction upon the respondent-authorities to release the petitioner from Bhagalpur Central Jail where he has been lodged on his conviction u/s 302 of the Penal Code, on the ground that he has suffered imprisonment for 14 years.
3. The office has objected to the maintainability of the case on the ground of lack of territorial jurisdiction. The petitioner has been convicted by a Sessions Court at Dumka. The territory comprising district Dumka being part of the Jharkhand State, under the territorial jurisdiction of the Jharkhand High Court, the question is whether Patna High Court can entertain the writ petition and issue mandamus as prayed for.
4. The only argument of the counsel for the petitioner in support of the maintainability of the case is that the petitioner is lodged in Bhagalpur Central Jail. Bhagalpur being part of the State of Bihar after division of the State under

the Bihar Reorganisation Act, 2000, the petition is maintainable. For that reason, the Jharkhand High Court cannot issue any direction for release from Bhagalpur Jail. On behalf of the State reference was made to the provisions of Section 27 and Section 34(1) of the Reorganisation Act. Section 27 provides that the High Court of Jharkhand shall have, in respect of any part of the territories included in the State of Jharkhand, all such jurisdiction, powers and authorities as, under the law in force immediately before the appointed day, are exercisable in respect of that part of the said territories by the High Court at Patna. Sub-section (1) of Section 34 bars the jurisdiction of the Patna High Court except in respect of proceeding contemplated by Sub-sections (2) and (3). It is not in dispute that no proceeding is pending before this Court and, therefore, Sub-sections (2) and (3) of Section 34 can have no application. The petitioner having been convicted by a Court at Dumka, falling under the jurisdiction of the Jharkhand High Court, in terms of Sub-section (1) of Section 34 the High Court at Patna has no jurisdiction in respect of any matter arising at or within the territories now comprising the State of Jharkhand. It is obvious that if any order of the Dumka Court is to be challenged, the petition would lie in the Jharkhand High Court and, therefore, it is the Jharkhand High Court which can issue any direction to it. The submission of the counsel for the petitioner that Jharkhand High Court does not have jurisdiction to direct release of the petitioner because he is lodged in a jail situate outside the State of Jharkhand is simply untenable in view of the express provisions of Clause (2) of Article 226 of the Constitution of India which provides that the power to issue directions, orders or writs to any Government, authority or persons under Clause (1) may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. As in the instant case the petitioner is serving imprisonment pursuant to conviction awarded by a Court which is now under the jurisdiction of Jharkhand High Court, the petitioner has no option but to approach that High Court for appropriate direction. We hasten to clarify that this observation should not be interpreted to mean that this Court has found merit in the claim of the petitioner.

5. We thus hold that the petition is not maintainable in this Court and accordingly dismiss, the same.