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(2008) 06 JH CK 0065

In the Jharkhand High Court

Case No : Criminal Rev. No. 902 of 2007

Shyam Sunder Prasad Bharuka APPELLANT

Vs

The State of Jharkhand RESPONDENT

Date of Decision : 17-06-2008

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 239
Penal Code, 1860 (IPC) — Section 120B, 406, 409, 467, 468

Citation : (2008) 56 BLJR 2187

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Advocate : Nitesh Kumar, for the Appellant; S.K. Srivastava, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Sinha, J.—The Criminal Revision is directed against the order impugned dated 4.9.2007, passed by learned A.C.J.M. Latehar in G.R Case No. 132 of 1998 whereby and whereunder the discharge petition of the petitioner u/s 239 of the Code of Criminal Procedure in connection with Latehar P.S. Case No. 50 of 1998 for the alleged offence under Sections 467, 468, 471, 477, 406, 409 r/w 120B of the Indian Penal Code was rejected.

2. Short fact of the case, as stands narrated in the written, report of the informant Awadh Bihari Singh, Divisional Forest Officer, State Trading Division-II. Latehar giving rise to Latehar P.S. Case No. 50 of 1998 was that one Vijay Kumar Sinha the then Divisional Forest Officer, State Trading Division-II. Latehar during his tenure of posting from 2.1.1990 to 28.12.1993 defalcated huge amount of public money, approximate to the tune of Rs. 43,20,500/- as it was found after official enquiry by the Department.

3. Informant had produced various documents with the written report which were the basis of institution of the case. It was alleged, inter alia, that fake purchase of various materials from fake dealers/suppliers standing in different names and

styles mostly non-existing were shown by Vijay Kumar Sinha during his tenure of posting. As a matter of fact, he had no authority or any sanction in this regard granted to him by superior authority or competent officer of the Department. It was further alleged that Vijay Kumar Sinha had done it at his personal accord under mala fide intention which ultimately resulted in defalcation of huge amount and that the materials said to have been purchased by Vijay Kumar Sinha were not found on physical verification by the Department. It was further alleged that alleged supply was made through the following:

(1) M/s. Steel and Allied Products, Calcutta

(2) M/s. Paramount Dealers, Ranchi

(3) M/s. Beemco Industry, Ranchi

(4) M/s. B. Mani Lai and Co. Ranchi

(5) Bihar Aluminium Agency, Ranchi

Accordingly, F.I.R. was instituted on 25.4.1998 only against Vijay Kumar Sinha the then Divisional Forest Officer, State Trading Division-II, Latehar.

4. According to learned Counsel, complicity of the petitioner appeared after 13/15 years of alleged occurrence and after 7 years of institution of the case in course of investigation by the C.I.D. in the year 2005 without any material whatsoever.

5. Allegation against the petitioner was that M/s. Bharuka Automobile had supplied fuel etc. to the Department to the tune of Rs. 15,71,513/- out of which voucher of Rs. 2,77,792.95 paise was not produced and as such it was suspected that the payment of such amount was made without supply of fuel.

6. Learned Counsel resented that on the basis of such suspicion warrant of arrest was issued against the petitioner pursuant to chargesheet submitted by the I.O. against him after 15 years of alleged occurrence.

7. Advancing his argument, Mr. Nilesh Kumar submitted that M/s. Bharuka Automobile was duly registered under Commercial Taxes vide its registration No. PL329R and it was also registered under MS licence and its registration No. was 4/1968 which were renewed from time to time by the concerned Department. The said firm had been regularly paying Income Tax and Commercial Taxes since 1968 duly audited by Chattered Accountant.

8. The learned Counsel attracted the attention that for the purpose of assessment of the Income Tax and Commercial fax, the concerned Departments did not use to demand ledger and stock register from the assessee for beyond the period of eight years and therefore, relevant vouchers and papers which were already audited were not required to be kept and accordingly used to be destroyed time to time. For such reason, there was no occasion for the petitioner to keep all those documents which were more than 8 years old.

9. Admittedly, vouchers of Rs. 2 lakhs and odds were missing from the custody of the Forest Department out of the fuel supplied to the Department of Rs. 15 lakhs and the vouchers of remaining amount being the cost of fuel were intact and for that petitioner cannot be held responsible for missing of the vouchers from the custody of the Department. Non-production of the vouchers of Rs. 2 lakhs and odds after about 15 years of the alleged occurrence would not tantamount to the allegation against the petitioner that his firm did not supply fuel to the principal accused worth 2 lakhs.

10. Finally, Mr. Nilesh Kumar argued that while allowing anticipatory bail application of the petitioner, it was observed that petitioner was not directly involved in the occurrence, alleged to have taken place some 10/11 years ago and in the opinion of the I.O. petitioner had avoided payment of Commercial Taxes in which no separate case was lodged under Bihar Finance Act and none of the ingredients of Sections 467, 468, 471, 477, 406, 409 and 120B of the Indian Penal Code is made out against the petitioner in the facts and circumstances of the case and that the Department had not made any allegation against the petitioner for non-supply of fuel worth Rs. 2 lakhs and odds in the written report and there was document for supply of fuel worth Rs. 13 lakhs and odds in the custody of the Forest Department. Therefore, his criminal prosecution in the instant case would amount to miscarriage of justice.

11. On the other hand, learned A.P.P. opposed the contention and quoted prima facie materials as contained in the impugned order,

Having not bearing para-423 and 463 of the case diary that the Investigating Officer of the C.I.D. during investigation found non-payment of Taxes to the State Exchequer by the petitioner and it was explained that it was not only a case of evading taxes rather it was a case of defalcation for non supply of fuel to the Forest Department which stands corroborated from the point of view that receipts/vouchers of Rs. 2 lakhs and odds towards purchase of fuel from the petitioner''s firm was not available. Defence raised by the petitioner relates to the question of fact which can only be met out in course of trial wherein the petitioner would have ample opportunity to defend him by adducing evidence.

12. Having regard to the facts and circumstances of the case and argument advanced on behalf of the parties. I find that the petitioner was not named in the F.I.R. and the informant had not implicated him in any manner for the alleged offence but in course of investigation. Investigating Officer of the C.I.D. collected materials against him as some of the materials prima facie have been produced by the A.P.P. referred to hereinabove. I find substance that the petitioner would have ample opportunity to defend his case during trial but at the same time the Trial Magistrate is required to be cautious that the petitioner may be charged in the appropriate penal offence. This Criminal Revision is dismissed with the above observation.