
(2011) 08 JH CK 0080
In the Jharkhand High Court
Case No : Criminal M.P. No. 1418 of 2007

Surendra Kumar Verma

APPELLANT

Vs

The State of Jharkhand and Smt. Seema Hembrom

RESPONDENT

Date of Decision : 03-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197(1)
Penal Code, 1860 (IPC) — Section 120B, 467, 468, 471

Citation : (2011) 08 JH CK 0080

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Advocate : P.P.N. Roy and Alok Kumar, for the Appellant; V.K. Prasad, Assistant Public Prosecutor and Awanish Ranjan Mishra, for the O.P. No. 2, for the Respondent

Final Decision : Allowed

Judgement

Prashant Kumar, J.—This application has been filed for quashing the order dated 10.09.2007 passed by Judicial Magistrate Hazaribagh in T.R. No. 1313 of 2007, whereby he took cognizance against Petitioner for the offences under Sections 467/468/471/120B of the Indian Penal Code.

2. It is alleged that Petitioner being a Circle Officer had issued a false certificate of genealogy of complainant's family, on the basis of same co-accused get the land transferred in her name.

3. It is submitted by Sri P.P.N. Roy, Sr. Advocate appearing for the Petitioner that Petitioner is Circle Officer, appointed by State Government, thus, he can, only be removed from service by the State Government. It is further submitted that admittedly Petitioner issued certificate of genealogy in discharge of his official duty. Thus as per provisions contained u/s 197(1) of the Code of Criminal Procedure no Court can take cognizance against Petitioner without previous sanction of the State Government. It is submitted that in the instant case no sanction given by State Government for prosecution of Petitioner. Accordingly, it

is submitted that impugned order can not be sustained by this Court.

4. Learned Counsel for the opposite party has not controverted aforesaid submission and has fairly stated that in the instant case there is no sanction for prosecution of Petitioner.

5. Having heard the submissions, I have gone through the record of case. From perusal of impugned order I find that Petitioner has been prosecuted for issuing a certificate of genealogy of the family of complainant. Thus it is admitted position that said certificate issued by Petitioner in discharge of his official duty. From perusal of Annexure-7, to the supplementary affidavit filed by Petitioner on 27.10.2010, it appears that Petitioner was appointed by State Government on the recommendation of Bihar Public Service Commission. Under the said circumstance, Petitioner can be removed from service only by the State Government. Section 197(1) of the Code of Criminal Procedure runs as follows:

Prosecution of Judges and public servants-

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affair's of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

[Provided that where the alleged offence was committed by a person referred to in clause(b) during the period while a Proclamation issued under clause(1) of article 356 of the Constitution was in force in a State, Clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.]

6. Thus as per aforesaid provision, if the Government servant removable from service by the State Government, no Court can take cognizance against him without previous sanction from the State Government. Admittedly, in this case no sanction accorded by State Government. Thus I conclude that impugned order has been passed in violation of Section 197(1) of the Code of Criminal Procedure, therefore same cannot be sustained.

7. Accordingly, this application is allowed. Impugned order is quashed, so far it relates to Petitioner.