

(2006) 12 PAT CK 0111

In the Patna High Court

Case No : Criminal Miscellaneous No. 28968 of 2006

Sushil Kumar Modi

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 08-12-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 133, 205, 227, 251, 313

Citation : (2007) 2 PLJR 153

Hon'ble Judges : Sadanand Mukherjee, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sadanand Mukherjee, J.—Heard the parties. This is an application for quashing the order dated 15.2.2006 passed by the Chief Judicial Magistrate, Bhagalpur in PS. Case No. 90 of 2004, by which he has rejected the petition dated 6.2.2006 for allowing the prayer to be represented through lawyer to reply the accusation u/s 251 of the Code of Criminal Procedure.

2. The petitioner has been made accused of certain alleged violations of the directions of authorities for non-cognizable offences under Sections 425, 426, 227 of the I.P.C. and Section 133 of the Cr.P.C.

3. The case of the prosecution is that on 5.4.2004 the police party found some flags and election propaganda papers, which are prohibited to be displayed at the relevant period, having been kept at places such as electric polls and telephone polls at the time of arrival of the petitioner who was Member of Parliament at the relevant time.

4. The learned Chief Judicial Magistrate, Bhagalpur vide order dated 8.4.2004 took cognizance on the basis of Shahkund P.S. Sanha No. 89 dated 5.4.2004 against the petitioner under Sections 425, 426 and 427 of the I.P.C. and Section 133 of the Code of Criminal Procedure and accordingly, summons were issued for appearance of the petitioner.

5. The petitioner filed an application u/s 205 of the Cr.P.C. for grant of permanent representation through his counsel, which was allowed on 16.4.2005 by the learned Chief Judicial Magistrate, Bhagalpur with condition that the petitioner shall remain physically present on the date of explanation of substance of accusation u/s 251 of the Cr.P.C., recording of statement u/s 313 of the Cr.P.C. and also on the date of judgment.

6. On 6.2.2006 an application was filed on behalf of the petitioner to reply the accusation u/s 251 of the Cr.P.C. by his counsel appearing in the case on the ground that the petitioner is now Deputy Chief Minister of the State and busiest person and engaged in administrative work of the State and hence unable to attend the court at that stage.

7. The learned Chief Judicial Magistrate rejected the said petition dated 6.2.2006 without considering the present situation and circumstances of the petitioner only on the ground that since predecessor C.J.M. while allowing the petition u/s 205 of the Cr.P.C. had put condition that at the time of explaining accusation, recording of statement u/s 313 of the Cr.P.C. and on the date of judgment, the petitioner shall remain physically present in court and hence allowing the present petition would amount to review or revision of the earlier order dated 16.4.2005.

8. In view of the present position and situation, the impugned order is said to be not warranted under law and as such a prayer has been made to quash the aforesaid order dated 15.2.2006 passed by the learned Chief Judicial Magistrate, Bhagalpur in P.S. Case No. 90 of 2004.

9. In this connection the settled law in respect of Sections 313 and 251 of the Cr.P.C., with reference to presence of the petitioner has been under-scored on behalf of the petitioner. In this connection the decision in the case of "Shantunu Das & Ors. vs. The State of Bihar & Anr.," reported in 2000(3) P.L.J.R. page 134 at page 135 has been relied upon by the learned counsel for the petitioner, wherein and whereunder, it was held that Section 251 of the Cr.P.C. merely requires answer to the accusation as to whether accused pleaded guilty or claimed to be tried on the charges and this part can be complied with even by a pleader on behalf of the accused.

10. A Bench of this Court while relying upon the decision in the case of "Srinivash Vajpai vs. State of Bihar" reported in 1976 BUR 248: 1976 PLJR 521 and also in the case of "S.C. Jain vs. State of Bihar" reported in 1984 PLJR 16 and also in the case of "Ravi Singh and Anr. vs. State of Bihar" reported in 1979 B.B.C.J. 437, came to the conclusion that the impugned order in that case passed by the court below directing for personal appearance for the aforesaid purpose cannot be sustained under law.

11. In respect of Section 313 of the Cr.P.C. also the decision in the case of Basavaraj R. Patil and Others Vs. State of Karnataka and Others, has been relied upon in which it was held that in an exigent condition the court can allow the counsel for the accused to answer the question on his behalf u/s 313(1)(b) of the

Cr.P.C. and for this the accused is required to file before the court an application with affidavit sworn by him containing real difficulties of the petitioner with an assurance that no prejudice would be caused and an undertaking that he would not raise any grievance in future.

12. So far as relevant question in the present case is concerned, the same only relates to Section 251 of the Cr.P.C. regarding substance of accusation to be stated by the petitioner.

13. In view of aforesaid discussion and considering the circumstances referred to above, the impugned order passed by the court below directing for personal appearance for the purpose of explaining the substance of accusation cannot be sustained under law. This application is, therefore, allowed and the impugned order dated 15.2.2006 passed by the court below is set aside. It is held that the lawyer representing the petitioner would be competent to answer the accusation as required u/s 251 of the Cr.P.C. This criminal miscellaneous application is accordingly allowed.