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(2008) 4 JCR 433

Jharkhand High Court

Case No: None

Jagdish Prasad Maheshwari	APPELLANT
Vs	
State of Jharkhand and Another	RESPONDENT

Date of Decision: Aug. 14, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 239, 482

Citation: (2008) 4 JCR 433

Hon'ble Judges: D.P. Singh, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

D.P. Singh, J.
Heard both sides.

2. The present petition has been preferred by the petitioner against the order dated 5.1.2004 by which the learned court below has refused to discharge the petitioner u/s 239 Cr.P.C.

3. According to Mr. Roy, learned Counsel for the petitioner, the learned court below has committed an error on record by not considering the facts on record that the petitioner has filed a case against the informant of this case on the same day dated 18.7.2002 registered as Kotwali P.S. Case No. 374/2002 in which the police has submitted charge sheet against the informant. It was further pointed out that prior to this FIR the petitioner has already moved the Labour Commissioner, Ranchi as well as Industrial Tribunal alleging ill-treatment by the opposite party No. 2 withholding his salary etc., after which the present false case has been lodged against him. According to Sri Roy, the learned trial court has ignored all these facts and relied upon the statement of one witness holding

that prima facie case has been made out.

4. Learned APP opposed this contention on the ground that the learned court below, having considered the materials on record, found that evidences were sufficient to frame charge against the petitioner for the alleged cheating, forging and misappropriation of money of the agency, where he was employed.

5. The learned senior counsel for the petitioner has relied upon 2005(5) ST 159 corresponding to State of Madhya Pradesh Vs. Mohanlal Soni, and 2000(3) ECC 1781 along with 2005(1) ECC 227. Hon''ble Apex Court has been pleased to hold that discharge petition should have been considered along with the documents produced by the petitioner-accused before the investigating agency, which was directed by the High Court for 2000(3) ECC 1781. The High Court has remanded back the matter for fresh hearing on the ground that the confessional statement of co-accused has been believed by the trial court. The decision in 2005(1) ECC has considered the counter case of the present case filed by the petitioner against the opposite party No. 2.

6. I have carefully gone through the materials on record. Admittedly, Kotwali P.S. Case Nos. 373/2002 and 374/2002 have been lodged on the same day. The police has submitted charge sheet in both the cases. However, when the matter was challenged by the opposite party No. 2 regarding cognizance taken in Kotwali P.S. Case No. 374/2002, this Court in Cr. Misc. No. 630/2003 u/s 482 Cr.P.C. quashed the entire criminal proceedings. The learned Counsel for the petitioner has taken a plea that in such circumstances counter case having been logged against the petitioner, should also be held not maintainable.

7. However, the materials on record indicates that the petitioner was working as the cashier cum accountant of M/s East India Transport Agency, Ranchi. It is further alleged that the accounts were found incorrect as well as misleading in which lacs of rupees alleged to have been misappropriated by cheating and forgery committed by this petitioner. The plea that counter case having been quashed, the present case should also be quashed cannot be accepted. This Court, while quashing the prosecution filed by the present petitioner against the O.P. No. 2 and informant of this case, has given reasons why the allegations made by the petitioner were not reliable. The court accordingly in (2005) 1 ECC 227 quashed the cognizance taken in Kotwali P.S. Case No. 374/2002.

8. The provisions to discharge apply in such cases only in which conviction of the accused is not possible. If materials on record appears prima facie to support the prosecution case, charges require to be framed.

9. In the facts stated above, the allegations against the petitioner have been supported by the witnesses before the police and the court below after going through the materials on record was satisfied that sufficient material was available to frame charge against the petitioner. The plea taken by the petitioner before this Bench requires to be considered at

appropriate stage during trial.

10. As such, I find that the present petition is not maintainable and deserves to be dismissed.

Accordingly, the present petition stands dismissed.