

## Dilip Kumar Sarkar and Another Vs State of Jharkhand

**Court:** Jharkhand High Court

**Date of Decision:** Jan. 23, 2003

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 239

**Citation:** (2003) CriLJ 2086

**Hon'ble Judges:** D.N. Prasad, J

**Bench:** Single Bench

**Advocate:** Ananda Sen and J.K. Mazumdar, for the Appellant; Assistant Public Prosecutor, for the Respondent

**Final Decision:** Allowed

### Judgement

@JUDGMENTTAG-ORDER

Deoki Nandan Prasad, J.

Both Criminal Revision heard together, as they are arisen out of the same order dated 10-10-2002, which has

been challenged and are being disposed of by this common order.

2. The order dated 10-10-2002 has been assailed on the ground that the Court below committed error in rejecting the petition for discharge in

connection with G. R. No. 274 of 2001 corresponding to Telco PS Case No. 31/2001.

3. The case of the prosecution in brief as stated that one Hari Krishna Dutta informed in writing that a sum of Rs. 2,65,000/- has been fraudulently

withdrawn from his joint savings account. It was found that the cheque was drawn in favour of one Ranjit Singh but the said cheque was never

received or requisitioned by the Informant from the said bank as the requisition slip is already attached with the cheque of the Informant. It is

further alleged that one of the employees, namely, Satyabrata Ghosh Choudhary admitted his guilt and assured to pay the entire amount within a

very short period and he had also paid a sum of rupees one lakh. The police investigated into the case and submitted charge-sheet under Sections

420, 467, 468, 471/34 of the Indian Penal Code.

4. The learned counsel appearing on behalf of the petitioners submitted that the Court below committed error in rejecting the petition for discharge

as the petitioners have got no concern with the said case and they have never been indulged in such activity. It is further submitted that there is no

evidence collected by the Investigating Officer during investigation against the petitioners and the petitioner, Tusar Kanti Patra was the Cashier at

the relevant time and he was bound to pay the cash amount which is mentioned in the cheque to a person who presents the token before him.

Clearance for the payment of the said cheque comes after due checking and verification from the office itself. So, he is not responsible for any

illegal act of the named FIR accused, namely Satyabrat Ghosh Choudhary. It is also submitted that other petitioners, namely, Pilip Kumar Sarkar

and Kalicharan Das are the officers in the said Bank and there is also no direct evidence against them for committing any illegal act in passing the

said cheque, rather it is Satyabrat Ghosh Choudhary, who is sole accused being responsible in the matter and he had also submitted a written

confession in which he has not whispered anything against the petitioners. It is further submitted that for verification of the signature over the said

cheque, the same was first went to Mr. Surendra Nath Jene and after verification of the signature, Shri Surendra Nath Jene found the signature to

be genuine and sent to Deputy Chief Manager for the formal signature. But, Surendra Nath Jene has not been charge-sheeted in the case for the

reasons best known to the Investigating Officer and without any cogent evidence the petitioners have been dragged unnecessarily, when admittedly

FIR named sole accused Satyabrat Ghosh Choudhary is wholly responsible for withdrawing the said amount of Rs. 2,65,000/-.

5. A written complaint was filed on behalf of the Bank of India to the Officer-in-charge on the basis of the written complaint filed by the informant

in which the Informant himself admitted that Satyabrat Ghosh Choudhary assured him to pay the amount and he has also paid a sum of rupees one

lakh on 10-11-2000 in cash.

6. On perusal of para 138 of the case diary, it is apparent that Satyabrat Ghosh Choudhary also submitted a written admission on 23-1-2001

before the Zonal Manager, Bank of India, Ranchi in which he did not whisper anything against the petitioners. No any direct evidence has been

collected against the petitioners for being involved in the said illegal act of Satyabrat Ghosh Choudhary. It further appears that Satyabrat Ghosh

Choudhary had again made his confessional statement as indicated in para-248 of the Case diary, which was recorded on 17-11-2001 and in this

statement, he named the petitioners. Except that there is no evidence against the petitioners for the alleged offence. There was no reason as to why

the said Satyabrat Ghosh Choudhary, who had filed earlier written confession before the Zonal Manager, did not whisper anything against the

petitioners. Had there been any involvement of the petitioners, he would have conveniently stated against the petitioners at the earlier statement of

confession of his guilt. Moreover, no any other witness said anything against the petitioners and it is apparent that it is the named accused in FIR,

Satyabrat Ghosh Choudhary, who had also paid back a sum of rupees one lakh to the Informant on 10-11-2000 in cash after confessing his guilt.

7. Thus, there appears no sufficient ground for proceeding against these petitioners as charge against the petitioners is groundless. The Court below

committed error in rejecting the prayer of the petitioners for discharge. In absence of any evidence, the petitioners cannot be allowed to face trial.

8. In the result, I find merit in these applications which are accordingly allowed. Consequently, the order dated 10-10-2002 as against the

petitioners are set aside and the petitioners are discharged accordingly.

However, it is made clear that the trial Court shall be at liberty to proceed with against the petitioners as well, if evidence is collected during trial as

per Section 319 of the Code of Criminal Procedure.