

**(2010) 11 JH CK 0022**

**Jharkhand High Court**

**Case No:** Writ Petition (S) No. 5483 of 2010

Sri Neeraj @ Neeraj Pathak

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

**Date of Decision:** Nov. 25, 2010

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 120B, 302, 34

**Citation:** (2011) 1 JCR 388

**Hon'ble Judges:** Rakesh Ranjan Prasad, J

**Bench:** Single Bench

### **Judgement**

@JUDGMENTTAG-ORDER

R.R. Prasad, J.

Heard learned Counsel appearing for the Petitioner and learned Counsel appearing for the State.

2. Learned Counsel appearing for the Petitioner submits that the Petitioner had made part of the investigation of a case bearing Bokaro Steel City P.S. Case No. 226 of 2002 instituted under Sections 302/120-B/34 of the Indian Penal Code. Subsequently, the Investigation was taken over by another Investigating Officer who on completion of the investigation submitted charge-sheet, upon which the trial commenced during which the parties adduced their evidences. Thereupon judgment was delivered but while delivering the judgment the learned Sessions Judge made following observation in paragraph 35.

Therefore Inspector Javed Mahmood, Sub-Inspector, M.R. Bhargav and Sub-Inspector Niraj Pathak, the Petitioner (all Investigating Officers of the case) should be immediately dismissed from police service for their active connivance with the accused. Sooner they are removed, better for the police administration.

3. On such observation made by the learned Sessions Judge, a departmental proceeding was initiated against the Petitioner wherein number of charges were framed including one charge which reads as follows:

Learned Sessions Judge while delivering the judgment did find that this Petitioner had gone in collusion with the accused person and, therefore, observation has been made to terminate the service of the Petitioner.

4. Being aggrieved with the departmental proceeding and the observation made by the learned Sessions Judge, this writ application has been filed for quashing the observation made by the learned Sessions Judge and also for quashing the departmental proceeding as all the charges are related to observation which was made behind the back of the Petitioner by the learned Sessions Judge and as such, any observation affecting the right of a person if made without giving an opportunity of being heard is fit to be expunged.

5. Having heard learned Counsel appearing for the parties, it does appear that the observation indicated above affecting the right of a person has been made by the learned Sessions Judge without giving any opportunity to him to defend himself and as such, the same can be said to have been made in violation of the principle of natural justice and therefore, aforesaid observation made by the learned Sessions Judge is hereby expunged. However, from the memo of charges, it does appear that other charges are also there which are being considered by the department to be independent to charge relating to observation depicting dereliction of duty and as such, at this stage, it would not be proper to quash the proceeding.

6. Consequently, Enquiry Officer will proceed with the proceeding leaving out the charge as mentioned at Clause "Jha". It would be appropriate to mention that Enquiry Officer and Disciplinary Authority will not be guided by the observation made by the learned Sessions Judge.

7. With this observation, this application is disposed of.