

(2011) 06 JH CK 0142

Jharkhand High Court

Case No: Criminal M.P. No. 309 of 2011

Rajesh Kumar Sinha @
Udal Jee @ Shailesh
Jee

APPELLANT

Vs

The State of
Jharkhand

RESPONDENT

Date of Decision: June 27, 2011

Acts Referred:

- Arms Act, 1959 - Section 25(1), 26
- Constitution of India, 1950 - Article 21
- Criminal Procedure Code, 1973 (CrPC) - Section 167(2), 173, 173(2), 173(8), 482
- Penal Code, 1860 (IPC) - Section 121
- Unlawful Activities (Prevention) Act, 1967 - Section 10, 13(1)

Hon'ble Judges: D.K. Sinha, J

Bench: Single Bench

Advocate: Jitendra S. Singh, for the Appellant; V.S. Sahay, APP, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

D.K. Sinha, J.

The Petitioner Rajesh Kumar Sinha @ Udal Jee @, Shailesh Jee has: invoked the inherent jurisdiction of this Court u/s 482 Code of Criminal Procedure for quashment of the order dated 14.2.2011 passed by (he Judicial Commissioner, Ranchi in Cr. Rev No. 154 of 2010 by which dismissing the revision and upholding the order dated 9.11.2010 passed by the Chief Judicial Magistrate I/C Ranchi wherein the petition filed on behalf of the Petitioner u/s 167(2) of Code of Criminal Procedure for his bail was rejected.

2. The. Petitioner was remanded on 5.8.2010 in connection with Lalpur P.S. Case No. 161 of 2010 corresponding to G.R. No. 3331 of 2010 registered for the alleged offence under Sections 25(1-B)(a), 26 of the Arms Act Section 121 of Indian Penal Code, Sections 10, 13(1)(a)(b) of Unlawful Activities.. (Prevention) Act, 1967 and u/s 17 of CLA Act. The police after investigation of the case submitted charge sheet, on 1.10.2011 only for the offence u/s 25(1-B)(a), 26 of the Arms Act showing investigation pending in other offences alleged against the Petitioner. It is stated that the Petitioner moved an application before the court of CJM Ranchi u/s 167(2) Code of Criminal Procedure for his release on bail which was finally heard by the CJM I/C Ranchi who vide order dated 9.11.2010 rejected the petition. The Petitioner then moved before the Judicial Commissioner, Ranchi in Cr. Rev. No. 154 of 2010 against the order dated 9.11.2010 which was dismissed by the order dated 14.2.2011.

3 The main thrust in this petition was that chargesheet submitted u/s 173. Code of Criminal Procedure against the Petitioner was only for the alleged offence under the Arms Act showing investigation pending for the other offences alleged against the Petitioner and in that manner the investigation was not shown to be complete on all the material particulars as per requirement u/s 173 Code of Criminal Procedure and that interim chargesheet was filed to frustrate the right of bail of the Petitioner after his detention in custody beyond 60 days. Assailing the order impugned recorded by the CJM I/C Ranchi on 9.11.2010 as also order impugned recorded by the Judicial Commissioner, Ranchi on 14.2.2011 the Learned Counsel submitted that both the courts below failed to appreciate that as per provisions u/s 173(2), final report is to be submitted after completion of investigation of the case and not the offence, and therefore, any report without complete investigation of the case could not be construed as a final report in terms of the aforesaid provision of law. Provisions of Section 167(2) Code of Criminal Procedure was introduced by way of amendment in the year 1973 in order to protect the right of personal liberty of a person or persons guaranteed under Article 21 of the Constitution of India the courts below failed to appreciate that provision of Section 173(8) Code of Criminal Procedure was quite different which provided power to the Investigating Agency for further investigation of the case and not of the offence, but in the instant case, apparently, investigation of the case was not shown to be completed. I find from perusal of the order impugned passed by the learned Judicial Commissioner in Cr. Rev. No. 154 of 2010. on. 14.2.2011 against the order impugned dated 9.11.2010 wherein it was discussed that there was no bar of further investigation of the case u/s 173(8) Code of Criminal Procedure and the learned Judicial Commissioner relied on the decision reported in [Mithabhai Pashabhai Patel and Others Vs. State of Gujarat](#), . The Apex Court held therein:

Even after submission of the police report u/s 173(2) on completion of investigation, the police has right to further investigation u/s 173(8) Code of Criminal Procedure but not fresh investigation or re-investigation. Further, law does not mandate taking

prior permission from the Magistrate for further investigation and carrying out further investigation even after filing of the chargesheet which is a statutory right of the police.

4. In the instant case I find that investigation of the case was complete against the Petitioner in so far as the allegation under the Arms Act was concerned but investigation was shown to be pending. for other offences to which the learned CJM I/C Ranchi has meticulously dealt with in his finding by rejecting-the petition of the Petitioner for his bail u/s 167(2) Code of Criminal Procedure.

5. The fact cannot be denied that right accrued u/s 167(2) is indefeasible right of an accused for presenting bail petition if the police report could not be filed, within 60/90 days as per statutory provision, yet, I find and observe that courts below were justified in rejecting the petition of the Petitioner when charge sheet was filed within. 60 days after completion of investigation of the case for the alleged offence under the Arms Act sowing investigation pending against The Petitioner for other offences in which sanctions were required. This petition is dismissed being devoid of merit.