

(2011) 12 PAT CK 0107

Patna High Court

Case No: Criminal Writ No. 808 of 2008

Arun Kumar Sharma

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision: Dec. 21, 2011

Final Decision: Dismissed

Judgement

A.K. Trivedi, J.

Heard learned counsel for the petitioner as well as learned AC to SC-22. There has been no appearance on behalf of respondent no.6.

2. Petitioner has prayed for quashing of FIR bearing Sasaram Mufassil P.S. Case No.58 of 2002 registered under Sections 409, 420, 477A, 120B of the Indian Penal Code.

3. Contention on behalf of petitioner is that he was posted at District Jail, Sasaram as an Assistant. He was not entrusted with any specific work save and except having been allotted in routine manner. More particularly, he was not entrusted with history ticket, remission card, release diary with regard to six released convicts, namely, Baidyanath Kurmi, Ramji Kurmi, Ramashish Kurmi, Bihari Kurmi, Gauri Kurmi, Kesho Kurmi who were released on 30.08.1997, rather the same happens to be in custody of the then Superintendent, Ashok Kumar Chaudhary who had managed the affair and got the aforesaid convicts released by hook and crook and so the FIR arraying him as an accused, is liable to be quashed. Then submitted that there happens to be specific provision enumerated under Bihar Jail Manual where under duties and responsibilities of clerks, Superintendent of Jail has been defined and for that referred Rule 51 to 56 as well as 242. Further submitted that as per Rule 71 of the Jail Manual, the subordinate staffs are only authorized to discharge those provisions which happen to be entrusted to him by a written order of Superintendent. There happens to be no written order and on account thereof, petitioner cannot be held responsible. Further it has been submitted that as per Rule 515 of the Bihar Jail Manual, the history sheet of release convict are to be

destroyed within one or two year which period had already expired and therefore, now it is not possible, to trace out the same. Further submitted that petitioner including others was show caused and the same was filed explaining the situation. Not only this one Lalan Prasad Singh had complained before Hon"ble High Court, Patna and accordingly I.G., Prison was directed to inquire into the matter who, after due inquiry, submitted his report vide Letter No.3178 dated 30.07.1999 (Annexure-5) disclosing that there happens to be no illegality / irregularity. It has further been pleaded that departmental proceeding launched against Ashok Kumar Chaudhary concluded exonerating him. Therefore, submitted that in the aforesaid facts and circumstances of the case there happens to be absence of any kind of illegality committed at the hands of petitioner. Also referred AIR 1991 page-69 to suggest that the case has been instituted in the year 2002 and more than nine years have elapsed and so continuance of instant proceeding will be nothing but an abuse of the process of the court.

4. Further been submitted that from the allegation whatever been incorporated in the written report no offence u/s 409, 420, 477A, 120B of the I.P.C. is made out because of the fact neither there happens to be any sort of preparation of forged document nor anybody was cheated. When from perusal of the FIR no offence is made out then in that event no prosecution is permissible and for that relied upon [State of U.P. Vs. R.K. Srivastava and Another](#), [Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others](#), [State of West Bengal and Others Vs. Swapan Kumar Guha and Others](#), [State of Haryana and others Vs. Ch. Bhajan Lal and others](#), So submitted that in any view of the matter the FIR is fit to be quashed so far it relates to petitioner.

5. Counter meeting with the pleading of petitioner, counter affidavit has been filed on behalf of State wherein the prayer of the petitioner has been opposed. Then it has been submitted that all the convict who were released on 30.08.1997 on the eve of Independence Day (consummating golden jubilee of independence) though were convicted for imprisonment for life u/s 302, 149, 148 of the Indian Penal Code, 27 of the Arms act. They have entered in jail on 05.01.1988 as is evident from admission register. So all the convict were released only after spending only 9 years 7 month 25 days in custody for which they were not at all entitled for. The aforesaid release was authenticated and facilitated by Superintendent of Jail Ashok Kumar Chaudhary, Jailor Sheo Nandan Chaudhary, Jail Clerk Arun Kumar Sharma. Rameshwar Prasad, Arbind Kumar after incorporating in the remark column that they were released after completing period of 16 years inclusive of remission as well as period as an under trial prisoners in pursuance of letter circulated vide Memo No.3092 dated 13.08.1997 issued by the Law Department. The aforesaid forgery was traced out and then an inquiry was conducted during course of which history ticket, remission card, release diary relating to aforesaid six convicts were called for which was purposely and intentionally withheld and from their conduct, it is evident that for aforesaid purpose, they all have connived. It has further been submitted that then thereafter

on an order of the authorities concerned show cause notice was issued followed with institution of case against petitioner including others. It has further been submitted that after bifurcation of State, Ashok Kumar Chaudhary opted for Jharkhand where he manage the affair and got himself exonerated from the departmental proceeding although the Jharkhand Government was not at all concerned with the affair nay any information was given to the Bihar Government with regard to conduction of the Departmental proceeding. As such submitted that the aforesaid event was not at all found favourable in favour of petitioner.

6. As per direction of I.G., Prison, Bihar received through Letter No.127 dated 10-01-2002 written report was submitted by the then Superintendent, District Jail, Sasaram with an allegation that to facilitate illegal release of convict Baidyanath Kurmi, Ramji Kurmi, Ramashish Kurmi, Bihari Kurmi, Gauri Kurmi, Kesho Kurmi on 30.08.1997, the history ticket, remission card, release diary relating to aforesaid convicts had intentionally been removed in connivance with each other by the then Superintendent Jail, Jailor respective clerks for which instant case has been registered. So many annexures have been annexed therewith to show the complicity of the individual accused as well as an explanation submitted by them respectively.

7. As relied upon by the learned counsel for the petitioner, in a celebrated decision [State of Haryana and others Vs. Ch. Bhajan Lal and others](#), the following criteria has been formulated by the Hon"ble Apex Court which could justify quashing of the FIR and those are:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroveretd allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, on investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient grounds for proceedings against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceedings is instituted) to the

institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

8. Now the facts of the case has to be dealt with to see whether any of the criteria so identified by the Hon"ble Apex Court is applying or not. There is no dispute with regard to release of six convicts, namely, Baidyanath Kurmi, Ramji Kurmi, Ramashish Kurmi, Bihari Kurmi, Gauri Kurmi, Kesho Kurmi who were life convict and whose date of entry in the admission register happens to be 05.01.1988. So in usual phenomena they were not at all entitled for their release on 30.08.1997. Therefore, their release was an outcome of fraudulent action of the authorities concerned. Who is to be blamed, is a matter of investigation. Unless and until the act committed by an individual is traced out, it cannot be said, at least for the present, that petitioner has got no hand.

9. Petitioner has referred so many rules of Bihar Jail Manual. Under Chapter V the duties of Superintendent has been incorporated. More particularly Rule 71 is to be presently dealt with which provides entrustment of duties to be carried out by the subordinate staff. For that purpose it is better to incorporate Rule 71:

71. The Superintendent of every jail shall prescribe in writing (or see that this has been done) in his minute-book the division of labour allotted to each of his subordinates, especially to those employed in the jail office, so that the responsibility for errors in the jail records, and for any other dereliction of duty, may be fixed with precision and without dispute. In district jails it should be specifically stated what office work the jailor and his assistant jailor shall respectively perform: but no such order shall relieve a jailor of the responsibility of ensuring that the work in the jail office, whether done by himself or by his assistant, is properly and punctually conducted. (Corresponding Rules 76, 242, 1217.)

10. Its, Section 6 deals with the function to be decided by the Subordinate Officer which includes the non-gazetted employee of the Jail. Rule 172 takes care of and for that the same is incorporated herein under:

172. All subordinate officers are bound -

(1) to render all assistance in their power in the management of the jail, the maintenance of order and discipline amongst both officers and prisoners, and the guarding and defending of the jail and all persons and property kept therein or belonging thereto against the use of criminal force by any person;

(2) to render prompt and strict obedience to all lawfull orders of his superior officers and to treat all superior officers and visitors with respect; (Corresponding Rule 21).

(3) to comply with the requirements of all law, rules, regulations, directions and orders for the time being in force regulating his duties which they are perform and the manner in which they are to perform them;

(4) to take proper care of all property of whatever kind at any time entrusted to them and duly to account for the same whenever called upon so to do.

11. So the petitioner cannot escape from its responsibility.

12. There happens to be no denial on behalf of petitioner that at the relevant time he was not posted at District Jail, Sasaram. There is whisper at the end of petitioner itself that he along with others have filed their show cause which happens to be part and parcel of FIR. The aforesaid show cause has been gone through and it does not exonerate the petitioner from his liability at least to that extent which could justify his prayer.

13. Consequent thereupon, I do not see any merit and accordingly petition is dismissed.