

2017 SCC ONLINE PAT 937 .

Ajay Kumar Saboo v. State Of Bihar

Patna High Court (Jun 30, 2017)

CASE NO.

Criminal Miscellaneous No. 20945 of 2014, Arising Out of PS. Case No. 330 Year-2004
Thana Patna Complaint Case District Patna

ADVOCATES

/s: Mr. Abhimanyu Rusta, Adv Mr. Sudhanshu Trivedi, Adv. Mr. Abhisek Singh, Adv.

Mr. Neeraj Kumar, Adv.

For the Union of India: Mr. R.K. Sharma, Adv.

For the State Mr. Umanath Mishra, A.P.P.

JUDGES

Anil Kumar Upadhyay, J.

Summary

1. 2. The grievance of the petitioner in the instant application is that in Complaint Case No. 330(C) of 2004, the petitioner has filed an application under section 205 Cr.P.C, the court below without considering the law laid down by this Hon'ble Court in the order passed in Criminal Revision No. 97 of 2011 dated 23.11.2006, reported in 2007 (1) PLJR 822, rejected the application vide order dated 09.12.2010 The revisional court perpetuated the illegality by dismissing Cr.

2. 4. Notwithstanding the aforesaid judgment which was circulated to all the Civil Courts, the court below rejected the application of the petitioner filed to dispense with personal appearance vide order dated 9.12.2010 and even the revisional court in Cr.

JUDGMENT

Anil Kumar Upadhyay, J.: Heard learned counsel for the petitioner, State and counsel on behalf of the Union of India.

2. The grievance of the petitioner in the instant application is that in Complaint Case No. 330(C) of 2004, the petitioner has filed an application under section 205 Cr.P.C, the court below without considering the law laid down by this Hon'ble Court in the order passed in Criminal Revision No. 97 of 2011 dated 23.11.2006, reported in 2007 (1) PLJR 822, rejected the application vide order dated 09.12.2010 The revisional court perpetuated the illegality by dismissing Cr. Revision No. 97 of 2011 vide order dated

28.2.2010

3. It appears from the averment made in the instant petition that at the relevant time the petitioner was Managing Director and whole time Director of the Company and the complaint was filed by Registrar of the Company under section 58(A) of the Companies Act read with Rule-3(i)(a) proviso (i) Rule 10 of the Company within (Acceptance and Deposits) Rules, 1975. The reason for rejection of the application under Section 205 Cr. P.C as appears from Annexure-2 that the offence is nonbailable. The court below committed error of jurisdiction in ignoring the fact that in the instant case after taking cognizance, summon was issued by the court below and in view of the judgment of the Division Bench in the case of Ram Harsh Das case reported in 1998(1) PLJR 502, the court was required to consider the application of the petitioner on its own merits without being prejudiced by the facts that the offence as alleged is nonbailable. In similar circumstances, a Bench of this Court in Cr. Revision Nos. 543, 454 of 2006 in the case of Manish Giri v. State of Bihar reported in 2007 (1) PLJR has discussed the scope under section 205 Cr.P.C and noticing the Division Bench judgment in the case of Ram Harsh Das (supra) and various other judgments held out that power to refuse permission under section 205 Cr.P.C should not be used as a substitute for ultimate punishment which could be awarded. The court decided the matter but also in the last paragraph issued direction to the Registrar to circulate the copy of the order for to all the Civil Courts in the State of Bihar for guidelines of Judicial Officers in future.

4. Notwithstanding the aforesaid judgment which was circulated to all the Civil Courts, the court below rejected the application of the petitioner filed to dispense with personal appearance vide order dated 9.12.2010 and even the revisional court in Cr. Revision No. 97 of 2011 has failed to exercise judicial discretion for the ends of justice and as such the petitioner was constraint to approach this Court by way of filing the instant application.

5. In view of the judgment of this Hon'ble Court reported in 2007 (1) PLJR 820, this application is allowed. The order passed by Special Judge, Economic Offence in Complaint Case No. 330 of 2004 dated 9.12.2010 and order dated 28.2.2014 passed by learned Ad hoc ADJ-VI in Cr. Revision No. 97 of 2011 are set aside.

6. The court below is directed to dispense with personal appearance of the petitioner on the condition that as and when personal appearance is required, the petitioner will appear and assist the court in conclusion of the pending case before the Special Judge, Economic Office, Patna in Complaint Case No. 330 of 2004.