

BIHAR STATE FOOD AND CIVIL SUPPLIES CORPORATION

A

v.

NARENDRA KUMAR MISHRA AND ANR.

NOVEMBER 28, 1995

[K. RAMASWAMY AND S.B. MAJMUDAR, JJ.]

B

Constitution of India, 1950 : Article 136.

Employee—Misappropriation of cash—Sanction for prosecution—Delay—Discharge—Held no interference called for.

C

The respondent was prosecuted for misappropriation of cash but was discharged on the ground that sanction for his prosecution was not obtained under Section 197 of the Code of Criminal Procedure, 1973. Subsequently, sanction was obtained but the High Court interfered with the matter on the ground that there was delay of 15 years in laying the prosecution.

D

Dismissing the appeal by the employer, this Court

HELD : It is most unfortunate that the High Court has interfered in this matter, but having regard to the distance of time at the this Stage, it is not appropriate to interfere with the matter which is at a stage of just starting of the trial. Having considered the totality of the fact of abnormal delay, it is not a fit case for interference under Article 136 of the Constitution. [746-C-D]

E

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1578 of 1995.

F

From the Judgment and Order dated 11.3.92 of the Patna High Court in Crl. Misc. No. 3575 of 1991 (R).

Udai Sinha, Ranjan Mukherjee and Gopal Singh for the Appellant.

G

Ranjit Kumar for the Respondents.

The following Order of the Court was delivered :

Leave granted.

H

- A It is stated that the first respondent was posted as an Assistant Godown Manager in the Stores. Within a period of three months, he committed defalcation of mis-appropriation of Rs. 2,61,859.30. The mis-appropriation of the said amount took place during the period of 1976 and earlier. A departmental enquiry commenced on December 12, 1979 and initially the prosecution was laid in 1985 without obtaining the sanction.
- B The learned Magistrate discharged the respondent on the ground that the sanction as required under Section 197 of the Code of Criminal Procedure, 1973 was not obtained. In 1991, the sanction was obtained and thereafter the prosecution was laid. The High Court unfortunately has interfered with the matter exercising its jurisdiction under Article 226 on the ground that
- C there was a delay of 15 years in laying the prosecution. This was most unfortunate that the High Court would have interfered but having regard to the distance of time at this stage, it is not appropriate to interfere with the matter which is at a stage of even starting of the trial.

- D Having considered the totality of the fact of abnormal delay, it is not a fit case for our interference under Article 136 of the Constitution. We are constrained to dismiss the appeal on this ground.

T.N.A.

Appeal dismissed.