

(2010) 09 PAT CK 0110

In the Patna High Court

Case No : Criminal Miscellaneous No. 9309 of 1999

Abhiram Sharma

APPELLANT

Vs

The State of Bihar, Ramanuj Sharma, Ramnaresh Sharma
and Bindeshwari Sharma

RESPONDENT

Date of Decision : 15-09-2010

Acts Referred:

Citation : (2010) 09 PAT CK 0110

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—Learned Counsel for the petitioner files supplementary affidavit enclosing therewith certified copy of the order dated 21.5.1997 passed in Complaint Case No. 1326 C of 1996 as well as orders dated 9.4.2010 and 5.5.2010 passed in the said Complaint Case. Let it be kept on record.

2. The sole petitioner, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, has prayed for quashing of the order dated 1.10.1996 passed in Complaint Case No. 801 (2) of 1996. By the said order, the learned Sub Divisional Judicial Magistrate, Masaurhi has taken cognizance of offence u/s 182 of the Indian Penal Code and directed for summoning the petitioner.

3. Short fact of the case is that as per instance of the petitioner, an F.I.R. vide Dhanarua P.S. Case No. 137 of 1995 was registered against Ramanuj Sharma and others for the offences under Sections 147, 447 and 379 of the Indian Penal Code. However, after investigation, the police submitted final report mentioning therein the case as false. Besides submitting final form, the police also filed prosecution report for prosecuting the petitioner for offence under Sections 182 and 211 of the Indian Penal Code and thereafter by order dated 1.10.1996 the learned Sub Divisional Judicial Magistrate took cognizance of offence u/s 182 of the Code of Criminal Procedure.

4. Aggrieved with the order of cognizance, the petitioner approached this Court

by filing the present petition, which was admitted on 21.12.1999. In this case, on 8.10.1999, this Court had directed that pending admission of this application further proceeding in Complaint Case No. 801 (2) of 1996 pending in the court of Sub Divisional Judicial Magistrate, Masaurhi shall remain stayed. On 21.12.1999, the case was admitted and while admitting it was directed that the interim order shall continue till the disposal of this application. The interim order of stay is still continuing.

5. Sri Sandeep Kumar, learned Counsel appearing on behalf of the petitioner, while challenging the order of cognizance as well as the entire proceeding against him in Complaint Case No. 801(2) of 1996, has argued that while investigation was going on, the petitioner apprehended that the police may not do justice in the investigation. As such, the petitioner had filed a protest petition, which was treated as Complaint vide Complaint Case No. 1326 (C) of 1996. Learned Counsel for the petitioner, while referring to Annexure-2 series to the supplementary affidavit, submits that in the said complaint the learned Magistrate had taken cognizance of offences under Sections 147, 148, 452 and 380 of the Indian Penal Code against accused persons. It has been argued that once the learned Magistrate has found the allegation true leveled by the petitioner, on which earlier F.I.R. was lodged, it would not be appropriate to allow the prosecution of the petitioner on an allegation of filing a false case against Opp. Party Nos. 2 to 4. Learned Counsel for the petitioner has also referred to a Judgment of the Hon"ble Supreme Court, reported in State of Punjab Vs. Brij Lal Palta, It has been argued that the Hon"ble Supreme Court has also deprecated such prosecution. On the aforesaid ground, it has been argued that the prosecution of the petitioner in Complaint Case No. 801 (2) of 1996 amounts to abuse of the process of the Court and, as such, this Court may interfere with the impugned order.

6. Smt. Indu Bala Pandey, learned Addl. Public Prosecutor appearing on behalf of the State has opposed the prayer of the petitioner. However, she is not in a position to deny the fact that the protest petition filed by the petitioner was treated as complaint and thereafter the learned Magistrate has already taken cognizance of offences.

7. Besides hearing learned Counsel for the parties, I have also perused the materials available on record. It is true that on the date of order of cognizance in Complaint Case No. 801 (2) of 1996, there was no order of cognizance on the complaint filed by the petitioner. But the fact remains that the petitioner had already filed a protest petition before filing of the final report by the police and the protest was treated as complaint. On that complaint subsequently, the learned Magistrate had taken cognizance of offences on 21.5.1997 vide Annexure-2 to the present petition. Keeping in view the fact that subsequently, the learned Magistrate on the complaint of the petitioner has already taken cognizance, there is no need to allow the prosecution of the petitioner in Complaint Case No. 801 (2) of 1996 and, as such, it is just and proper to quash

the order dated 1.10.1996 passed in Complaint Case No. 801 (2) of 1996 by the learned Sub Divisional Judicial Magistrate, Masaurhi and also to quash the entire proceeding against the petitioner.

8. Accordingly, the order dated 1.10.1996 passed in Complaint Case No. 801 (2) of 1996 passed by the learned Sub Divisional Judicial Magistrate and the entire proceeding against the petitioner is hereby set aside and the petition stands allowed.