
(2010) 07 PAT CK 0109
In the Patna High Court

Amrita Priyam

APPELLANT

Vs

The State of Bihar and Nagendra Prasad Singh

RESPONDENT

Date of Decision : 14-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 420, 467, 468

Citation : (2010) 07 PAT CK 0109

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—The sole petitioner, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, has prayed for quashing of an order dated 16.1.1999/17.2.1999 passed by the learned Judicial Magistrate, 1st Class, Patna. By the said order, the learned Magistrate has taken cognizance of offences under Sections 420, 467 and 468 of the Indian Penal Code in Complaint Case No. 1586 (C) of 1998.

2. Short fact of the case is that the Opp. Party No. 2 , who was the Secretary of Laxmi Grih Nirman Samiti Ltd. (hereinafter referred to as "the Society") filed a complaint, vide Complaint Case No. 1586(C) of 1998, disclosing therein that the petitioner was one of the members of the Society and a piece of land was allotted by the Society to the petitioner with a condition that without permission of the Society , she cannot transfer the said land to any one. It was alleged that the petitioner without obtaining any permission from the Society has transferred the land to one another person. It has also been stated in paragraph 5 of the complaint petition that if a member transfers a piece of land of the Society to any other person without permission of the Society, the Society will be at liberty to take step for cancellation of the said transfer. On the aforesaid allegation, the present complaint was filed and after filing of the complaint petition, the complaint was examined on S.A. and some witnesses were examined as enquiry

witnesses and thereafter by the impugned order, the learned Magistrate has taken cognizance of the offence.

3. Sri Amish Kumar, learned Counsel appearing on behalf of the petitioner, while placing the contents of Complaint Petition submits that on perusal of the complaint petition, no offence is made out. It was submitted that had there been any illegality or irregularity, the Society was having remedy in civil side. For such allegation criminal prosecution was no required to be initiated.

4. In this case, despite service of notice on Opp. Party No. 2, he has not preferred to appear before this Court and, as such, at the time of hearing none appeared on behalf of Opp. Party No. 2.

5. Smt Indu Bala Pandey, learned Addl. Public Prosecutor appearing on behalf of the State has opposed the prayer of the petitioners.

6. Aggrieved with the order of cognizance, the petitioner approached this Court by filing the present petition, which was admitted on 11.2.2002. In this case by order dated 29.3.2001, while issuing notice to Opp. Party No. 2, this Court had directed that till further order is passed, further proceeding in Complaint Case No. 1586 (C) of 1998 pending before the Judicial Magistrate, 1st Class, Patna , shall remain stayed and this case was admitted on 11.2.2002 and this Court had directed that during the pendency of this application, interim order passed on 29.3.2001 shall remain operative and the same is still continuing.

7. Besides hearing learned Counsel for the petitioner and learned Addl. Public Prosecutor appearing on behalf of the State. I have also perused the materials available on record including the Complaint Petition. On perusal of the entire complaint petition, it is difficult to infer as to what offence, the petitioner has committed. It appears that the learned Magistrate in a mechanical manner has passed the impugned order.

8. Without going in detail, on perusal of the complaint petition and other materials the Court is satisfied that the prosecution of the petitioner in such situation was completely unwarranted.

9. Accordingly, the order of cognizance dated 16.1.1999/17.2.1999 passed by the learned Judicial Magistrate, 1st Class in Complaint Case No. 1586(C) of 1998 is hereby set aside and the petition stands allowed.