
(2007) 02 PAT CK 0045

In the Patna High Court

Case No : Criminal Miscellaneous No. 10652 of 1998

Anju Pathak

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 01-02-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 319, 482

Citation : (2007) 2 PLJR 832

Hon'ble Judges : Madhavendra Saran, J

Bench : Single Bench

Advocate : Gajendra Kumar Jha II and Kumari Sunita Saran, for the Appellant;
Mayanand Jha, for the Respondent

Final Decision : Allowed

Judgement

Madhavendra Saran, J.—This application u/s 482 of the Code of Criminal Procedure (in short as "the Code") has been filed for quashing the order dated 19.2.1998 passed by Shri B.K. Malviye, Judicial Magistrate, IInd Class, Begusarai in G.R. No. 344 of 1993 whereby and where under he has issued summon against the petitioner u/s 319 of the Code to face the trial. The prosecution case, in short, is that one Ratan Shankar Pathak, brother-in-law of the petitioner, filed a petition of complaint against the petitioner and others in the Court of Chief Judicial Magistrate, Begusarai on 18.11.1992, a copy of which was sent to Police u/s 156(3) of the Code for registration and investigation on the basis of which the police registered Begusarai Town P.S. Case No. 61 of 1993. In the complaint petition it was mentioned that the complainant and his family had gone to attend a Puja ceremony and at about 11.30 p.m. he returned back along with one Shakti Jha to the house when he found lock of his dwelling room lying in broken condition. He also found some persons inside the room. The complainant reached at the door of his room raising alarm and then he saw the accused persons coming out of the room holding articles in their hands with intention to commit theft, On protest being made by the complainant and his wife Meera Pathak, the

accused person assaulted the complainant and his wife with fists and slaps. It is alleged that accused Hari Shankar Pathak took away box containing articles, accused Jai Shankar Pathak took away two rajas, accused Uma Shankar Pathak took away twenty one pairs of dhoti and accused Ram Swaroop Pathak carried away Lota and Thali. The Police after investigation, submitted charge-sheet but the petitioner was not sent up for trial. The charges were framed against charge-sheeted accused persons and trial proceeded and after examination of 7 witnesses a petition was filed on behalf of the prosecution to summon the petitioner u/s 319 of the Code. Learned Magistrate heard the matter and by impugned order dated 19.2.1998 allowed the prayer and directed the office to issue summon against the petitioner Anju Pathak. Against the said order 19.2.1998 the petitioner has preferred the present application for quashing before this court.

2. The submission of the learned counsel for the petitioner is that during pendency of the criminal trial co-accused no. 4 Ram Swaroop Pathak died and the other remaining three accused named Hari Shankar Pathak, Jay Shankar Pathak and Uma Shankar Pathak faced the trial and by judgment dated 19.6.2002 they have been acquitted by the court below. His further submission is that against the said order of acquittal neither the informant nor the petitioner filed any appeal before the court. His further submission is that nothing specific has been assigned against the petitioner and as per the evidence of PWs. 5, 6 and 7 she was only member of that mob. His also submission is that the order impugned is mechanical one and the continuation of the present criminal proceeding against the petitioner is an abuse of process of the court.

3. Learned A.P.P. on the other hand supported the impugned order.

4. It is settled view that the court has to use the power u/s 319 of the Code sparingly and primarily to advance the cause of criminal justice. It is also settled view that the said power would not be exercised when the possibilities of the petitioner being convicted is remote. Now the position in the present case is that a petition u/s 319 was filed by the informant on 2.5.1996 after examination of PWs. 5 and 6 for summoning the petitioner to face trial along with other accused persons which was rejected by the learned Magistrate by a detailed order dated 10.7.1996. Against the said rejection Criminal Revision No. 286/96 was preferred before the Sessions Judge which was dismissed with certain direction and observation. Thereafter, witnesses Meera Pathak (PW. 7) was examined as a prosecution witness and after her examination the informant again filed a petition on 6.3.1997 to summon the petitioner which was rejected by the trial court on 28.5.1997. It appears that the said order was never challenged by the informant before any competent court. Thereafter, again a petition u/s 319 was filed on behalf of the State on 11.6.1997 which was heard and rejected by the trial court on 29.8.1997. The APP in charge of the case filed the present petition u/s 319 before the court below on 7.2.1998 and the learned Magistrate by impugned order dated 19.2.1998 allowed the prayer.

5. It has been further contended on behalf of the petitioner that on the same set of evidence the other accused who faced the trial have been acquitted by the learned Magistrate vide judgment dated 19.6.2002 and against the said acquittal no appeal has been preferred either by the informant or by the State. He also contended that more or less the same evidence will be available against the petitioner.

6. In the impugned order dated 19.2.1998, the learned Magistrate has nowhere observed that there is reasonable prospect of the case as against the petitioner, ending in conviction.

7. As mentioned above the alleged occurrence took place in the year 1992. It has been pointed out that the informant is Dewar of the petitioner and at the time of alleged occurrence all of them were living in the same building and, therefore, the presence of the petitioner in the house was quite natural. In the aforesaid facts and circumstances, in my view the continuation of the present proceeding against the petitioner would be an abuse of process of the court. Such being the position, this application is allowed and the order impugned is against the petitioner is hereby quashed.