

(2006) 02 PAT CK 0020

In the Patna High Court

Case No : Criminal Miscellaneous No. 27236 of 2002

Awadesh Kumar Mehta @ Awadhesh Prasad Mehta

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 07-02-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 203, 398, 399, 401
Penal Code, 1860 (IPC) — Section 120B, 419, 420, 467, 468

Citation : (2006) 2 PLJR 254

Hon'ble Judges : Rekha Kumari, J

Bench : Single Bench

Advocate : Birendra Prasad Verma, Durgesh Kumar, Mritunjay Kumar and Hriday Narain Harshi, for the Appellant; Shahab Azeem for the State and Mr. Ram Bali Jha for Opp. Party No. 2, for the Respondent

Final Decision : Allowed

Judgement

Rekha Kumari, J.—This is an application filed u/s 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) for quashing the order dated 28.5.2002 passed by the 5th Additional Sessions Judge, Darbhanga in Criminal Revision No. 330 of 2001 by which he has set aside the order of the learned Chief Judicial Magistrate, Darbhanga dismissing the complaint case No. 270 of 2001 under the provisions of Section 203 of the Code and has directed the Chief Judicial Magistrate to make further enquiry and pass a fresh order in accordance with law. There is also a prayer for quashing the subsequent order dated 13.8.2002 passed in the above complaint case by the learned Chief Judicial Magistrate, Darbhanga in compliance of the order passed in revision application under which he took cognizance under sections 419, 420, 467, 468, 471 and 120-B of the Indian Penal Code against the petitioner and other persons. Heard both sides.

2. Shorn of any details, suffice it is to say that the complainant initially had filed a complaint petition against the petitioner and other co-accused in the Court of

the Chief Judicial Magistrate, Darbhanga for taking action under sections 419, 420, 467, 468, 471 and 120-B of the Indian Penal Code, a copy of which was sent to the police for institution of a case and for making investigation. Accordingly Kamtaul P.S. Case No. 26/2000 was registered. The police after investigation submitted final report as "case false".

3. The complainant filed a protest petition in the nature of complaint. The complainant was examined on solemn affirmation. Thereafter two witnesses were examined u/s 202 of the Code. The learned Chief Judicial Magistrate after considering their statements dismissed the complaint u/s 203 of the Code. The complainant preferred Criminal revision application against that order. The learned Additional Sessions Judge by the impugned order set aside the order of the Chief Judicial Magistrate and directed him to make further enquiry and pass a fresh order. The Chief Judicial Magistrate accordingly passed the order dated 13.8.2002 summoning the petitioner and other accused persons to stand trial.

4. Learned counsel for the petitioner submitted that in the Criminal Revision application neither the petitioner nor any accused was made a party and was given any opportunity of hearing. Therefore, the impugned order passed by the learned Additional Sessions Judge is violative of the provisions of Section 401 of the Code and against the principles of natural justice and, therefore, is liable to be set aside and this being so, the consequential order of the learned Chief Judicial Magistrate is also non est. In support of his submissions, he has relied upon a decision of this Court (Ranchi Bench) in the case of Mostt. Malti Saha and Ors. vs. State of Bihar & Anr., 2000(1) P.C.C.R. 197. He further submitted that the learned Chief Judicial Magistrate after receipt of the order of the learned Additional Sessions Judge, Darbhanga did not make any further enquiry and on the basis of the materials already on record he passed the impugned order and, therefore, the impugned order of the learned Chief Judicial Magistrate is also bad in law.

5. Learned Counsel for Opposite Party No. 2 (complainant) on the other hand referred to Section 398 of the Code and submitted that the provisions made therein is clear that it is not necessary to give an opportunity of hearing to any person accused of an offence when in revision, the High Court or the Sessions Judge orders for further enquiry into any complaint which has been dismissed u/s 203 of the Code. He further submitted that an order of "further enquiry" does not make it obligatory for the Magistrate to proceed further u/s 202 of the Code. It includes reconsideration of the evidence which is already on record.

6. As regards the second contention of the learned counsel for the petitioner, further enquiry does not necessarily means taking of further evidence. It includes reconsideration. In the case of Saiyed Abrarul Hasnain Vs. The State of Bihar and Others, this Court relying on two Division Bench decisions of this Court in Brijnath Sahai vs. Babu Lal, 1956 B.L.J.R. 575, and Jugeshwar Choudhary vs. A. Lakra, 1966 B.L.J.R. 693 has held that the law is well settled that after enquiry if a complaint is dismissed and revisional court orders for further enquiry on finding

a prima facie case, then the court below has nothing to do except to take cognizance. Therefore, if on the same material the learned Chief Judicial Magistrate had taken cognizance and ordered to issue summons, the impugned order passed by him cannot be said to be bad on that account.

7. The question, however, is whether the order of the learned Additional Sessions Judge can be sustained and if the same is not sustainable, the impugned order of the learned Magistrate would be non est and would be quashed.

8. Now, so far the order of the learned Additional Sessions Judge, Section 401 of the Code which provides for High Court power of revision in its sub-section (2) it has been provided that "no order under this section shall be made to the prejudice of the accused or any other person unless he has had an opportunity of being heard either personally or by pleader on his own defence". This provision is applicable also in the case of power exercised in revision u/s 399 of the Code by the Sessions Judge.

9. The Ranchi Bench of this Court in the above case while dealing with this issue, observed that since the accused were materially benefitted by the order of the Magistrate dismissing the complaint u/s 203 Cr.P.C. as they were not given opportunity of hearing in the Sessions Court in revision, they were certainly prejudiced when the order of the Sessions Court turned to be detrimental to their interest. The Court, accordingly, set aside the order of the Sessions Court passed in revision.

10. Therefore, in view of the above decision it is evident that the order of the learned Additional Sessions Judge cannot be sustained and is hereby set aside. Accordingly, the subsequent order of the learned Chief Judicial Magistrate taking cognizance and issuing summons to the petitioner and other co-accused persons is also not maintainable. In the result, this application u/s 482 of the Code is allowed and the impugned orders are hereby set aside. The learned Additional Sessions Judge, Darbhanga is directed to send notice to all the accused persons including the petitioner and also the complainant and after giving them opportunity of hearing, pass a fresh order in accordance with law.