

(2005) 12 PAT CK 0020

In the Patna High Court

Case No : Criminal Miscellaneous No. 26915 of 2002

Awadh Kishore Choudhory and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 09-12-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 192(1), 202, 482
Penal Code, 1860 (IPC) — Section 323, 327, 34, 380, 427

Citation : (2006) 1 PLJR 699

Hon'ble Judges : Rekha Kumari, J

Bench : Single Bench

Advocate : Ratna Das, for the Appellant; Surendra Kumar for O.P. No. 2 and ,
Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Rekha Kumari, J.—This is an application u/s 482 of the Code of Criminal Procedure for quashing the order dated 24.9.2001 passed by the A.C.J.M., Patna City, by which he had made over the complaint u/s 192(1) Cr. P.C. to Sri S.N. Singh, Judicial Magistrate and also for quashing the order dated 9.7.2002 passed by the Judicial Magistrate, 1st Class under which he has ordered to issue summons against the petitioners for standing trial for offences under sections 461, 380, 448, 508, 323, 327/34 of the Indian Penal Code in C.A. No. 723/2001. Heard.

2. Learned counsel for the petitioners submitted that the complainant (O.P. No. 2) and petitioner No. 1 are full brothers and they are on litigating terms. The house from which theft is alleged to have been committed have been allotted to petitioner No. 1 and he had been becoming in possession. His name has also been mentioned against that house. The house was not in possession of O.P. No. 2 and therefore, there is no question of any occurrence as alleged and that O.P. No. 2 has filed the complaint only to harass the petitioners. He also submitted that O.P. No. 2 had also got a case filed u/s 107 Cr. P.C. against the petitioners

regarding disputed house but the same was dropped.

3. It is well settled that at the time of taking cognizance the Magistrate has only to see whether the allegations made in the complaint petition disclose any offence and at the time of issuance of processes he has only to see whether there is any prima facie case against the accused for proceeding against him. The facts mentioned by the learned lawyer are defence of the petitioners and it is also settled that the Magistrate is not required to consider the defence of the accused at this stage.

4. The impugned order dated 9.7.2002 shows that the Magistrate after perusing the complaint petition, the statement of the complainant on S.A. and the statement of the witnesses examined under section 202 Cr.P.C. has found a prima facie case under sections 380, 448, 504, 323, 427, 461 I.P.C. against the petitioners and has ordered to issue summons. Therefore, I do not deem it fit to exercise the power u/s 482 Cr. P.C. and quash the orders. This application, hence, is dismissed.