
(1971) 08 PAT CK 0019
In the Patna High Court

Basudeo Hissaria and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-08-1971

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 195, 200, 203, 204, 403
Penal Code, 1860 (IPC) — Section 186

Citation : (1972) CriLJ 973

Hon'ble Judges : B.D. Singh, J

Bench : Single Bench

Judgement

B.D. Singh, J.—This application u/s 561-A of the Code of Criminal Procedure (hereinafter referred to as "the Code") has been filed by the two petitioners against an order of Sri D. N. Prasad. Munsif Magistrate Sadar Monghyr dated the 18th March. 1971 refusing to drop the proceeding against them under the provisions of Section 403 of the Code.

2. In order to appreciate the point involved in this application, it will be necessary to state briefly the facts. Janardan Gir, the Labour Officer who is Opposite Party No. 2. on the 6th September 1967 in official discharge of his duties, went to inspect various shops located at Sadar Bazar Jamalpur, Police-station Monghyr under the Bihar Shoos and Establishments Act. 1953 and after inspecting some shops, opposite party no. 2 entered the shop of petitioner no. 2, at 9. 30 p. m. of the day. Petitioner no. 2 is the owner of the shop whereas petitioner no. 1 possibly is a friend of petitioner no. 2. The shop deals in ready-made garments. Petitioner no. 1 thereafter came along with 50 to 60 persons and stopped Opposite party No. 2 from performing his official duties, whereas petitioner no. 2 refused to produce the records of the shoo before opposite party no. 2. and it is alleged that he also abused opposite party no. 2 and stated that he could not inspect the shop at that hour of the night. Subsequently opposite party no. 2 lodged Sanaha (Ext. 4) on the same date. i. e. on the 6th September 1967 at 10 p. m. The Officer In charge of the Police-station submitted report on the 10th September 1967 against the two petitioners. The Sub-divisional

Magistrate. Monghyr. took cognizance for an offence u/s 186 of the Indian Penal Code against the petitioners and transferred the case to Sri D. N. Prasad, Munsif Magistrate. Monghyr, for disposal. In that proceeding the petitioners were, however, acquitted by an order of the Munsif Magistrate dated the 2nd March 1970. a true copy of which is marked Annexure "1" to the application before this Court, mainly on the ground that opposite party no. 2 being a public servant, it was for him to have lodged a complaint under the provisions of Section 195(1) (a) of the Code before the Sub-divisional Magistrate. He could not have lodged the Sanaha before the Officer In charge of the Police-Station. Consequently a formal complaint was filed by Opposite party no. 2 before the Subdivisional Magistrate on the 11th May 1970, who took cognizance for an offence u/s 186 of the Indian Penal Code and transferred the case to Sri D. N. Prasad. the said Munsif Magistrate for disposal. Thereafter on the 22nd May 1970. the transferee court issued processes against the petitioners u/s 204 of the Code and on the 28th May 1970, the petitioners filed a petition before him to drop the proceeding chiefly on the ground that once when they had been acquitted of the offence, they could not be tried again for the same offence in contravention of the provisions of Section 403(1) of the Code. The learned Magistrate, however, held that on the evidence, facts and circumstances of the case, the earlier proceeding was not valid under the law as it was not filed before a competent Court, and. therefore, the subsequent trial was not barred for the same offence u/s 403(1) of the Code. He therefore, rejected the petition of the petitioners and passed the impugned order.

3. Mr. J. N. Varma learned Counsel appearing on behalf of the petitioners has raised two points for consideration:

(i) The second trial for the same offence was barred u/s 403 of the Code, and (ii) the processes against the petitioners could have been issued at the first instance only by the Sub-divisional Magistrate on the 12th September, 1970. when he had taken cognizance against the petitioners, according to the provisions contained u/s 204 of the Code.

The issue of processes, he urged, by the transferee Magistrate, namely. Sri D. N. Prasad. Munsif Magistrate by an order dated the 22nd May 1970 was not valid, but it was contrary to the provisions contained u/s 204 of the Code.

4. I will take up for consideration point no. 1 first. In the instant case the cognizance taken in the first trial was not valid and. therefore, the trial of the petitioners on an invalid cognizance was also bad. In that view the petitioners were never tried on the first occasion by a Court of competent jurisdiction Section 403(1) of the Code makes it amply clear that for a bar of second trial, it is essential that the first trial ought to have been by a court of competent jurisdiction. In that view of the matter, the learned Magistrate by the impugned order has rightly held that the second trial was not barred u/s 403 of the Code.

5. Now I advert to consider point no. 2. It may be noticed that this point was not

raised before the learned Magistrate. However, it has been raised before this Court and it has also been mentioned in paragraph 10 of the application which the petitioners have filed. Since the question of jurisdiction has been challenged. I have allowed the petitioners to raise this question before this Court for the first time. In order to substantiate his contention. Mr. Varma has referred to Section 204(1) of the Code, the relevant portion of which reads as under:

204 (1). If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be one in which according to the fourth column of the second schedule, a summons should issue in the first instance, he shall issue his summons for the attendance of the accused. If the case appears to be one in which, according to that column, a warrant should issue in the first instance, he may issue a warrant, or if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

From the above section it is clear that it is mandatory upon the Magistrate taking cognizance to issue processes in the first instance. The word used in the section is that he shall issue his summons for the attendance of the accused."

6. In the case of Krishnadeo Prasad Vs. Mt. Budhni, a Full Bench of this Court were considering among other questions whether an order u/s 203 or 204 of the Code can be passed by only that Magistrate who had taken cognizance of the offence on a complaint u/s 200. Their Lordships observed in paragraph 4 of their judgment that Section 203 lays down that the Magistrate before whom a complaint is made or to whom it has been transferred, may dismiss the complaint". Section 204 provides "that a Magistrate taking cognizance of an offence may issue process if he is satisfied that there is sufficient ground for proceeding". Their Lordships further held that.

a Magistrate to whom a complaint has been made or a Magistrate to whom the case has been transferred, may dismiss the complaint and it is only the Magistrate who has taken cognizance of an offence on the basis of a complaint, who can issue process. No other Magistrate can pass an order u/s 203 or 204 unless he can be held to be either permanently or temporarily a successor-in-office of the Magistrate before whom the complaint was filed or who took cognizance of an offence on the complaint.

7. In the instant case it is not the case of the State of Bihar (opposite party No. (1) that Shri D. N. Prasad. Munsif Magistrate was successor-in-Office either temporarily or permanently of the Sub-divisional Magistrate, and in that capacity he had issued processes against the petitioners u/s 204 of the Code on the 22nd May 1970. In my opinion the order passed by him dated the 22nd May 1970 issuing, processes against the petitioners u/s 204 of the Code is not valid, hence it is quashed and the application is allowed.