
(2010) 07 PAT CK 0106

In the Patna High Court

Beni Madhav Pandey, Sharda Devi, Awadh Narayan Mishra
and Ram Lakhan Prasad

APPELLANT

Vs

State of Bihar and Raj Narayan Pandey

RESPONDENT

Date of Decision : 22-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120B, 420

Citation : (2010) 07 PAT CK 0106

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—Four petitioners, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, have prayed for quashing of an order dated 22.5.2000 passed by Sub. Divisional Judicial Magistrate, Bettiah in Complaint Case No. 469C of 2000. By the said order the learned Magistrate has taken cognizance of the offences under Sections 420 and 120B of the Indian Penal Code and directed for summoning the petitioners.

2. Short fact of the case is that the complainant-opposite party No. 2, who was own brother of petitioner No. 1, filed a complaint vide Complaint Case No. 469C of 2000 disclosing therein that in respect of ancestral properties there were family partition and after partition all the brothers including the petitioners and the complainant and one brother namely, Madan Mohan Pandey were enjoying their own share. However, the petitioner No. 1 with a view to commit fraud transferred the land lying in the share of the complainant to his wife (petitioner No. 2), who has been arrayed as accused No. 2 by executing the deed of gift and petitioner No. 3 had turned up as a witness. On the aforesaid allegation, the complaint petition was filed and after filing of the complaint petition, the learned Magistrate conducted an enquiry. Thereafter, by the impugned order dated 22.5.2000, the Sub. Divisional Judicial Magistrate, Bettiah, has taken cognizance

of the offences under Sections 420 and 120B of the Indian Penal Code.

3. Aggrieved with the order of cognizance initially the petitioners filed a revision vide Cr. Revision No. 101 of 2000 in the court of District and Sessions Judge, Bettiah. However, the said revision was got withdrawn by filing a petition indicating therein that the petitioners wanted to file a petition before this Court and, accordingly, revision petition was permitted to be withdrawn. It was submitted that thereafter the petitioners filed the present petition. On 28.9.2001 this Court while issuing notice to opposite party No. 2 directed that in the meantime, further proceeding in connection with Complaint Case No. 469C of 2000, pending in the court of S.D.J.M., Bettiah shall remain stayed. Thereafter, on 18.2.2002 despite service of notice on opposite party No. 2, the opposite party No. 2 did not appear and this Court admitted the case for hearing and while admitting the case it was directed that pending hearing of this application, the interim order passed on 28.9.2001, shall remain operative and order of stay is still continuing. However, opposite party No. 2 has not preferred to appear in the present case.

4. Mr. Ganesh Prasad Singh, learned Counsel appearing on behalf of the petitioners, while challenging the order of cognizance, submits that the complaint petition was filed maliciously by the complainant only with a view to dissuade the petitioner No. 1 from enjoying his own share. It was submitted that petitioner No. 1 had transferred the land of his share in favour of petitioner No. 2 through deed of gift. It was submitted that had there been any dispute in respect of said transfer, for that purpose the complaint, who was own brother of petitioner No. 1, was not entitled to invoke criminal jurisdiction of this Court instead of preferring a civil suit. It was submitted that over the land which had fallen in the share of petitioner No. 1, opposite party No. 2-complainant was having an evil eye and when deed of gift was executed by petitioner No. 1 in favour of his wife, who is petitioner No. 2, the present complaint petition was filed. Accordingly, it has been submitted that initiation of the present proceeding was malicious and is liable to be set aside.

5. In absence of opposite party No. 2, Mr. Shyam Kumar Singh, learned Additional Public Prosecutor appearing on behalf of the State, has opposed the prayer of the petitioners.

6. Besides hearing learned Counsel for the petitioner and the State, I have also perused the materials available on the record. In the complaint petition itself, the complainant had admitted that petitioner No. 1 is his own elder brother and the allegation which has been made can be well decided by a court of civil jurisdiction and for such allegation it is not desirable to allow the criminal proceeding to proceed.

7. Accordingly, the order of cognizance dated 22.5.2000 passed by the Sub. Divisional Judicial Magistrate, Bettiah in Complaint Case No. 469-C of 2000 is hereby set aside and the petition stands allowed.