
(2010) 09 PAT CK 0020
In the Patna High Court

Bhagwan Prasad, Umesh Prasad @ Dr. Umesh Prasad, Suresh Prasad and Binod Prasad Sons of Bhagwan Prasad APPELLANT

Vs

Ram Avtar Prasad and The State of Bihar RESPONDENT

Date of Decision : 08-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120B, 406, 420

Citation : (2010) 09 PAT CK 0020

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Dismissed

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 16.11.2002 passed in Complaint Case No. C744 of 2002 passed by the Judicial Magistrate, Aurangabad. By the said order, the learned Magistrate has taken cognizance of the offences under Sections 406, 420 and 120B of the Indian Penal Code.

2. Short fact of the case is that opposite party No. 1 filed a complaint in the court of Chief Judicial Magistrate, Aurangabad, which was numbered as C744 of 2002. The complainant had alleged in the complaint petition that accused persons falsely persuaded the complainant to arrange marriage of complainant's daughter with petitioner No. 2, Umesh Prasad @ Dr. Umesh Prasad, who is son of petitioner No. 1 and brother of petitioner Nos. 3 and 4. A false information was given that petitioner No. 2 was an M.B.B.S. Thereafter, the complainant got the marriage of his daughter settled with petitioner No. 2. Before marriage, certain amount and golden ring were given. However, subsequently, it was noticed that the complainant was cheated on the point that son of petitioner No. 1 was not an M.B.B.S. Thereafter, the marriage could not take place. The complainant requested the accused persons to refund the amount, but nothing was paid to

the complainant. It was alleged in the complaint petition that for the purpose of marriage, invitation cards were got printed and every arrangements were made. It was alleged that the accused persons including accused No. 5 (not before this Court), who was mediator, had committed fraud with the complainant and accordingly, they had committed offences under Sections 406, 420 and 120B of the Indian Penal Code. After filing the complaint and after completion of enquiry, the learned Magistrate was satisfied with the materials available on the record and, accordingly, the learned Magistrate, by its order dated 16.11.2002, took cognizance of the offences under Sections 406, 420 and 120B of the Indian Penal Code and directed to summon the accused persons.

3. Aggrieved with the order of cognizance dated 16.11.2002, the petitioners approached this Court by filing the present petition. It was admitted on 17.1.2006 and while admitting, it was directed that during the pendency of this application, interim order passed on 17.9.2003 shall remain stayed. The order of stay of criminal proceeding is still continuing.

4. Mr. Saurabh Kumar, learned Counsel appearing on behalf of the petitioners, has argued that the case was falsely instituted by the complainant. It was submitted that the accused persons had never given any false statement. Petitioner No. 2 was not an M.B.B.S., but he was a Homoeopathic Doctor and it was complainant, who had broken the marriage. Accordingly, it has been prayed to set aside the order of cognizance.

5. Mr. Arun Kumar, learned Counsel appearing on behalf of opposite party No. 1-complainant has vehemently opposed the prayer of the petitioners. It was submitted that from the contents of the complaint petition itself, it is evident that the accused persons had committed offence of cheating as well as criminal breach of trust. It was submitted that the allegation made in the complaint petition was fully corroborated during the enquiry by the witnesses. The learned Magistrate has rightly passed the order of cognizance. It was submitted that there is no error in the order of cognizance and as such the petition is required to be rejected.

6. Mrs. Indu Bala Pandey, learned Additional Public Prosecutor appearing on behalf of the State has supported the stand taken by the learned Counsel appearing on behalf of opposite party No. 1.

7. Besides hearing learned Counsel for the parties, I have also perused the materials available on the record particularly the contents made in the complaint petition. After going through the averments made in the complaint petition, the court is satisfied that while passing the impugned order, the learned Magistrate has committed no mistake. The court is of the opinion that it is not a fit case for exercising inherent power in favour of the petitioners.

8. Accordingly, the petition stands rejected.

9. In view of rejection of this petition, interim order of stay dated 17.9.2003

stands automatically vacated.

10. Keeping in view the fact that the matter remained pending before this Court for a long period, it is desirable to direct the court below to proceed with the case expeditiously so that the case may come to a logical end without any delay.

11. With the above observation and direction, the petition stands rejected.