

(2010) 08 PAT CK 0174

In the Patna High Court

Case No : Criminal Miscellaneous No. 26922 of 2001

Bhagwan Singh and Anirudh Kumar

APPELLANT

Vs

The State of Bihar and Anwar Ali Hussain

RESPONDENT

Date of Decision : 27-08-2010

Acts Referred:

Bihar Tenancy Act, 1885 — Section 48D

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 482

Penal Code, 1860 (IPC) — Section 120B, 193, 467, 471, 76

Citation : (2010) 08 PAT CK 0174

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Judgement

Rakesh Kumar, J.—Two 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 6th June, 2001 passed by the learned Chief Judicial Magistrate, Araria in Raniganj P.S. Case No. 192 of 1998 (G.R. No. 1212 of 1998). By the said order, the learned Chief Judicial Magistrate has taken cognizance of offences under Sections 467, 471, 193 and 120B of the Indian Penal Code and directed for summoning the accused persons.

2. Short fact of the case is that Opp. Party No. 2, namely, Anwar Ali initially filed a complaint in the court of the learned Chief Judicial Magistrate, Araria, which was numbered as Complaint Case No. 767 of 1998 arraying eleven persons as accused including both the petitioners, who were at the relevant time posted as Circle Inspector and Circle Officer respectively. The said complaint was referred to the police for its registration and investigation u/s 156(3) of the Code of Criminal Procedure and accordingly an F.I.R. vide Raniganj P.S. Case No. 192 of 1998 was registered on 28.7.1998 for offences under Sections 467, 471, 193 and 120B of the Indian Penal Code. In the F.I.R. it was alleged that the informant's/complainant's wife had got land from her father and thereafter they were paying rent and rent receipts thereof were being issued in favour of wife of the complainant. It was alleged in the F.I.R. that accused Nos. 1 to 7 were keeping

their evil eyes over the lands of the informant's wife and with a view to illegally usurp the land of the wife of the complainant accused Nos. 1 to 7 had got a proceeding u/s 48D of the Bihar Tenancy Act initiated in respect of the said land, which was registered as Case No. 55 / 1992-93. It was further disclosed that the wife of the complainant and other co-sharers appeared before the Anchal Adhikari, Raniganj and filed their objection. It was also alleged that accused No. 8, who is petitioner No. 2 in the present case in the capacity of Circle Officer had himself inspected the disputed land and thereafter the case, which was instituted by accused Nos. 1 to 7 was rejected. After rejection of the case, an appeal was also preferred under the provision of Bihar Tenancy Act, which was numbered as Appeal No. 42 of 1993 and that too was dismissed on 26th August, 1996. It was further alleged by the complainant that accused Nos. 1 to 7 got a forged document prepared in the name of wife of the complainant and in connivance with other accused persons a fresh case was instituted u/s 48D of the Bihar Tenancy Act, which was numbered as Case No. 9 of 1995-96. It was alleged that accused persons conspiring with each other got a forged and fabricated document prepared and on that basis order was passed on 15th July, 1996. The complainant disclosed that he came to know regarding the said order only on 15th May, 1998 and thereafter a complaint was filed, which was finally registered as Raniganj P.S. Case No. 192 of 1998. After investigation, the police submitted chargesheet and thereafter the learned Magistrate by its order dated 6.6.2001 took cognizance of the offences under Sections 467, 471, 193 and 120B of the Indian Penal Code and directed for summoning the accused persons.

3. Aggrieved with the order of cognizance the petitioners approached this Court by filing the present petition. On 26.2.2002 while issuing notice to Opp. Party No. 2, this Court directed that under further orders, further proceeding in the court below with respect to petitioners, namely, Bhagwan Singh and Anirudh Singh shall remain stayed. Thereafter, on 25.10.2002 the case was admitted for hearing and lower court record was called for and it was directed that during the pendency of this application further proceedings in the court below shall remain stayed. The order of stay is still continuing.

4. Sri Akhileshwar Pd. Singh, learned Counsel appearing on behalf of the petitioners, while challenging the order of cognizance dated 6.6.2001 so far the petitioners are concerned, has raised several objections. It was firstly submitted that allegations were levelled in relation to discharging the quasi-judicial jurisdiction and, as such, the petitioners were protected from prosecution under Sections 76 to 79 of the Indian Penal Code. Learned Counsel for the petitioners has further submitted that even though after investigation police did not forward the petitioners for facing trial, learned Magistrate has passed order of cognizance against both the petitioners. Sri Singh, learned Counsel for the petitioners has pointedly referred to Annexure-2 to the petition, which is a copy of the final report/chargesheet submitted by the police after investigation. Sri Singh, learned Counsel for the petitioner has submitted on the basis of the chargesheet that the Investigating Officer, while submitting chargesheet, had categorically stated that

chargesheet was being submitted against accused Sk. Akbar, Sk. Ali Hussain, Sk. Mahmood, Sk. Kalim, Sk. Ishaque, Sk. Kudus and Sk. Md. Alam. However, investigation in respect of both the petitioners and Chandra Mohan Mishra and Habibur Rahman, both Halka Karmchari, Raniganj was kept pending. It was submitted that since both the petitioners were not forwarded by the police for facing trial, the learned Magistrate at the time of taking cognizance was not authorized to summon the petitioners also to face trial. It was submitted that since the investigation in respect of petitioners was kept pending, the learned Magistrate was required to await final report by the police and only thereafter he was required to summon the petitioners. It was alternatively argued that even for the time being if it is assumed that the learned Magistrate was having jurisdiction to take cognizance and summon even those accused who were not forwarded by the police, minimum requirement was to assign reasons succinctly. Learned Counsel for the petitioners, while placing the impugned order, submits that the order does not indicate anything save and except the ornamental words. Accordingly, it has been prayed to set aside the impugned order.

5. Sri Mritunjay Kumar Nirala, learned Addl. Public Prosecutor appearing on behalf of the State has vehemently opposed the prayer of the petitioners.

6. Besides hearing learned Counsel for the parties, I have also perused the materials available on record including the lower court record, which was received and kept with the record of the present case. From the lower court record, it is evident that chargesheet was submitted on 15.3.2001 and from the chargesheet it is evident that the police had forwarded only seven accused persons to face trial vide Chargesheet No. 49 of 2001. In respect of two petitioners and two other accused persons, further investigation was going on. This makes it clear that on the date of cognizance in the present case i.e. on 6.6.2001 there was only one chargesheet and chargesheet was specific on the point that investigation in respect of the two petitioners and other two accused persons was continuing and, as such, no police report was submitted in respect of these petitioners. In such a situation, it was advisable for the learned Magistrate to await the supplementary report and only thereafter he would have directed for summoning the petitioners in case they were forwarded to face trial by the police or even after submission of the report differing with it by assigning some reasons, he would have proceeded against these petitioners. In a situation where the investigation in respect of the petitioners were kept pending by the police, the learned Magistrate was not required to summon the petitioners, while summoning other accused persons.

7. On perusal of the impugned order of cognizance, the Court is satisfied that it was passed in a mechanical manner without application of mind so far as petitioners are concerned and on this ground alone, the impugned i.e. order dated 6.6.2001 passed by the learned Chief Judicial Magistrate, Araria in Raniganj P.S. Case No. 192 of 1998, G.R. No. 1212 of 1998 is liable to be set aside and is hereby set aside.

8. While going through the record, it has been noticed that after the impugned order, i.e. order dated 6.6.2001, a supplementary chargesheet was filed on 30.6.2001, which was seen by the learned Chief Judicial Magistrate on 16.7.2001. In view of the facts and circumstances that further supplementary chargesheet was submitted in the case, it is desirable to remit back the matter to the concerned Magistrate with a direction to examine the record and take appropriate steps in accordance with law.

9. In this case earlier lower court record was called for and the same is lying with the record of the present case. The office is directed to remit back the lower court record forthwith along with a copy of this order.