
(1980) 08 PAT CK 0006

In the Patna High Court

Bhuneshwar Prasad Sinha and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 20-08-1980

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 482
Penal Code, 1860 (IPC) — Section 147, 323, 379

Citation : (1981) CriLJ 795

Hon'ble Judges : B.P. Jha, J

Bench : Single Bench

Judgement

B.P. Jha, J.—In an application u/s 482 of the Cr. P.C. these petitioners pray for quashing an order dated 6-12-1978 passed by the Chief Judicial Magistrate, Patna.

2. By this order the learned Chief Judicial Magistrate took cognizance in respect of offences under Sections 379, 147 and 323, I.P.C. against these petitioners. In this connection, a first information report was also lodged against these petitioners in respect of the facts constituting the offence mentioned in the protest petition (complaint petition). The police submitted a final form holding that the case is untrue. The final form was accepted by the Chief Judicial Magistrate. Patna on 26th June, 1977 and the accused persons were discharged. In respect of the same facts constituting the offence, the complainant filed a protest petition before the Chief Judicial Magistrate. The Chief, Judicial Magistrate took cognizance of offences in respect of the same facts constituting offences for which the final form was submitted and accepted by Judicial order dated 26th June. 1977.

3. Whenever a final form is submitted, the informant is entitled to file a protest petition or complaint petition before or after filing of the final form. The Magistrate should keep both the matters that is the acceptance of the final form and the protest petition for hearing on the same date. If the Magistrate takes cognizance on the basis of the complaint petition then in that case he should not

accept the final form. If once he accepts the final form then on the same facts constituting the offence, he is not entitled to take cognizance on the basis of the complaint petition or protest petition because that will result in two inconsistent orders passed by the Judicial Officer. In this connection it is relevant to quote a portion of paragraph 15 of the Judgment of Abhinandan Jha and Others Vs. Dinesh Mishra, .

Then the question is, what is the position when the Magistrate is dealing with a report submitted by the police, u/s 173, that no case is made out for sending up an accused for trial, which report, as we have already indicated, is called, in the area in question, as a final report? Even in those cases, if the Magistrate agrees with the said report, he may accept the final report and close the proceedings.

In that case it has been held by the Supreme Court that if the Magistrate agrees with the opinion of the police he may accept the final report and close the proceedings. It will be deemed that the proceedings against the accused persons in respect of the facts constituting the offence have been closed by the Magistrate in a Judicial-Proceeding. If it is so, such proceeding can only beset aside in revision by the higher authority unless and until the order is not set aside, the Magistrate is not entitled to take cognizance on the basis of the complaint petition or protest petition in respect of the same facts constituting the offence as mentioned in the final form. In the present case, it is clear from the order dated 6-12-78, that the final form was accepted by the court earlier. If it is so, then the Magistrate was not justified in taking cognizance in respect of the same facts constituting the offence which were mentioned in the final form. In order to check the litigation, it is necessary that when a judicial order is passed by accepting the final form such order should not be set aside by the Magistrate by taking cognizance on the basis of the complaint petition.

4. In the result, this petition is allowed and the order dated 6-12-1978 is hereby quashed.