
(1976) 01 PAT CK 0013
In the Patna High Court
Case No : Criminal Rev. No. 2425 of 1974

Bhuneshwar Singh and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 16-01-1976

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 11, 12, 190, 192, 20
Penal Code, 1860 (IPC) — Section 392

Citation : (1978) 26 BLJR 372

Hon'ble Judges : C.N. Tiwary, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

C.N. Tiwary, J.—This is an application for quashing an order of the Sub-divisional Magistrate, Lakhisarai,, dated 17-8-1974 taking cognizance against the petitioners u/s 392 of the Indian Penal Code.

2. The opposite party Nageshwar Singh filed a petition of complaint in the court of the Sub-divisional Magistrate, Lakhisarai on 14-2-1974 against the petitioners. The allegations were that on 12-2-1974 the complainant Nageshwar Singh along with one Bishundeo Singh had gone to village Mahmadpur with Rs. 855/- for purchasing a bullock from one Ramanand Singh. The complainant learnt that the bullock had already been sold away for Rs. 900/-. He was, therefore, returning with Bishundeo Singh. At about 5-15 p. m. when the complainant and Bishundeo Singh were passing through Lalmahwabadh all the four accused persons (petitioners) caught the complainant and asked him to hand over the money to them. On refusal of the complainant to give the money to them accused petitioners Kapildeo Singh, Sadhu Singh and Ramashray Singh assaulted him with lathi and accused petitioner Bhuneshwar Singh forcibly took away Rs. 855/- from him. The complainant raised alarm on which witnesses came and saw the occurrence. Accused petitioners fled away.

3. The learned Sub-divisional Magistrate, examined the complainant on solemn

affirmation on 14-2-74 and referred the matter for inquiry and report u/s 202 of the Code of Criminal Procedure, 1898 (hereinafter referred to as the old Code) to Sri K.P. Mishra, Dy. Magistrate. The inquiry officer examined the witnesses produced by the complainant and submitted report to the effect that the case was prima facie true. But the Sub-divisional Magistrate disagreeing with the report of the Inquiry Officer dismissed, the complaint u/s 203 of the old Code by his order dated 6-3-74. The complainant preferred a revision before the sessions judge, against the order dismissing the complaint. The learned Sessions Judge, by his order dated 29-7-74 directed further inquiry to be made into the complaint. The Code of Criminal Procedure, 1973 (hereinafter referred to as the new Code) had come into force with effect from 1-4-74. The order of the sessions judge, dated 29-7-74 was, therefore, forwarded to the Sub-divisional Judicial Magistrate, Lakhisarai for information and necessary action.

The learned Sub-divisional Judicial Magistrate, on consideration of the materials before him, issued summons to the accused petitioner to stand trial u/s 392 of the Indian Penal Code, by his order dated 17-8-74. It is against that order that this application has been preferred.

4. It is urged on behalf of the petitioners that the S.D.O., Lakhisarai had taken cognizance and had examined the complainant on solemn affirmation and therefore, processes could be issued against the accused by the S.D.O., and if the S. D. O. transferred the case to another magistrate for disposal, then by the transferee magistrate. It is submitted that the Sub-divisional Judicial Magistrate, who had neither taken cognizance nor was one to whom the case had been transferred by the S. D. O. for disposal, could not issue processes against the accused persons. The learned Counsel appearing on behalf of the petitioners has relied on the decisions in *Rajendra Nath Mahto v. T. Ganguli*, and *Sudama Singh v. Ravindra Narain Singh* 1973 P.L.J.R. 35 These decisions do not apply to the facts of this case. It seems that on coming into force of the new Code the sessions judge had transferred this case to the court of the Sub-divisional Magistrate, Lakhisarai and that is why he forwarded copy of the order dated 29-7-74 passed in Cr. Revision No. 34 of 74 to the Sub-divisional Judicial Magistrate, Lakhisarai. The sessions judge had powers to transfer the case to the court of the Sub-divisional Judicial Magistrate u/s 408 of the new Code.

5. The learned Counsel for the petitioners concedes that the Sub-divisional Judicial Magistrate, Lakhisarai could issue processes even without any order of the sessions judge transferring the case to him, if the Sub-divisional Judicial Magistrate happens to be successor-in-office of the S.D.O., Lakhisarai in this regard. But he contends that the Sub-divisional Judicial Magistrate cannot be the successor-in-office of the S. D. O. because the S. D. O. continues to remain posted at Lakhisarai even after the commencement of the new Code. This argument is fallacious. At the time when the cognizance was taken by the S.D.O., Lakhisarai, the old code was in force and at the time when process was issued the old code stood repealed and the new code was in force. The S. D. O. has no

jurisdiction to take action under Sections 200 to 204 of the new code. The functions and powers of a Magistrate under Sections 200 to 204 of the new code are to be exercised by a Judicial Magistrate. Relevant portion of Section 3 of the new Code is as follows:

(i) In this code-

(a) any reference, without qualifying words, to a Magistrate, shall be construed, unless the context otherwise requires -

(i) in relation to an area outside a metropolitan area, as a reference to a Judicial Magistrate.

Therefore, reference to a "Magistrate under Sections 200 to 204 is to be construed as a Judicial Magistrate."

Section 11(3) lays down:

The High Court may, whenever it appears to it to be expedient or necessary, confer the powers of Judicial Magistrate of the first class or of the second class on any member of the judicial service of the State, functioning as a Judge in a Civil Court,

Section 12(3)(b) of the new code reads:

The High Court may designate any Judicial Magistrate of the first class in any sub-division as the Sub-divisional Judicial Magistrate and relieve him of the responsibilities specified in this section as occasion requires.

6. It is, thus, obvious that the Sub-divisional Judicial Magistrate, Lakhisarai appointed under the new code becomes successor-in-office of the S.D.O., Lakhisarai appointed under the old code in this regard. Therefore, the order of the learned sub-divisional magistrate issuing processes in this case cannot be assailed on the ground that he was not the successor-in-office of the S.D.O., Lakhisarai.

7. Lastly it is urged that immediately before the commencement of the new code the proceeding was pending and therefore, this case is covered by Section 484(2) of the new code and hence, notwithstanding of the repeal of the old code processes should have been issued and this case should have been disposed of in accordance with the provisions of the old code by the S.D.O., Lakhisarai. There is no substance in this argument. The wordings of Sub-section (2)(a) of Section 484 of the new code are quite clear. This case does not come under Clause (a) of Sub-section (2) of Section 484 of new code. The words of the statute, when there is doubt about their meaning, are to be understood in the sense, in which they best harmonise with the aspect of the enactment and the object which the Legislature had in view. We have to seek aid from other provisions of the new code in order to arrive at the proper meaning of the words used in Sub-section (2) of Section 484 and that interpretation should be accepted, which would result in properly carrying out the intention of the Legislature in enacting the new code.

In the old code Executive Magistrates could exercise powers under Sections 190, 192 and 200 to 204 but they cannot do so now. As pointed out above, the intention of the Legislature in enacting the new code is that the Judicial Magistrates should exercise the powers of Magistrates under Sections 190, 192 and 200 to 204 of the new code. These changes have been introduced with the clear object of separation of the Judiciary from the Executive, which the new code seeks to bring about. Under the new code the courts of Executive Magistrate cannot exercise powers and (sic) functions of a Magistrate under Sections 190, 192 and 200 to 204. Section 20(4) says that:

The State Government may place an Executive Magistrate in charge of a sub-division and may relieve him of the charge as occasion requires; and the Magistrate so placed in charge of a sub-division shall be called the Sub-divisional Magistrate.

Therefore, the Officer Incharge of Lakhisarai Sub-division is an Executive Magistrate designated as Sub-divisional Magistrate. The Sub-divisional Magistrate, Lakhisarai being an Executive Magistrate cannot issue process and cannot try cases. Hence, it would best harmonise with other provisions of the new code to hold that a pending complaint does not come under Sub-section (2) of Section 484 of the new Code.

8. In view of the aforesaid discussions, I do not find any merit in the application. The application is accordingly dismissed.