
(2011) 02 PAT CK 0024

In the Patna High Court

Case No : Criminal Miscellaneous No. 5521 of 2003

Bhuneshwar Singh, Manju Devi, Maheshwar Singh and Pappu Kumar APPELLANT

Vs

The State of Bihar and Jaipania Devi RESPONDENT

Date of Decision : 04-02-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 192, 482
Penal Code, 1860 (IPC) — Section 323, 376, 380, 452, 504

Citation : (2011) 59 BLJR 781

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 1.2.2002 passed by the learned Judicial Magistrate, 1st Class, Hajipur in Complaint Case No. C1-2074 of 2001, Tr. No. 1250 of 2002, whereby the learned Magistrate has taken cognizance of offence under Sections 376/511, 323, 380, 452 and 504 of the Indian Penal Code so far as Petitioner No. 1 Bhuneshwar Singh is concerned and order of cognizance was passed against rest of three Petitioners for the offence under Sections 323, 380, 452 and 504 of the Indian Penal Code. The Petitioners have further prayed for quashing of the order dated 17.12.2002 passed by the learned 1st Addl. Sessions Judge, Vaishali at Hajipur in Cr. Revision No. 56 of 2002, whereby the learned Addl. Sessions Judge has dismissed the Revision Petition.

2. Short fact of the case is that Opp. Party No. 2 filed a complaint on 10.10.2001 in the court of learned Chief Judicial Magistrate, Vaishali at Hajipur vide Complaint Case No. C1 2074 of 2001 arraying the Petitioners as accused for commission of offences under Sections 323, 376, 380, 452 , 504 and 511 of the Indian Penal Code. After filing the complaint, the learned Chief Judicial

Magistrate vide its order dated 10.10.2001 transferred the case to the court of Sri A.K. Sharan , Judicial Magistrate, 1st Class at Hajipur u/s 192 of the Code of Criminal Procedure for enquiry and disposal of the complaint case. It was disclosed in the complaint petition that her husband was employed in Intelligence Service, Govt. of India and he was posted somewhere else. However, the complainant along with her three daughters and two minor sons were residing in the village. It was alleged that accused persons conspiring with each other were misbehaving and teasing the complainant and her three daughters off and on. Often the accused persons after coming to the door of the complainant used to abuse and assault them. It was disclosed that since the accused persons were powerful persons of the village, interference of the villagers never gave any favourable result and having irritated with such behaviour of the accused persons she filed an application before the Superintendent of Police, Hajipur. After coming to know regarding filing of such application, accused persons became enraged and on the date and time of occurrence, Petitioner No. 1 came to the door of the complainant and started abusing and started assaulting the complainant. In the said occurrence, it was also alleged by the complainant that accused Petitioner No. 1 even tried to outrage her modesty and tried to commit rape and her clothes were torn. On the alarm raised by the children of the complainant, other accused persons (Petitioner Nos. 3 and 4) armed with Lathi and Danda arrived there and started assaulting the complainant and her children. In the said occurrence, they had also broken the door of the complainant and after entering into the house, accused persons started to forcibly lifting the complainant. Any how, on the intervention of the villagers, the complainant could be saved. It was also alleged that in the occurrence, accused persons had forcibly taken gold Top and chain amounting to Rs. 7000/- During the course of enquiry, the complainant was examined on S.A. and in support of the complaint petition about seven witnesses were examined and finally by order dated 1.2.2002 after examining the complaint petition, statement of the complainant on S.A. and evidence of complaint witnesses, the learned Judicial Magistrate, 1st Class, Hajipur took cognizance of offences under Sections 376/511, 323, 380, 452 and 504 of the Indian Penal code against accused Bhuneshwar Singh (Petitioner No. 1) and against rest of the accused persons, cognizance order was passed for the offences under Sections 323, 380, 452 and 504 of the Indian Penal Code. The learned Judicial Magistrate also directed for issuance of summons for securing attendance of the accused persons. The Petitioners against the order of cognizance thereafter preferred a revision petition vide Cr. Revision No. 56 of 2002 and the learned 1st Addl. Sessions Judge, Vaishali at Hajipur vide its order dated 17th December,2002 rejected the revision petition mainly on the ground that the order, which was challenged , was an interlocutory order against which revision was not maintainable.

3. Aggrieved with the order of cognizance dated 1.2.2002 passed by the learned Judicial Magistrate, 1st Class, Hajipur in Complaint Case No. C1 2074 of 2001, Tr. No. 1250 of 2002 as well as against the order dated 17.12.2002 passed by the

learned 1st Addl. Sessions Judge in Cr. Rev. No. 56 of 2002, the Petitioners approached this Court by filing the present petition. On 26.9.2003, while issuing notice to Opp. Party No. 2, this Court directed that in the meantime, further proceeding pending in the court of the Judicial Magistrate, 1st Class, Hajipur in Case No. C-1-2074 of 2001, Tr. No. 1250 of 2002 shall remain stayed . Subsequently, on 19.10.2005, the petition was admitted for hearing and it was directed that during the pendency of this application interim order passed on 26.9.2003 shall remain operative. The order of stay is still continuing.

4. Sri Ramesh Kumar Chaudhary , learned Counsel for the Petitioners, while questioning both the orders , has argued that on perusal of the complaint petition itself it appears that the complaint was filed maliciously and with oblique motive . It was also submitted that the learned Addl. Sessions Judge has incorrectly held that the order of cognizance was an interlocutory order and against that order, the revision was not maintainable. It was emphatically argued that once the learned Magistrate after conducting enquiry had taken cognizance of the offence and passed an order for summoning the Petitioners, the same order attains its finality and, as such, it cannot be termed as an interlocutory order. Accordingly, it was submitted that the learned revisional court has grossly erred in rejecting the revision petition on the ground of its maintainability.

5. Learned Counsel for the Petitioners has further questioned the veracity of the allegation in the complaint petition taking a clue from the complaint petition. In the complaint petition, it was alleged that occurrence had taken place on 10.10.2001 at about 7.00 P.M. in the evening and, as such, it was impossible for the complainant to file a complaint in the court of the learned Chief Judicial Magistrate on the same date, i.e. on 10.10.2001. It was further submitted that the witnesses in their deposition have also said that the occurrence had taken place on 10.10.2001 in the evening and, as such, it was argued that the basis of the case i.e. date and time of occurrence is itself falsified on the basis of evidence as well as the fact that the complaint was filed on the same day, i.e. 10.10.2001. Accordingly, it was submitted that on the sole ground of mentioning incorrect date of occurrence, the entire case of the complainant becomes doubtful. On the aforesaid ground, it has been prayed to set aside both the orders.

6. Despite valid service of notice, Opp. Party No. 2 has preferred not to appear in the present case. However, Sri Hirday Prasad Singh, learned Addl. Public Prosecutor has appeared on behalf of the State (Opp. Party No. 1) and in absence of any representation of Opp. Party No. 2, he has vehemently opposed the prayer of the Petitioner. It was submitted that in the complaint petition, allegation was made, which was serious in nature. It was submitted that the complainant's husband was posted outside and the complainant with her three daughters and two minor sons was residing in the village, where the Petitioners being powerful persons had committed atrocities and crime against her and her children. The said allegation has been consistently corroborated by the

witnesses, who were examined during the enquiry. However, on the point of date and time of occurrence, which was raised by the learned Counsel for the Petitioners, it was submitted that it may be considered as irregularities to the some extent , but this ground cannot be a sole ground for interference with either of the orders. Besides this, there are other materials on record to suggest that the order of cognizance was passed rightly and in the same manner, the revisional court considering the order of cognizance as interlocutory has not interfered with the revision petition and, as such, the petition is required to be rejected.

7. Besides hearing learned Counsel for the parties, I have also perused the materials available on record. Before coming to the revisional court? order, I have minutely examined the order of cognizance passed by the learned Magistrate, The learned Magistrate has examined the case in detail. During the enquiry altogether seven witnesses were examined in support of the complaint. The allegation made in the complaint petition specifically makes out the case of commission of offence and thereafter the learned Magistrate has taken cognizance. Regarding the date and time of occurrence, the Court is of the opinion that on such material it would not be appropriate for this Court to interfere with the order of cognizance. The case is at the initial stage. Those facts could be clarified or examined during the trial and not at this stage. Time without number, it has been held that this Court should refrain from interfering with a criminal proceeding at its initial or interlocutory stage. It has also been clarified that power u/s 482 of the Code of Criminal Procedure is to be exercised in exceptional cases. The Court is of the opinion that the order of cognizance requires no interference. If the Court is satisfied that the order of cognizance was passed legally and correctly, there is no requirement to pass any order or comment against the order of the revisional court.

8. In view of the facts and circumstances as indicated above, I do not find any merit in the present petition and the petition stands rejected. 9. In view of the rejection of the present petition, interim order of stay stands automatically vacated.