

(2010) 09 PAT CK 0151

In the Patna High Court

Case No : Criminal Miscellaneous No. 20577 of 2001

Bhup Narayan Jha

APPELLANT

Vs

The State of Bihar and Chitranjan Prasad

RESPONDENT

Date of Decision : 16-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 144, 182, 379, 411

Citation : (2011) 2 PLJR 563

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Judgement

Rakesh Kumar, J.—The sole petitioner, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, has prayed for quashing of an order dated 7.7.2001 in Complaint Case No. 935 (C) of 1999 passed by the Judicial Magistrate, Saharsa. By the said order, the learned Magistrate has rejected the petition for discharge filed on behalf of the petitioner.

2. Short fact of the case is that opposite party No. 2 filed a complaint in the court of Chief Judicial Magistrate, Saharsa, which was numbered as Complaint Case No. 935(C) of 1999 against the petitioner and one another on an allegation of commission of offences under Sections 144, 379 and 411 of the Indian Penal Code. It was alleged by the complainant that the accused persons including the petitioner had looted crops of the complainant by putting the complainant in fear. At the time of occurrence, it was alleged that the accused persons had also shown pistol to the complainant. After filing of the complaint and conducting enquiry, the learned Magistrate had taken cognizance of offence under Sections 144 and 379 of the Indian Penal code. Against the order of cognizance, the petitioner and others preferred a revision vide Cr. Revision No. 121 of 2000 before the court of learned Sessions Judge. However, no favourable order was passed in the revision petition and on 29.5.2000, the revision petition was disposed of by the learned Sessions Judge with a liberty to the revisionist to argue at the time of charge. At the stage of charge, the petitioner filed petition

for discharge along with number of documents. However, the learned Magistrate, by assigning a detailed reason by its order dated 7.7.2001, has rejected the discharge petition.

3. Aggrieved with the order dated 7.7.2001 passed by the learned Judicial Magistrate, whereby discharge petition was rejected, the petitioner approached this Court by filing the present petition, which was admitted on 10.9.2004 and stay order was passed. Despite valid service of notice, opposite party No. 2 has not preferred to appear in the present case.

4. Shri Sharda Nand Mishra, learned Counsel appearing on behalf of the petitioner, while challenging the impugned order, has raised several points. It was submitted by learned Counsel for the petitioner that present case was instituted by the complainant against the petitioner maliciously and with oblique motive. It was submitted that at the instance of petitioner, an F.I.R. was earlier registered against the opposite party No. 2 vide Saharsa P.S. Case No. 253 of 1998 for the offence u/s 379 of the Indian Penal Code. In the said case, police after investigation submitted charge sheet and the learned Magistrate had already taken cognizance of offence. Against the order of cognizance, the opposite party No. 2 had preferred a quashing application before this Court. However, this Court, on 25th March, 2010, has rejected the quashing application preferred by opposite party No. 2. Learned Counsel for the petitioner has also produced a photo copy of certified copy of order dated 26.7.2006 passed in Cr. Misc. No. 29035 of 2004. It was submitted that the complainant is in the habit of filing false cases against the petitioner. On earlier occasion also, as per instance of opposite party No. 2, a false case was instituted against the petitioner vide Saharsa P.S. Case No. 345 of 2001 and subsequently, the Chief Judicial Magistrate had taken cognizance of offence on 24.5.2004. It was submitted that against the order of cognizance, the petitioner had filed Cr. Misc. No. 29035 of 2004 and this Court, by assigning a detailed reason, had quashed the order of cognizance against the petitioner. This Court was of the opinion that the dispute was completely civil in nature. Learned Counsel for the petitioner has further submitted that for the land in question, a title suit is already pending vide Title Suit No. 56 of 1992. It has further been submitted that on one occasion, on the basis of false accusation made by the complainant, police had submitted prosecution report and thereafter, in Misc. Case No. 31 of 2001 on 16.1.2001, learned Magistrate, Saharsa had taken cognizance of offence u/s 182 of the Indian Penal Code and noticed the complainant to face trial in the case. In some and substance, it has been submitted that the present prosecution against the petitioner was initiated by opposite party No. 2 maliciously and on this ground alone, the order of rejection of discharge petition is liable to be set aside.

5. Smt. Indu Bala Pandey, learned Additional Public Prosecutor appears on behalf of the State, who has vehemently opposed the prayer of the petitioner. It was submitted that even in complaint petition, there was specific allegation against the petitioner and thereafter, the learned Magistrate had taken cognizance and

now case was at the stage of framing of the charges. It has been submitted that the learned Magistrate, while rejecting the discharge petition, has committed no error.

6. Besides hearing learned Counsel for the petitioner and the State, I have also perused the materials available on record. The learned Magistrate, while rejecting the discharge petition, has assigned a detailed reason. Moreover, in the complaint petition also, there were sufficient materials to indicate commission of offences. So far as ground taken by the petitioner that number of cases were filed by opposite party No. 2 is concerned, I am of the opinion that those facts may not be looked into by the court while hearing the present petition, which has been preferred against the rejection of discharge petition. As per the provisions contained in the Code of Criminal Procedure, trial is rule and discharge is exception. In such situation, keeping in view the reasons assigned by the learned Magistrate, while rejecting the discharge petition filed by the petitioner, I am of the opinion that the learned Magistrate has committed no mistake or error. I do not find any material for exercising inherent jurisdiction u/s 482 of the Code of Criminal Procedure in favour of the petitioner, which is to be exercised in exceptional or rarest of rare cases.

7. Accordingly, I do not find any merit in the petition and the petition stands rejected.

8. In view of rejection of this petition, interim order of stay stands automatically vacated.

9. Let a copy of this order be sent to the court below forthwith.

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