
(2008) 07 PAT CK 0117
In the Patna High Court

Birendra Lal Karan

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 24-07-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 203
Penal Code, 1860 (IPC) — Section 182, 211, 34, 406, 420

Citation : (2008) 07 PAT CK 0117

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Abhijit Sinha, J.—This application has been filed for quashing of the order dated 8.6.2005 passed by the learned Additional Sessions Judge, Kishanganj, in Cr. Revision No. 238 of 2003 whereby he has set aside the order dated 2.7.2003 passed by Sri S.K. Mishra, Judicial Magistrate, First Class, Kishanganj, whereunder he had dismissed Complaint Case under the provisions of Section 203 Cr.P.C.

2. It appears that one Devendra Lal Dass @ Balak Baba, impleaded herein as O.P. No. 2, submitted a written report before the police alleging inter alia that on 10.8.1999, the petitioner along with a few others had approached him for an urgent loan of Rs. 10,000/- with a promise to repay the same in 10-15 days time and the informant in good faith had handed over a sum of Rs. 8000/- to the petitioner but the loan amount had not been returned till now notwithstanding several reminders therefor.

3. On the basis of the said written report Kishanganj P.S. Case No. 30 of 2000 was registered under Sections 420, 406/34 IPC and after due investigation police submitted a final form as the case was found to be false and recommended for action under Sections 182, 211 IPC against the informant. However, in the meanwhile a protest petition had been filed and on the basis thereof the procedure of a complaint case was adopted. At the conclusion of the enquiry u/s

202 Cr.P.C. the complaint was dismissed. The complainant challenged the dismissal order in Cr. Revision No. 238 of 2003 which was allowed by order dated 8.6.2005. For setting aside the dismissal order, the learned Revisional Court has taken into consideration two purported irregularities committed by the court below, namely, that he had looked into and placed reliance on the final form submitted by the police and secondly that the learned Magistrate had finally disposed of the case on the ground of previous enmity. The Revisional Court was of the view that since the protest petition was proceeding as a complaint case, the learned Magistrate could not have taken into account or consideration any extraneous matter save and except the materials available/brought on the records during the enquiry and the reliance placed on the final form and previous enmity was in excess of powers conferred upon him. On perusal of the materials available on the record, the Revisional Court formed an opinion that a prima facie case had been made out for the accused to face trial and it was at this trial that the question of previous enmity could be considered.

4. The reasonings assigned by the revisional court cannot be accepted in totality. The learned Judge appears to be remiss of the fact that the issue of previous enmity had come in course of evidence adduced during the enquiry and the learned Magistrate could not have ignored the same. To my mind the reasoning assigned by the learned Magistrate in disbelieving the complainant's case appears to be relevant and cogent. The learned Magistrate's reasoning was that there being previous enmity the accused could not have gone to the complainant seeking loan.

5. In my opinion the Revisional Court had erred in setting aside the order of the learned Magistrate.

6. One aspect of the matter which has escaped the attention of both the courts below is that the initial F.I.R. as also the subsequent protest petition was in respect of non refunding of money dues against loan which is out and out a civil dispute. That apart, a perusal of the written report submitted by the informant does not make out any of the ingredients constituting offences either u/s 406 or 420 I.P.C.

7. To my mind the learned Magistrate had rightly dismissed the complaint but for partly wrong reasons. The issue involved being civil in nature no gainful purpose would be served by upholding the order of the revisional court.

8. Accordingly, I find merit in this application which is allowed, for the reasons stated in the foregoing paragraphs and the impugned order of the revisional court is hereby quashed.