
(1988) 05 PAT CK 0007

In the Patna High Court

Case No : Criminal Revision No. 812 of 1985

Chandu Singh and 4 Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 12-05-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 116, 116(6), 117(3), 251

Citation : (1989) PLJR 7

Hon'ble Judges : B. Prasad, J

Bench : Single Bench

Advocate : Madan Prasad Singh, for the Appellant; R.B.S. Pahepuri, For the State and None. For the O.P. No. 2, for the Respondent

Final Decision : Dismissed

Judgement

B. Prasad, J.—This application is revision under sections 397 and 401 of the Code of Criminal Procedure, 1973 (hereinafter referred to the "Code") is directed against the judgment and order dated 10.6.1986 passed by Shri Amar Nath Jha, 2nd Additional Session Judge, Patna, in Criminal Appeal No. 281 of 1983 dismissing the same and upholding the order dated 30.7.1983 passed by Shri C.N. Jha, Executive Magistrate, Danapur, in Case No 1857 (M) 82 u/s 107 of the Code calling upon the respondents to execute bonds of Rs. 5,000/- each with two sureties of like amount to keep peace for one year. In this petition, it has been contended that the proceeding u/s 107 of the Code was started on 20.10.1983. On 9.5.1983 Opposite party No. 2 (first party) filed a petition before the learned Magistrate for extending the life of the proceeding and on the same day the learned Magistrate ordered for extension of the proceeding by two months. The impugned order was passed by the learned Magistrate on 30.7.1983 which was definitely beyond the period of two months calculated from 9.5.1983 on which date the learned Magistrate had extended the life of the proceeding by two months. As per the police report the apprehension of breach of peace between the parties was on account of only 1/2 decimal of land. Both parties had their

claims over this land. But the police filed a collusive report for starting the proceeding against the petitioners.

2. Against the final order passed by the learned Magistrate on 30.7.1983 the petitioner preferred Criminal Appeal No. 281/83 before the Sessions Judge, Patna, which was finally heard by the learned Additional Sessions Judge named above who was pleased to dismiss the appeal. On these grounds amongst others it was contended that the judgment of the learned appellate court be set aside and the entire proceeding against the petitioners be quashed.

3. The only point for decision before me is whether this petition is fit to be allowed or not?

4. The facts of this case are in a very short compass. It appears that on 20.10.1982 the police submitted report for starting a proceeding u/s 107 of the Code against the present petitioners. Accordingly, the proceeding was started. It further appears that on 9.5.1983 opposite party no. 2 filed a petition before the learned Magistrate for extending the life of this proceeding. By order of the same date the learned Magistrate extended the life of this proceeding by two months. It has been contended before me on behalf of the petitioners that the proceeding u/s 107 of the Code was started against them on 20.10.1982 and, therefore, the period of six months would have expired on 19.4.1983. In this view of the matter, it was submitted that when on 9.5.1983 the petition was filed before the learned Magistrate for extending the period of this proceeding it has already expired. I do not find any force in this contention.

5. In this connection, a reference may be made to section 116 (6) of the Code which prescribes that an inquiry u/s 116 shall be completed within a period of six months from the date of its commencement, and if such inquiry is not so completed, the proceedings under this Chapter shall, on the expiry of the said period, stand terminated unless, for special reasons to be recorded in writing, the Magistrate otherwise directs : The important question that comes up for consideration in this connection is what will be the date of commencement of a proceeding. Will it be the date on which the police submitted the report or the date on which the Magistrate passed an order starting a proceeding u/s 107 of the Code. The matter has been set at rest by the Full Bench of this Court in the case of Sitaram Singh and Others, etc. Vs. State of Bihar and Another, etc., In this decision it was held that the date of commencement of the proceeding is the same on which a summons-case is to start before a Magistrate. The procedure has been provided in Chapter XX of the Code. Section 251 provides that when the summons-case, the accused is brought before the Magistrate the particulars of the offence of which he is accused shall be stated to him. In the above mentioned Full Bench case it has been held that the date on which the proceedings proceeded against u/s 107 of the Code before the court and the allegations are explained to them should be treated to be the date of the commencement of the proceeding. In this view of the matter, it cannot be said that 20.10.1982 was the date of the commencement of this proceeding. From

the order of the learned Additional Sessions Judge passed in Criminal Appeal No. 281 of 1983 it appears that both parties had appeared before the learned Magistrate on 3.12.1982. Therefore, this date can safely be treated to be the date of the commencement of the proceeding. Therefore, the period of six months will accordingly expire on or before 3.6.1983. However, by an order dated 9.5.1983 the learned Magistrate extended the period of this inquiry by two months. Hence this extension was ordered when the proceeding was very much alive and, therefore, it cannot be said that the order of extension was passed after the proceeding had already come to an end. The order of the learned Addl. Sessions Judge further shows that he found the order of the learned Magistrate extending the period of the proceeding by two months well discussed. In this connection, he has referred to the evidence of the witnesses and also to the submissions of both the parties. On behalf of the petitioners it has not been shown that there has not been proper discussion on the evidence by the learned Magistrate. Therefore, it cannot be said that the exercise of the discretion by the learned Magistrate by extending the period of this proceeding by two months was wrong.

6. In this connection a reference has also been made to the case of S.K. Rai v. The State (1975 B.B.C.J. 879). In this decision also it has been clearly held that the proceeding u/s 107 of the Code will automatically expire with the expiry of six months from the date of the appearance of the parties proceeded against. This will take effect automatically unless for the reasons to be recorded in writing the Magistrate extends this period. It has further been held that the period of six months will start running from the date of the appearance of the person proceeded against.

7. My attention has been drawn to the case of Satruhan Jha and Others Vs. The State, In this case it was held that Since there was a land dispute between the parties, the proceeding u/s 107 of the Code can be started against both of them and both of them can be called upon to execute the interim bonds in terms of section 117 (3) of the old Code. It may, however, be mentioned here that the facts and circumstances in each case differ and what has been observed in the above mentioned case is simply that under an exceptional situation the order u/s 117 (3) of the Code calling upon both the parties to execute interim bonds was justified. In the present case however, it has not been shown that this order should have been passed against both the parties.

8. I have carefully gone through the order dated 30.7.1983 passed by the learned Magistrate. He has properly discussed the facts and circumstances of the case and the evidence on record and has come to correct conclusion. I do not find any reason to interfere with the same. Under these circumstances, I do not find any merit in this application. It is, accordingly, dismissed. The order of stay passed by this Court on 6.3.1983 stands automatically vacated.