
(2010) 04 PAT CK 0105
In the Patna High Court

Dhurendra Prasad Jaiswal

APPELLANT

Vs

Ashok Kumar and The State of Bihar

RESPONDENT

Date of Decision : 09-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 482
Penal Code, 1860 (IPC) — Section 120B, 406, 420

Citation : (2010) 04 PAT CK 0105

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 the order dated 20.10.1997 passed in Case No. 272(C) of 1997/ G.R. No. 1093 of 1997 by the Addl.Chief Judicial Magistrate , Danapur . By the said order, the learned Magistrate after perusing the chargesheet and case diary had taken cognizance of the offences under Sections 420, 406 and 120B of the Indian Penal Code.

2. Sri Mukesh Kumar, learned Counsel appearing on behalf of the petitioner , while challenging the order of cognizance, submits that the contents of the complaint petition makes it clear that the dispute in between the petitioner and the complainant was of the civil nature and for such allegation, the criminal proceeding may not be allowed to use by the complainant. He further submits that in respect of the dispute of the property in question, title suit was already pending and during the pendency of title suit, the present complaint petition has been filed. Learned Counsel for the petitioner submits that title suit vide Title Suit No. 90 of 1996 was already pending. On these grounds, he has prayed for quashing of the order of cognizance and subsequent proceeding pursuant to the case.

3. Smt. Indu Bala Pandey, learned Counsel appearing on behalf of the State has opposed the prayer of the petitioner. She submits that at the initial stage of the

proceeding, this Court may not interfere into the matter. She further submits that the complaint petition vide Complaint Case No. 272(C) of 1997 was filed by the complainant and thereafter said complaint was transferred to the police for its investigation u/s 156(3) of the Code of Criminal Procedure . Thereafter a case vide Danapur P.S. Case No. 272 of 1997 was registered and after investigation of the case, the police submitted chargesheet in this case. She submits that since the materials indicating the involvement of the petitioner was collected by the petitioner, chargesheet in this case was submitted. On the basis of said chargesheet and materials available in the case diary, the learned Magistrate has rightly taken cognizance of the offence and accordingly she has prayed for rejection of the present petition.

4. I have also examined Annexure-1, which is a copy of the complaint petition. In the complaint petition the complainant has disclosed that in the month of December 1995 on different dates the complainant had made payment to the petitioner with a view of get the house in question registered in his favour. After executing an agreement to sale, it has been alleged that instead of executing the deed in favour of the complainant, the petitioner subsequently filed a partition suit vide Title Suit No. 90 of 1996. Accordingly, it has been alleged that the complainant was cheated by the petitioner and the petitioner had also committed the offence of criminal breach of trust. Moreover, the present proceeding has not been initiated on the basis of the complaint, but the complaint was referred to the police and the police after thorough investigation of the case has submitted chargesheet against the petitioner and only thereafter the learned Magistrate has taken cognizance of the offences.

5. While exercising inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, I am of the view that at this initial stage, criminal proceeding in the court below arising out of Danapur P.S. Case No. 272 of 1997 may not be interfered with. On the basis of material available on the record I do not find that it is an exceptional and rarest of rare cases for interfering into the matter.

6. In view of the facts and circumstances, particularly in view of the fact that the case is at the very initial stage, I am not inclined to interfere with the matter. Accordingly I do not find any merit in this petition and the petition stands rejected.

7. In this case by the order dated 19.2.1998, while issuing notice to Opp.Party No. 1, this Court had directed that in the meantime, further proceedings in the court below shall remain stayed. Subsequently, on 19.5.1998 this petition was admitted for hearing and while admitting this case, this Court had further directed that during the pendency of this application, interim order dated 19.2.1998 shall continue.

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

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