
(2010) 04 PAT CK 0161

In the Patna High Court

Dukhan Rai @ Dukhan Yadav

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-04-2010

Acts Referred:

Arms Act, 1959 — Section 27

Criminal Procedure Code, 1973 (CrPC) — Section 182, 195, 482

Penal Code, 1860 (IPC) — Section 182, 211, 307, 34, 379

Citation : (2010) 04 PAT CK 0161

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Dismissed

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 order dated 1.4.1999 passed by the Chief Judicial Magistrate, Patna in Case No. 459(2) of 1999. By the said order, learned Magistrate has taken cognizance for the offence u/s 182 of the Indian Penal Code.

2. Short fact of the case is that on the basis of fardbeyan of this petitioner, an F.I.R. vide Parsa Bazar P.S. Case No. 474 of 1998 was registered for the offences under Sections 307, 379, 504/34 of the Indian Penal Code and Section 27 of the Arms Act. After registering F.I.R. vide Parsa Bazar P.S. Case No. 474 of 1998, the police investigated the case and during investigation, the allegation made by the informant was found to be untrue and false and, accordingly, while submitting final report, the police recommended for prosecution of this petitioner for the offence under Sections 182 and 211 of the Indian Penal Code. Thereafter, the learned Magistrate, vide order dated 1.4.1999, has taken cognizance for the offence u/s 182 of the Code of Criminal Procedure.

3. Shri Ramesh Kumar Chaudhary, learned Counsel appearing on behalf of the petitioner, while challenging the order of cognizance, submits that the order of cognizance is patently illegal in view of the fact that it was barred u/s 195(1)(a)

of the Code of Criminal Procedure. He submits that without the sanction of the concerned court, the learned Magistrate was not empowered to take cognizance in the case. This was the only ground for attacking the order of cognizance, which has been taken by learned Counsel for the petitioner.

4. I have also heard Shri Raj Ballabh Singh, learned Counsel appearing on behalf of the State, who opposes the prayer of the petitioner. So far as the ground, which has been taken by the learned Counsel for the petitioner is concerned, I am of the view that same is misconceived in the facts and circumstances of the present case. On the basis of information given by the petitioner, police had registered the case vide Parsa Bazar P.S. Case No. 474 of 1998 and during investigation, the police found that a false case was instituted by this petitioner and as such, the police, while submitting final form, recommended for prosecution of the petitioner under Sections 182 and 211 of the Indian Penal Code. Since after registration of the case and before recommending for prosecution of the petitioner, no proceeding was pending before the court nor there was any allegation of making false statement or disclosure during a proceeding, there was no necessity to obtain permission from the concerned court. The false information by the petitioner was given to the police officer and as such after being satisfied that information was false, the police has rightly recommended for prosecution and on the said recommendation, while taking cognizance by the impugned order, learned Magistrate has committed no error.

5. In view of the facts and circumstances, I am of the opinion that there is no merit in this petition and petition stands rejected.

6. By order dated 18.1.2000, while issuing notice to opposite party Nos. 2 to 7, this Court had directed that meanwhile, further proceeding in the court below shall remain stayed. Subsequently, by order dated 20.9.2000, the case was admitted for hearing and it was directed that during the pendency of this application, interim order dated 18.1.2000 shall continue.

7. In view of rejection of the present petition, interim order of stay stands automatically vacated.

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