

(2010) 07 PAT CK 0125

In the Patna High Court

Case No : Criminal Miscellaneous No. 31322 of 2000

Gaya Singh and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 19-07-2010

Acts Referred:

Constitution of India, 1950 — Article 21

Criminal Procedure Code, 1973 (CrPC) — Section 144, 173(8), 379, 411, 468

Penal Code, 1860 (IPC) — Section 144, 379, 411

Citation : (2010) 52 BLJR 997

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Advocate : Bhupendra Narain Singh and Ravindra Kumar Sinha, for the Appellant; Indu Bala Pandey, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—Ten petitioners, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, have prayed for quashing of an order dated 11.3.1993 passed by Chief Judicial Magistrate, Gaya whereby the learned Chief Judicial Magistrate had taken cognizance of offence under Sections 144, 379 and 411 of the Indian Penal Code. The petitioners have further prayed for quashing of an order dated 30.9.2000 passed by Sri A.K. Sinha, Judicial Magistrate, 1st Class, Gaya in G.R. No. 76 of 1998/T.R. No. 405 of 2000, whereby the learned Magistrate rejected the petition filed on behalf of the petitioners, which was filed to quash the order of cognizance on the ground that order of cognizance was hit by Section 468 of the Code of Criminal Procedure.

2. Short fact of the case is that on the basis of written report of one Arun Sharma submitted before the Officer Sharma, Konch Police Station an F.I.R. vide Konch P.S. Case No. 3 of 1989 was registered on 6.1.1989 on an allegation that in the preceding night i.e. the night of 5.1.1989, the petitioners armed with deadly weapon had overpowered the informant and thereafter, they had forcibly

taken away the diesel engine. On the basis of said written report, the aforesaid F.I.R. was lodged and thereafter, police started investigation. After investigation, since no materials were collected by the police showing complicity of accused persons, a final form was submitted by the police on 16.4.1989. Subsequently, after obtaining permission from the concerned court, further investigation in the case, was taken up and after lapse of about two years, charge sheet was submitted on 21.11.1992 for the offence under Sections 144, 379/411 of the Indian Penal Code against the accused persons i.e. petitioners and thereafter, by order dated 11.3.1993, the learned Chief Judicial Magistrate, took cognizance of offences under Sections 144, 379 and 411 of the Indian Penal code.

3. Since the order of cognizance was passed after expiry of more than four years, the petitioners filed a petition before the concerned Magistrate, where the case was pending with a plea that order of cognizance was barred by Section 468(2)(c) of the Code of Criminal Procedure. However, the learned Magistrate, after hearing the parties by its order dated 30.9.2000, rejected the petition.

4. Aggrieved with the order of cognizance dated 11.3.1999 as well as order dated 30.9.2000, petitioners approached this Court by filing the present petition and same was admitted for hearing by order dated 28.11.2000 passed by this Court. While admitting, it was directed that in the meanwhile, further proceeding of G.R. Case No. 76 of 1989, Tr. No. 405 of 2000 so pending in the court of the learned Judicial Magistrate, Ist Class, Gaya, shall remain stayed and order of stay is still continuing.

5. Shri Bhupendra Narain Singh, learned Counsel appearing on behalf of the petitioners, while challenging both the orders, has argued that the proceeding against the petitioners in the present case was initiated maliciously due to the village politics. It was submitted that firstly on false allegation, an F.I.R. was got registered. However, the Investigating Officer thoroughly investigated the case and he did not find any material for forwarding the petitioners to face trial and as such on 16.4.1989, a final form was submitted with indication that evidence were insufficient for sending the accused persons to face trial. It was submitted that after expiry of more than one year to the reasons best known to the concerned Dy. S.P., a petition was filed before the concerned Magistrate for granting permission for further investigation u/s 173(8) of the Code of Criminal Procedure and thereafter, again the matter was kept pending for more than two years and finally on 21.11.2000, charge sheet was submitted against the petitioners on trivial allegation i.e. for offence under Sections 144, 379 and 411 of the Code of Criminal procedure and thereafter, the learned Magistrate, after expiry of about four months from the date of filing of the charge sheet, passed the order of cognizance on 11.3.1993. Learned Counsel for the petitioners, after noticing the recent judgment of Hon"ble Apex Court reported in AIR SCW 4998 Japani Sahu v. Chandra Shekhar Mohanti, has not placed the point relating to cognizance being barred by limitation. However, it was submitted by him that on two grounds, order of cognizance as well as entire proceeding in Konch P.S. Case No.

3 of 1989 is liable to be set aside. According to him, the first ground for the quashing of proceeding is that the proceeding was not fair and honest rather it was a malicious proceeding. The second ground, according to Shri Singh, is that if for the time being, it is accepted that there is some truth in the allegation, it would not be appropriate to direct the petitioners to participate in the criminal proceeding for an occurrence, which had taken place long back in the year 1989 i.e. after more than 21 years. It was submitted that it is a fit case where this Court may consider that right of petitioners of speedy trial as enshrined under Article 21 of the Constitution of India has been infringed coupled with the fact that allegation is not relating to commission of a very serious offence. Accordingly, it has been prayed for quashing of the order of cognizance as well as entire proceeding in Konch P.S. Case No. 3 of 1989.

6. Smt. Indu Bala Pandey, learned Additional Public Prosecutor appearing on behalf of the State has vehemently opposed the prayer of the petitioners. It was submitted by learned Additional Public Prosecutor that it is true that initially when materials were not collected showing involvement of the petitioners, a final form was submitted, but subsequently, after getting an information indicating involvement of the petitioners, the Dy. S.P. approached the concerned court for granting permission for further investigation and thereafter, the police thoroughly investigated the case and charge sheet was submitted against the petitioners. Accordingly, it has been argued on behalf of the State that the petition is liable to be rejected.

7. Besides hearing learned Counsel for the parties, I have also perused the materials available on record. It is evident from the record that allegation of commission of offence under Sections 144 and 379 of Indian Penal Code was made for an alleged occurrence, which had taken place in the night of 5th January, 1989. After investigation, the police submitted final form, which was submitted on 16.4.1989 and thereafter, the matter remained pending for more than one year. After expiry of more than one year, suddenly the case was re-opened by the Investigating Officer on 17.9.1990.

8. In view of the facts and circumstances, re-opening of the investigation after more than one year on an allegation of commission of offence under Sections 144 and 379 of the Indian Penal Code makes it clear that re-opening of the case was not beyond shadow of doubt. The court is in agreement with the submission of learned Counsel for the petitioners that the action was not fair. Even though the case was re-opened on 17.9.1990, to the reasons best known to the Investigating Officer, the investigation for such offence again remained pending for more than two years and thereafter, on 21.11.1992, charge sheet under Sections 144, 379 and 411 of the Indian Penal Code was submitted by the police on which order of cognizance was passed on 11.3.1993. So in between date of occurrence and date of cognizance, it took about more than four years and thereafter, the matter remained pending before this Court without any progress in the court below for more than ten years. Net result is that for about 21 years,

nothing has happened in the case.

9. Accordingly, the court is of the opinion that in view of peculiar facts and circumstances of the present case, it would not be appropriate to direct the petitioners to re-participate in a proceeding relating to an occurrence, which had taken place about 21 years back and as such the court is of the opinion that it is a fit case to exercise inherent jurisdiction in favour of the petitioners and as such order of cognizance dated 11.3.1993 is hereby set aside and consequently the entire proceeding in G.R. No. 76 of 1998/T.R. No. 405 of 2000 (arising out of Konch P.S. Case No. 3 of 1989) is hereby set aside and petition stands allowed.