

(1980) 01 PAT CK 0014

In the Patna High Court

Case No : Criminal Miscellaneous No. 2790 of 1979

Ishwardayal Singh and Mahendra Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 02-01-1980

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 323, 397, 397(2), 397(3), 448
Penal Code, 1860 (IPC) — Section 323, 324, 34, 448, 452

Citation : (1980) PLJR 34

Hon'ble Judges : M.P. Singh, J

Bench : Single Bench

Advocate : Vyas Muni Singh, Beni Madhav Prasad Singh and Anil Jayaswal, for the Appellant; Kamta Prasad Gupta, for the Respondent

Final Decision : Allowed

Judgement

M.P. Singh, J.—This is an application by the accused--petitioners u/s 482 of the Criminal Procedure Code for quashing the order passed by the trying magistrate, dated the 26th February, 1979, refusing to transfer the case to a Bench of a Gram katchery for trial. It appears that the accused moved the Sessions Judge, Arrah for giving a direction that the case be sent to the Gramkachari for trial but the revision petition (Cr. Revision No. 99 of 1979) was dismissed by the Addl. Sessions Judge by order dated the 10th May, 1979. The relevant facts for the purpose of this application are these:

Cognizance was taken by the Chief Judicial Magistrate under Sections 452 and 323 read with Section 324 Section 34 of the Indian Penal Code. The case was then transferred to a Judicial Magistrate for disposal Charges were framed for offences under Sections 448 and 323. No charge was framed u/s 452 of the Indian Penal Code. The offences under Sections 448 and 323 are triable by the Bench of a Gram Katchery. The two courts below took the view that the jurisdiction of the Gram Katchery was ousted on the very day when the case was found to be u/s 452 of the Indian Penal Code at the time of taking cognizance.

The prayer made by the accused persons to transfer the case to the Gram Katchery was rejected.

A preliminary objection was raised on behalf of the opposite party that under the provision of Sub-section (3) of Section 397 Cr.P.C. the present application which was in fact a revision petition but was filed in the garb of an application u/s 482 Cr.P.C. was barred. Sub-section (3) of Section 397 runs thus:

If an application under this section has been made by any person either to the High Court or to the Sessions Judge no further application by the same person shall be entertained by other of them.

In support of this contention counsel for the opposite party relied on (1) Jagir Singh Vs. Ranbir Singh and Another, . In that case it was observed that the provisions of Sub-section (3) of Section 397 cannot be circumvented by labelling the petition as one u/s 482 of the Criminal Procedure Code. No one can doubt that proposition of law. In the facts and circumstances of the present case, however, I am of the opinion that the impugned order brings about the situation calling for the exercise of inherent power u/s 482. In (2) Madhu Limaye Vs. The State of Maharashtra, , it was observed.

.....But in case the impugned order clearly brings about a situation which is an abuse of process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court.

2. Counsel appearing for the State of Bihar (opposite party) contended that Madhu Limaye's case (supra) was a case u/s 397(2) and not u/s 397(3). In my opinion, there is absolutely no difference in principle. In either case the revision would be barred in the High Court. In the present case the argument advanced on behalf of the petitioners is that both the offences under Sections 448 and 323 for which charges were framed are triable by the Bench of a Gram Katchery and under the provisions of Section 69 of the Bihar Panchayat Raj Act, 1947 the Magistrate was bound to transfer the case to the Bench of a Gram Katchery having jurisdiction to try the case unless he was satisfied that the case was of such a nature or of such a difficulty that it ought to have been tried by a regular court. In my opinion this contention is sound. If the case is triable by a Gram Katchery ordinarily it must be tried by the Gram Katchery. But in exceptional cases the magistrate may be of the opinion that it ought to be tried in a regular court. Cases may arise where the Panchas of the Bench may, somehow or other, be connected with the accused persons or with any of the parties of the case. There may also be a case where the Panchas of the Bench may have some bias against the accused or they may be under the influence of the accused. There may be various circumstances to be considered as to whether or not ought to be tried the Gram Katchery or by a regular court. In order to meet such a situation Section 69 of the Panchayat Raj Act, 1947 provides that the Magistrate shall if he

is satisfied that the case is not of such a nature or of such a difficulty that it ought to be tried by a regular court, at once transfer the case to the Bench having a jurisdiction. Neither the magistrate nor the Addl. Sessions judge applied his mind to the provisions of Section 69 of the Panchayat Raj Act. The provisions of that section can be attracted at any stage of the criminal proceeding. In the present case the stage of the criminal proceeding was the framing of the charge. It is clear that no decision has been given with regard to the point raised in this case. Hence it will not be proper to allow the continuance of the criminal proceeding before the Magistrate. Because if the proceeding is allowed to continue it may amount to abuse of the process of the court. It will also not serve the ends of justice. In the circumstances, I think the proper course would be to set aside the order passed by the Magistrate and the Addl. Sessions Judge and sent back the case to the Magistrate for considering the point regarding the transfer of the case to a Gram Katchery afresh in the light of the provisions of Section 69 of Bihar Panchayat Raj Act, 1947. In the result, the order of the Magistrate dated 26.2.79 contained in Annexure 1 to this application as also the order of the Addl. Sessions Judge, Arrah, dated the 10th May, 1979 contained in Annexure 3 to this application are set aside and the case is sent back to the Magistrate for reconsidering the matter of transfer as indicated above in the light of the observations made and in accordance with law. This application is allowed to the extent indicated above.