
(1980) 02 PAT CK 0001

In the Patna High Court

Case No : Criminal Miscellaneous No. 1946 of 1979

Janardan Prasad Singh, Rajendra Prasad Singh and Tarini
Prasad Singh

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 23-02-1980

Acts Referred:

Penal Code, 1860 (IPC) — Section 182, 211, 323, 380, 448

Citation : (1981) PLJR 223

Hon'ble Judges : P.S. Sahay, J

Bench : Single Bench

Advocate : Rama Kant Prasad Singh, for the Appellant; B.N.P. Gupta, for the Respondent

Final Decision : Allowed

Judgement

P.S. Sahay, J.—The petitioners have moved this court for setting aside the order of cognizance dated 23.2.79 taken against them under Sections 452 and 323 of the Indian Penal Code (shortly called the Code hereinafter) This case has rather a chequered history. On 16.7.75 opposite party no. 2 lodged a first information against the petitioners alleging offences under Sections 323, 448 and 380 of the Code. Investigation was taken up by the police and final report was submitted on 7.1.76 and the allegations against the petitioners were found to be false and a prayer was also made for prosecution of opposite party no. 2 under Sections 182 and 211 of the Code. On 29.1.76, after submission of the final report, a protest petition in the nature of complaint was filed by opposite party no. 2. The learned Magistrate considered the final report and also the protest petition and by his order dated 14.7.76 accepted the final report and also held that there was no merit in the protest petition and therefore, he rejected the same. By the same order he directed a notice to be issued to the informant, opposite party no. 2 to show cause as to why he should not be prosecuted under Sections 182 and 211 of the Code. Against the order dated 14.7.76, opposite party no. 2 filed a

revision before the Sessions Judge which was numbered as Criminal Revision 510 of 1976 and was ultimately transferred to the court of the 4th. Additional Sessions Judge Patna, who by his order dated 9.6.78, dismissed the revision and held as follows:--

I have also considered the record and all facts and circumstances to find out whether any miscarriage of justice has been done in this case or not. On careful consideration and scrutiny of the facts and circumstances, I am not inclined to make an order for further enquiry in this case." Thereafter a fresh petition of complaint was filed on 25.7.78 on the same allegations against the petitioners, and a copy of that complaint has been filed along with this application marked as Annexure 6. The learned Magistrate, by his order dated 28.7.78, held that enquiry will be necessary and opposite party no. 2 was examined on solemn affirmation on 8.78 by Shri K.P. Verma, Special Judicial Magistrate, who examined two witnesses on 1.9.78 and 24.10.78. One more witness was examined on 14.2.79 by the Addl. Chief Judicial Magistrate Shri J.M. Veer. Addl. Chief Judicial Magistrate by his order dated 23.2.79 took cognizance under Sections 452 and 323 of the Code but refused to take cognizance u/s 380 of the Code. Being aggrieved by the aforesaid order the petitioners have moved this court.

Learned counsel appearing on behalf of the petitioners has contended that the protest petition having been dismissed on 14.7.76 and also the petition for further enquiry before the Additional Chief Judicial Magistrate on 9.6.78, the second petition of complaint which was filed on 25.7.78 on similar allegations without any fresh material, was not maintainable. In my opinion, the contention raised on behalf of the petitioners is correct and must be accepted. It seems the whole confusion has been created by certain observations made by the learned Additional Sessions Judge while dismissing the criminal revision on 9.6.78. Taking advantage of the same, opposite party no. 2 filed a fresh petition of complaint. That will be held to be barred because opposite party no. 2 had moved the Sessions Judge for further enquiry not only against the acceptance of the final form but also against the dismissal of the complaint, which will be further clear from the order of the Additional Sessions Judge himself. If opposite party no. 2 was really aggrieved by the aforesaid order, he should have moved a superior court in order to get that order set aside and his remedy was not by filing a fresh complaint as has been done in the instant case, Reading the protest petition which was filed on 29.1.76 and the fresh petition of complaint which was filed on 25.7.78, it appears, the allegations are the same in both the petitions and no fresh material was brought by opposite party on record when a second complaint was filed on 25.7.78. In that view of the matter, the matter could not be reopened. I am also of the opinion that the revision filed by opposite party no. 2 having been dismissed on 9.6.78, the matter became final and can not be reopened now by means of a second complaint.

2. Learned counsel has raised another important point of law which in my

opinion, also supports his contention. It has been urged that while taking cognizance on 23.2.79, the learned Magistrate has referred to the materials in the case diary, which were wholly extraneous, and in this connection reliance has been placed on a Bench decision of this court in (1) Ram Kumar Pandey V. The State (1979 P.L.L.R. 502 : 1979 B.B.C.J. 293). The learned Magistrate should not have taken into consideration the matters which were in the case diary while considering the complaint and in that view of the matter, the order is bad in law.

3. Thus, on a careful consideration of the points which have been raised in this case I set aside the impugned order of the learned Magistrate taking cognizance on 23.2.79 against the petitioners and quash the criminal case lodged against them.

4. Before I part with this case, I must observe that both the Magistrates, while dealing with the matter on 14.7.76 and 23.2.79, have written an elaborate order as if they were trying the case itself. It is the duty of the Magistrate in such cases at the initial stage only to find out whether a prima facie case has been made out against the accused persons for issuing processes and it is not his duty to weigh the evidence and that is a matter to be left to the trial court. The application is accordingly allowed.