
(2010) 07 PAT CK 0024
In the Patna High Court

Kameshwar Singh and Uday Narayan Singh	APPELLANT
Vs	
The State of Bihar and Nand Kishore Pd. Sinha, Advocate	RESPONDENT

Date of Decision : 07-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 500

Citation : (2010) 07 PAT CK 0024

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—Two petitioners, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, have prayed for quashing of the order dated 1.8.1998 passed by Sri Panchanand Sharma, learned Judicial Magistrate, 1st Class, in Complaint Case "No. 1447(C) of 1997. By the said order, learned Magistrate has taken cognizance of offence u/s 500 of the Indian Penal Code.

2. Short fact of the case is that Sri Nand Kishore Prasad Sinha, Opp. Party No. 2 filed a complaint vide Complaint Case No. 1447(C) of 1997 in the court of learned Chief Judicial Magistrate, Patna disclosing there in that he along with his family members had filed a partition suit No. 143 of 1996 in the court of the learned Subordinate Judge IV, Jehanabad. In the said case, the petitioners before this Court were defendants in the said suit. It was alleged that in the said partition suit, petitioners filed their written statement and in later part of para-21 of the said written statement, the petitioners have stated as follows:

It is further submitted that plaintiff No. 2 started practice as lawyer for only 2 or 3 years and he was employed in Bihar Vidhan Sabha by giving bribe to authority and to make matter worse he has been discharged as he was engaged in srvi by foul means.

3. Aggrieved with the aforesaid assertion made by the petitioners in their written statement, which was filed in Partition Suit No. 143 of 1996, Opp. Party No. 2 filed the present complaint against the petitioners. It was stated that Opp. Party No. 2 is a Law Graduate and he joined Patna District Bar Association in 1983 but he left it in the year 1990 since he was employed as Assistant in Bihar Vidhan Sabha and remained there till December, 1996 and thereafter he again started his legal practice in Civil Court, Patna as well as in Patna High Court. It was alleged that the statement, which was made by the petitioners in their written statement, was false and it was libel. The complainant has asserted that since such false statement to the written statement was read by the witnesses and some other persons had conveyed the complainant, the petitioners are liable to be prosecuted and punished for the offence u/s 500 of the Indian Penal Code.

4. While pressing the present petition, Sri Shivendra Prasad, learned Counsel appearing on behalf of the petitioners has argued that on the basis of such statement made in a written statement, which was filed in a proceeding before a court at Jehanabad, the complainant was not entitled to initiate present complaint against the petitioners without approval/sanction of the concerned court, where such statement was made. It was also argued that the complainant himself had admitted that initially he started practice and thereafter he was employed in Bihar Vidhan Sabha and finally his service was terminated and after termination of his service, he again joined the Bar and started practice. According to the learned Counsel for the petitioners, for such statement, no offence can be made out u/s 500 of the Indian Penal Code.

5. In this case Sri Satyendra Narayan Singh, learned Counsel has appeared on behalf of Opp. Party No. 2. He has vehemently opposed the prayer of the petitioners and submits that since the libel statement, which was made by the petitioners, was conveyed by other persons, certainly it will attract the provisions of Section 500 of the Indian Penal Code and the present petition is liable to be rejected.

6. Smt. Indu Bala Pandey, learned Addl. Public Prosecutor appearing on behalf of the State has vehemently opposed the prayer of the petitioner and supported the contention of Sri Satyendra Narayan Singh, learned Counsel for Opp. Party No. 2.

7. Besides hearing learned Counsel for the parties, I have perused the materials available on record. Prima facie, I am of the view that for such statement, which was made in a judicial proceeding before a court outside the jurisdiction of the Court where the present complaint petition was filed, the learned Magistrate was not required to proceed but without recording any definite finding on the merit of the case, this Court is persuaded to interfere with the impugned order on the ground that at this belated stage it would not be appropriate to direct the petitioners to participate in the present complaint petition. In the present case, the Court is not satisfied with the allegation leveled against the petitioners by the complainant and also on the basis of pendency of the proceeding for such a long period, it is desirable to interfere with the impugned order and, accordingly, this

Court is of the opinion that for the ends of justice, it is desirable to set aside the order dated 1.8.1998 passed by the learned Judicial Magistrate, 1st Class, Patna in Complaint Case No. 1447 (C) of 1997 and same is hereby set aside.

8. Accordingly, the petition stands allowed.