
(2007) 05 PAT CK 0135

In the Patna High Court

Case No : Criminal Miscellaneous No. 24240 of 2004

Kaunain Akhtar @ Md. Konen and Others

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 01-05-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 468(2)(c), 482
Penal Code, 1860 (IPC) — Section 323, 329, 373, 379, 406

Citation : (2007) PLJR 20

Hon'ble Judges : Ghanshyam Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ghanshyam Prasad, J.—Heard the parties. This application u/s 482 of the Code of Criminal Procedure has been filed to quash the order of cognizance dated 29.5.2004 passed by the Chief Judicial Magistrate, Madhubani in Trial No. 508 of 2004 thereby and there under the court below has taken cognizance under Sections 323 and 379 of the Indian Penal Code against the petitioners.

2. It appears from the record that originally the complaint case bearing No. 1047 of 1999 was filed by Opposite Party No. 2 since deceased against four persons including the petitioners under Sections 406, 323 and 379 of the Indian Penal Code. The same was sent to Benipatti police station for registering the case. The police registered a case bearing Benipatti P.S. Case No. 15 of 2000 against the petitioners and others. However, after investigation the police submitted final report. But the court below proceeded on protest petition filed by Opposite Party No. 2.

3. After inquiry u/s 202 of the Code of Criminal Procedure the court below took cognizance through the impugned order under Sections 329 and 373 of the Indian Penal Code.

4. It is submitted by the learned counsel for the petitioners that the cognizance

in question is barred by limitation as provided u/s 468(2) (c) of the Code of Criminal Procedure. It is further submitted that as per the complaint petition the date of occurrence is from April 1999 to 18.9.1999. Under all sections of the Penal Code referred in the complaint petition the maximum punishment is three years only in which the period of limitation for taking cognizance is three years but the court below has taken cognizance after lapse of much more than three years.

5. Considered the submission of learned counsel for the petitioners as well as provision of Section 468(2)(c) of the Code of Criminal Procedure which provides limitation for three years for taking cognizance" if the offence is punishable with imprisonment for a term not exceeding three years. In this case the date of occurrence is between April 1997 (sic--1999?) to 18.9.1999. The maximum punishment provided under Sections 406/ 379 of the Indian Penal Code is only three years whereas u/s 323 of the Indian Penal Code is only one year. However, on perusal of the order it appears that cognizance has been taken much after expiry of limitation period without condoning the delay. No petition for condonation of delay was filed on behalf of the prosecution. It is apparent that the cognizance taken by the court below is barred by limitation. Thus, having regard to the facts and circumstances of the case this application is allowed and impugned order of cognizance is hereby quashed.