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(2008) 04 PAT CK 0049

In the Patna High Court

Case No : Criminal Miscellaneous No. 36054 of 2005

Keshaw Singh @ Keshaw Prasad Singh and Others — APPELLANT

Vs

State of Bihar and Another — RESPONDENT

Date of Decision : 23-04-2008

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 203, 397, 398, 399, 399(2)
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2008) 56 BLJR 1957 : (2008) 3 PLJR 424

Hon'ble Judges : Chandramauli Kr. Prasad, Acting C.J.;Jayanandan Singh, J

Bench : Division Bench

Advocate : Krishna Prasad Singh, Narendra Kumar and Dharmendra Kumar Singh, for the Appellant; Pranav Kumar, for Opp. Party No. 2 and Mayanand Jha, Addl. P.P., for the Respondent

Final Decision : Dismissed

Judgement

Chandramauli Kr. Prasad, Acting C.J. and Singh, J.—This application has been filed for quashing order dated 30th August, 2005 passed by the Additional Sessions Judge-cum-Fast Track Court No. II, Kaimur at Bhabua in Criminal Revision No. 102 of 2004, whereby it has set aside order dated 22.4.2004 passed by the Judicial Magistrate, Ist Class, Bhabua in Complaint Case No. 271-C of 2001 dismissing the complaint.

2. Short facts giving rise to the present application are that on the basis of the statement given by opposite party No. 2 Radha Raman Singh, Bhagwanpur (Karamchat) P.S. Case No. 88/98 was registered under Sections 147, 148, 149 and 302 of the Indian Penal Code as well as Section 27 of the Arms Act. After usual investigation, final report was submitted by the police, which was accepted by the learned Magistrate.

3. The informant, however, filed a protest petition, which was treated as a complaint petition, in which the complainant was examined on solemn

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affirmation and enquiry was directed to be held. In the enquiry three witnesses were examined. The learned Magistrate by order dated 22.4.2004 dismissed the complaint u/s 203 of the Code of Criminal Procedure (hereinafter referred to as ''the Code''). The complainant aggrieved by the same, preferred Criminal Revision No. 102 of 2004 before the Sessions Judge, Kaimur (Bhabua) and labelled it as an application under Sections 397 and 399 of the Code. Ultimately the matter was assigned to the Additional Sessions Judge, Fast Track Court No. II. The revisional court on consideration of the materials on record came to the conclusion that the order dismissing the complaint is not proper and accordingly directed for further enquiry.

4. It is not in dispute that the revisional court had passed the impugned order without giving any opportunity to the petitioners of being heard.

5. Mr. Krishna Prasad Singh, Senior Advocate, appearing on behalf of the petitioners, raises a very short point. He submits that an order prejudicial to the petitioners had been passed and that having been done without giving any opportunity to them, the order impugned is vitiated on this ground alone. In support of his submission he has placed reliance on the judgment of the Supreme Court in the case of Bhagirath v. Kana Ram and Anr. 2001 Cri.L.J. 122 and our attention has been drawn to paragraph-3 of the judgment, which reads as follows:

3. We fail to understand, after the aforesaid order without even noticing the accused, how the High Court could pass the impugned order directing the Magistrate to take cognizance for the offence punishable u/s 307, IPC. In the facts and circumstances of the present, case, without expressing any opinion on the merits of the matter, we are quashing the impugned order of the High Court since the same has been passed without even hearing the accused, and remit the matter to the High Court for redisposal after giving opportunity of hearing to the parties concerned. The learned Chief Justice is requested to place this matter before a learned Judge other than the Judge who had passed the impugned order dated 06.11.1997.

6. He further submits that the complainant had chosen to file revision application under Sections 397 and 399 of the Code and from a plain reading of Section 399(2) read with Section 401(2) of the Code, an order to the prejudice of a person cannot be passed unless he is given an opportunity of being heard either personally or by pleader.

7. Additional P.P. appearing on behalf of the State and Mr. Pranav Kumar representing opposite party No. 2, however, contend that in fact the revisional court has exercised its power u/s 398 of the Code and the matter stands concluded by a Division Bench judgment of this Court in the case of Rajendra Lal Das and Others Vs. The State of Bihar and Nalin Kumar Das .

8. Having appreciated the rival submissions, we do not find any substance in the submission of Mr. Singh and the decision relied on is clearly distinguishable.

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9. True, it is the complainant, had chosen to label the revision application to be an application under Sections 397 and 399 of the Code. It is well settled that mere labelling of an application under a particular provision neither confers jurisdiction, nor deprives the jurisdiction vested to a court under the Statute. Here, the complaint was dismissed u/s 203 of the Code and the power to order further enquiry is conferred u/s 398 of the Code. Thus, in our opinion the revisional court while setting aside the order of Magistrate dismissing the complaint and directing for further enquiry, in fact, exercised its power u/s 398 of the Code. Once it is held so, in view of the decision of the Division Bench of this Court in the case of Rajendra Lal Das (supra), petitioners were not required to be given any notice, which would be evident from the following passage from the said judgment, which reads as follows :

14. The doctrine of audi alteram partem which is a general principle will not be applicable in a revision u/s 398 of the Code. Like any other general principle this also must make room for an exception expressly provided under the Statute.

10. We hasten to add that the order of further enquiry u/s 398 of the Code will not be vitiated on the ground that no notice was given to the persons shown as accused but that itself shall not deprive the Court to issue notice to the accused and hear them, if justice demands so.

11. It is relevant here to state that the judgment of the Supreme Court in the case of Bhagirath (supra) was considered by the Division Bench in Rajendra Lal Das case and on consideration of the aforesaid case, the Division Bench enunciated the law as stated above.

In that view of the matter, we do not find any merit in this application and it is dismissed accordingly.

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