
(2010) 03 PAT CK 0042

In the Patna High Court

Krishna Mangal Singh

APPELLANT

Vs

The State of Bihar and Jagannath Singh

RESPONDENT

Date of Decision : 25-03-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 182, 211, 307, 327, 328

Citation : (2010) 03 PAT CK 0042

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—No one appears on behalf of the petitioner either to press this application or to make a prayer for adjournment.

2. The sole petitioner has prayed for quashing of the order dated 20.7.1998, whereby the learned Sub Divisional Judicial Magistrate, Sheohar at Sitamarhi had taken cognizance for offences under Sections 182 and 211 of the Indian Penal Code in Case No. C-2/3/92, Tr. No. 168/98.

3. The short facts of the case is that the petitioner was the informant in Sheohar P.S. Case No. 16 of 1988. In the said F.I.R. the petitioner had alleged that Opp. Party No. 2, Jagannath Singh had served some drink, which was containing poison and after consuming the said drink, his younger brother, namely, Chitranjan Singh died. On the basis of said information, an F.I.R. i.e. Sheohar P.S. Case No. 16 of 1988 was registered for offences under Sections 428 and 307 of the Indian Penal Code. While investigation was going on, the petitioner apprehending that the police may not conduct fair investigation filed a protest petition before the court of the learned Magistrate. Finally, the police submitted final form in the said case and submitted a report to prosecute the petitioner for an offence under Sections 182 and 211 of the Indian Penal Code. The learned Magistrate accepted the final form and transferred the protest petition of this petitioner to the complaint side. However, due to non appearance/pairvi made by

the complainant on 9.4.1991 the complaint petition stood dismissed. Subsequently, the petitioner filed another complaint, which was registered as Complaint Case No. C-1/4 of 1991. In the said complaint, Opp.Party No. 2 was arrayed as accused. The complainant/petitioner was examined on S.A. and in support of Complaint, four witnesses were also examined and thereafter the learned Chief Judicial Magistrate, Sheohar at Sitamarhi by his order dated 19.8.1993 took cognizance of offences under Sections 327 and 328 of the Indian Penal Code against Opp.Party No. 2, Jagdish Singh.

4. From the petition it appears that against the order of cognizance, Opp.Party No. 2 filed a quashing application vide Cr.Misc. No. 13999 of 1993 before this Court. In paragraph 12 of the petition, it has been stated that the said petition was pending before this Court.

5. On the basis of the report dated 26.9.1988 of the Officer Incharge of Sheohar Police Station, the learned Chief Judicial Magistrate, Sitamarhi issued notice to the petitioner and, thereafter, as stated in the present petition, the petitioner filed a show cause stating therein that in this complaint regarding the allegation of poisoning the court had already taken cognizance . However, the learned Sub Divisional Judicial Magistrate, Sheohar at Sitamarhi had taken cognizance by the impugned order dated 20.7.1998 for offence u/s 182 and 211 of the Indian Penal Code against the petitioner.

6. Since on the same allegation, the Magistrate had taken cognizance for the offences, it is not appropriate for the Sub Divisional Judicial Magistrate to proceed with the report submitted by the police for initiation of proceeding under Sections 182 and 211 of the Indian Penal Code against this petitioner. Secondly, the alleged offence had taken place in the month of April, 1988 and after lapse of about 10 years, it was not desirable for the learned Sub Divisional Judicial Magistrate to take cognizance of the offence, particularly under Sections 182 and 211 of the Indian Penal Code. It is made clear that in the F.I.R., i.e. Sheohar P.S. Case No. 16 of 1988, the petitioner had made an allegation that in the night of 10.4.1988, his younger brother was killed by Opp.Party No. 2 by way of administering poison in drink. The learned Magistrate had obviously taken cognizance on the report of the police after lapse of more than 10 years from the date of occurrence.

7. The petitioner after the order of cognizance approached this Court by filing the present petition and by an order dated 8.12.1998, this Court had directed for stay of the further proceeding in Trial No. 168/98. As per order of this Court, Jagannath Singh was added as Opp.Party No. 2 in this application and thereafter notice was issued. Despite valid service of notice, Opp.Party No. 2 did not appear and, accordingly, on 23.6.1999, this Court admitted the present petition for hearing and directed that till final disposal of the case, interim order passed on 8.12.1998 will continue. Even at the time of hearing none appeared on behalf of Opp.Party No. 2 as well as none appeared on behalf of the petitioner. One of the reasons for quashing of the order of cognizance in the present case is that the

order of cognizance was passed on 20.7.1998 for the offence, which was alleged to be committed in the year 1988. Accordingly, after expiry of 22 years from the date of occurrence it would not be advisable to direct the petitioner to appear before the court below for facing the trial for the offences committed under Sections 182 and 211 of the Indian Penal Code.

8. In view of the facts and circumstances, as indicated above, I am of the view that the order of cognizance suffers with glaring defect and illegality and liable to be set aside.

9. Accordingly, the order of cognizance dated 20.7.1998 passed in C-2/3/92, Tr. No. 168/98 is hereby set aside and the petition stands allowed.