

(2007) 02 PAT CK 0136

In the Patna High Court

Case No : Criminal Miscellaneous No. 1882 of 2007

Mahadeo Yadav and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-02-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2007) 2 PLJR 51

Hon'ble Judges : Ghanshyam Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ghanshyam Prasad, J.—Heard. This application u/s 482 Cr.P.C. has been filed to quash the order dated 12.9.2006 passed by Assistant Sessions Judge, Patna City in Sessions Trial No. 558 of 1995 thereby and thereunder he has rejected the petition dated 15.2.2003 filed by the petitioners for prosecution of the opposite party nos. 2 and 3.

2. On the basis of fardbeyan lodged by opposite party no. 2, Kadam Kuan P.S. Case No. 7 of 1994 was instituted against the petitioners. In course of investigation, the police examined one Baleshwar Yadav, son of Kali Yadav as witness.

3. In course of the trial, one Baleshwar Yadav S/o Mukhali Yadav @ Kali Yadav was produced before the court for examination. Immediately a petition dated 16.1.2001 was filed on behalf of the defence/petitioners alleging therein that the witness is imposter and not the real Baleshwar Yadav S/O Late Kali Yadav. Baleshwar Yadav who was examined by the police in course of investigation has already died. Prayer was already made to prosecute both Baleshwar Yadav as well as the informant who are opposite party nos. 2 and 3. As a result Baleshwar Yadav, opposite party no. 3 was not examined. The matter was enquired by the police. The police vide its report dated 20.1.2001 reported that Baleshwar Yadav,

son of Late Kali Yadav had already died a year before. The opposite parties filed rejoinder along with certificate of Mukhiya to show that Baleshwar Yadav, son of Kali Yadav who died was a person of another village and not of the village in question.

4. On 15.2.2003 again, the petitioners filed application with prayer to lodge prosecution against the opposite parties which has been rejected vide impugned order.

5. The learned counsel for the petitioners submits that it is a clear case of impersonation and, therefore, the learned lower court ought to have lodged case against opposite parties.

6. However, from the facts stated above as well as in the impugned order, it would be clear that death of Baleshwar Yadav, who was examined during course of investigation itself in dispute. The prosecution has also filed document against the claim of the petitioners. Baleshwar Yadav, opposite party no. 3 himself has also filed affidavit dated 23.9.2004 stating therein that he was real Baleshwar Yadav who was examined by the police. Apart from it, he was also not examined in the Court. No any false statement was given by him. Therefore, mere filing of Hazari does not make any offence. The court below has rightly rejected the petitions filed by the petitioners. Accordingly, this application is rejected. The court below is directed to conclude the trial as early as possible.