
(2008) 09 PAT CK 0026

In the Patna High Court

Case No : Criminal Miscellaneous No. 14401 of 2007

Maresh Prasad and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 11-09-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 116, 373

Citation : (2009) 1 PLJR 579

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Abhijit Sinha, J.—Heard Mr. Rashid Izhar, the learned counsel for the petitioners as also Mr. Rajesh Kumar Mishra, the learned counsel for Opp. Party No. 2 and Mr. Jharkhandi Upadhaya, the learned A.P.P. for the State. The petitioners who are the second party in a proceeding u/s 107 Cr.P.C. being Case No. 766 of 2005 are aggrieved by the order dated 12.1.2007 passed in Cr. Revision No. 32 of 2006/81 of 2006 by Sri Basant Kumar Dikshit, Presiding Judge, F.T.C. No. IV, Gaya, whereby while upholding the order of the learned Sub-Divisional Magistrate, Gaya dated 30.5.2006 passed in the aforesaid proceeding, he has dismissed the revision. The learned Magistrate had continued the proceeding and passed final orders after the passage of statutory period of six months as provided under Subsection (6) of Section 116 Cr.P.C.

2. It appears that the second party in pursuance of the notice issued by the Sub-Divisional Magistrate appeared before the Magistrate on 30.5.2005. During the pendency of the proceeding on 21.11.2005 the first party filed a petition for extending the statutory period as there was no likelihood of completion of the proceeding within the statutory period. No definite orders appears to have been passed by the learned Magistrate but he continued with the proceeding and eventually passed final orders on 31.5.2006 making the rule absolute and directing the second party to execute bonds to maintain peace for one year. A

Revision being Cr. Revision No. 32 of 2006 was preferred before the Sessions Court and by order dated 12th January, 2007, the Presiding Judge, F.T.C. No. IV, Gaya dismissed the revision on the ground that since the proceeding u/s 107 Cr.P.C. had been completed, the aggrieved party was entitled to file an appeal u/s 373 Cr.P.C.

3. Unfortunately, I am not in a position to agree with either of the two courts below. Firstly, the learned Magistrate was remiss of the fact that in the proceeding u/s 107 Cr.P.C. statutory period of six months has been fixed within which the proceeding is required to be completed since it relates to emergency measures and in the event it is not possible to complete the proceeding within the stipulated statutory period under subsection (6) of Section 116 Cr.P.C., the Magistrate was empowered to extend the period for special reasons to be recorded in writing, failing which on the expiry of the said statutory period, the proceeding would automatically stand terminated. The learned Magistrate notwithstanding the filing of a petition by the first party either ignored the provisions of sub-section (6) of Section 116 Cr.P.C. or was purposely remiss of the fact of what he was required to do.

4. The Revisional Court again erred in law by stating that an appeal lay u/s 373 Cr.P.C.

5. It goes without saying that in a revision, the Revisional Court is required to satisfy itself or himself as to the correctness, legality or propriety of any finding or order recorded or passed, and as to the regularity of any proceeding of such inferior court. The learned Presiding Judge, F.T.C No. IV, Gaya was again remiss of the fact that the proceeding u/s 107 Cr.P.C continued beyond the statutory period fixed by the Statute without there being any extension of the said period by an order in writing stating the special reasons for extending the proceeding and anything continued beyond the statutory period would automatically become non est by efflux of statutory period fixed by the Statute. The learned Presiding Officer instead of dealing and dwelling on this aspect of the matter took a tangent turn and went into the provisions of appeal which he was under law not permitted to do.

6. In the aforesaid facts and circumstances of the case and the discussions made above, I find sufficient force in the submissions advanced by the learned counsel for the petitioners.

7. The learned counsel for Opp. Party No. 2 sought to assail the submissions advanced by the learned counsel for the petitioners by stating that the petitioners have participated in the proceeding even after efflux of the statutory period and had voluntarily surrendered themselves to the jurisdiction of the court and as such, today they cannot raise plea of the proceeding having terminated by an efflux of the statutory period. Submissions advanced by the learned counsel for Opp. Party No. 2 are noticed only to be rejected.

8. It goes without saying that whether parties submit themselves to the

jurisdiction of the court or not is immaterial when the Statute has fixed a specific period for completion of the proceeding and it is not completed with the statutory period, it automatically terminates with the efflux of time. In the result the application succeeds and the orders passed by the learned Magistrate and the Revision Court are hereby set aside.