
(2001) 02 PAT CK 0071

In the Patna High Court

Case No : Criminal W.J.C. No. 526 of 2000

Mahi Kant Chaudhary and Others

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 06-02-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397(3)
Penal Code, 1860 (IPC) — Section 195, 420, 465, 467, 471

Citation : (2001) CriLJ 3819 : (2001) 1 PLJR 786

Hon'ble Judges : P.K. Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.K. Sinha, J.—Heard.

This petition is for quashing the entire criminal prosecution of the petitioners in connection with Andhra Tharhi P.S. Case No. 98 of 1987, corresponding to C.R.NO. 807 of 1987 pending In the Court of Sub-Divisional Judicial Magistrate, Jhanjharpur as also for quashing the order dated 15-9-1992 passed by the S.D.J.M., Jhanjharpur by which the learned Magistrate had ordered for framing of the charges under Sections 420, 467, 465, 195 and 471 of the Indian Penal Code as also for quashing the order recorded by the learned 3rd Additional Sessions Judge, Madhubani in Criminal Revision No. 1259 of 1992 dated 2-8-2000 by which the learned lower Court had dismissed the revision application filed by the petitioners against the aforesaid order of the learned S.D.J.M. dated 15-9-1992.

2. Learned counsel for the petitioners mainly has made two arguments, firstly that after investigation the police filed final report holding the case to be a civil dispute but even thereafter cognizance of offence was taken against which the petitioners had moved this Court in Cr. Misc. No. 5019 of 1989 as per which after some arguments the learned counsel for the petitioners was permitted to withdraw the application with liberty to place all the relevant papers before the learned Magistrate at the time of framing of the charges which could be

considered in accordance with law. Contention of the learned counsel is that even after this order the learned Sub-Divisional Judicial Magistrate vide Annexure-8 had passed a cryptic order without discussing the grounds mentioned by the learned counsel for the petitioners. Learned counsel also took me through other annexures and also on merits of the case to show as to how the land in question belongs to the petitioners which was, as submitted, recognised by the survey authorities, hence no offence, as alleged, can be deemed to have been committed by the petitioners. Against the cognizance of offence the petitioners have already moved this Court and that application was dismissed as withdrawn. The order of this Court does not appear to have been noticed by the learned S.D.J.M. while recording the order as per Annexure-8 but that was placed before the learned Additional Sessions Judge while hearing the revision application whereafter the learned Court went through the lower Court's record and found that the aforesaid order of this Court was not on record.

3. Noting that the revision was not maintainable, the learned Additional Sessions Judge also observed that when the matter was raised before that Court that there was no material in the case diary at all to frame charges against the petitioner, the learned Court thought it better to go through the merits of the submission in order to avoid further complication, as in the words of the learned lower Court itself. The learned Court, after some discussion, held that there were sufficient materials and strong documentary and oral evidence in the case diary against the accused persons relating to commission of forgery.

4. The order of the learned Sub-Divisional Judicial Magistrate, vide Annexure 8, has been tested in revision before the Sessions Court. Since Section 397(3) of the Code of Criminal Procedure bars a second revision, the application has come up before this Court under Article 227 of the Constitution of India. It is well settled that while deciding any matter under this provision this Court cannot act as if sitting in appeal or in revision, thereby circumventing the provision of procedural law. This power is to be utilised only in extremely exceptional cases.

5. The order of this Court recorded in the Criminal Miscellaneous case against the cognizance has been noticed by the learned Additional Sessions Judge and he has discussed the materials on record before dismissing the application.

6. In that view of the matter, I don't think that this Court under Article 227 of the Constitution should interfere in the impugned order.

7. In view of the aforesaid this application is dismissed. However, it is made clear that any observation of this Court in this order will have no bearing on the trial of the case.