
(1997) 01 PAT CK 0029

In the Patna High Court

Case No : Criminal Revision No. 166 of 1988

Md. Nisar Alam and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 31-01-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 203, 204, 209

Citation : (1997) 1 BLJR 779 : (1997) 1 PLJR 653

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.K. Sarin, J.—This criminal revision application is directed against the judgment and order dated 28.1.1988 passed by 3rd Additional Sessions Judge, Bhagalpur in Cr. Revision No. 156/87 by which the learned Additional Sessions Judge has set aside the order dated 27.5.1987 passed by Sub-divisional Judicial Magistrate, Naugachhia in C. 48/87.

2. It appears that the opposite party No. 2 filed a complaint before the learned Sub-divisional Judicial Magistrate, Naugachhia alleging that on 13.4.1987 at about 12 O' Clock in the night when he and his wife were sleeping outside thatched house the accused petitioners came there variously armed and the accused petitioner No. 1 put his 3 Nut (Gun) on the chest of the complainant and exhorted his companions to take the belongings from the house where upon the other petitioners took away two maunds Arhar, one piece of Sari, one Thali and one Lota. It was further alleged that the accused Md. Junaid Ansari (petitioner No. 3) threatened the complainant's wife to keep mum. It was alleged that the accused Nisar (petitioner No. 1) set fire to the complainant's thatched house which resulted in the complete burning of the house along with the articles kept in it. It was alleged that the complainant went to the police station, but petitioner Nos. 1 and 3, Nisar and Junaid were already there and the police was in their collusion. On 15.4.1987, the complainant filed a complaint before the learned

Magistrate, which was sent by the learned Magistrate to police for instituting a case to investigate. The said order was recalled on a petition filed by the complainant and the learned Magistrate after examining the complainant held enquiry u/s 202 of the Code of Criminal Procedure. Four witnesses were examined on behalf of the complainant. The learned Magistrate on consideration of the evidence came to the conclusion that the complainant had not been able to prove his case and as such he did not find sufficient materials to proceed with the case. Accordingly, the learned Magistrate dismissed the case u/s 203 of the Code of Criminal Procedure (hereinafter referred to as the Code). Feeling aggrieved the complainant filed Criminal Revision No. 156/87, which was heard and disposed of by 3rd Additional Sessions Judge, Bhagalpur by the judgment and order under revision. The learned Sessions Judge set aside the order of the learned Magistrate and sent the record to the learned Magistrate for passing necessary orders according to law. The learned Sessions Judge observed that the learned Magistrate was not justified in dismissing the complaint's case as untrue after examining the evidence of witnesses. The learned Sessions Judge observed that meticulous examination of the statement of witnesses, the facts and circumstances of the case are to be done after the close of the trial and not at the stage of enquiry u/s 202 of the Code.

3. Being aggrieved by the order passed by the learned Sessions Judge the accused have preferred this criminal revision.

4. the learned Counsel for the petitioners has contended that the learned Magistrate was perfectly justified in dismissing the complaint when he did not find the prima facie case to be made out on account of unreliable evidence. He has contended that the Magistrate was right in weighing the evidence of the witnesses to find out whether reliance can be placed on it. In support of his contention, the learned Counsel for the petitioners has placed reliance on a decision of Supreme Court in the case of Vadilal Panchal Vs. Dattatraya Dulaji Ghadigaonker and Another, wherein it has been held that-

Section 203 makes it clear that the judgment which the Magistrate has to form must be based on the statements of the complainant and his witnesses and the result of the investigation or inquiry. But the judgment which the Magistrate has to form is whether or not there is sufficient ground for proceeding. This does not mean that the Magistrate is bound to accept the result of the inquiry or investigation or that he must accept any plea that is set up on behalf of the person complained against. The Magistrate must apply his judicial mind to the materials on which he has to form his judgment. In arriving at his judgment he is not fettered in any way except by judicial considerations; he is not bound to accept what the inquiring officer says, nor is he precluded for accepting a plea based on an exception, provided always there are satisfactory and reliable materials on which he can base his judgment as to whether there is sufficient ground for proceeding on the complaint or not. If the Magistrate has not misdirected himself as to the scope of an inquiry u/s 202 and has applied his

mind judicially to the materials" before him, it would be erroneous in law to hold that a plea based on ;an exception can never be accepted by him in arriving at his judgment. What bearing such a plea has on the case of the complainant and his witnesses, to what extent they are falsified by the evidence of other witnesses-all- these are questions which must be answered with reference to the facts of each case. No universal rule can be laid in respect of such question.

5. In the said case, the question involved was whether the Magistrate could take into consideration the plea of self defence of the accused which found support from the report of the Enquiring Officer holding enquiry u/s 202 of the Code and in that background it was held that it was open to the Magistrate to hold that the plea was correct on the basis of the report and the statements of witnesses recorded by the Enquiring Officer.

6. The learned Counsel for the petitioners has further placed reliance on a decision of the Apex Court in the case of Pramatha Nath Taluqdar Vs. Saroj Ranjan Sarkar, where in the question involved was entertainment of second complaint after the first complaint had been dismissed. It has been held in the said case that where a complaint is filed and the Magistrate on an enquiry held u/s 202 takes the evidence offered by the complainant into consideration and comes to the conclusion that there is no ground to proceed, that the evidence is not worthy of credit and that he is not satisfied with the correctness of the complaint, he is entitled to refuse the issue of process and dismiss the complaint u/s 203. There cannot be any dispute regarding the principles laid down by the Apex Court in the said two decisions that a Magistrate has to be satisfied on consideration of the evidence led in enquiry u/s 202 of the Code whether a prima facie case is made out to proceed against the accused persons so as to issue process. If the Magistrate is not satisfied about such prima facie case, he is entitled to dismiss the complaint u/s 203 of the Code. In the present case, the question which arises for consideration is whether the reasons given by the learned Sessions Judge for setting aside the order of the learned Magistrate that the learned Magistrate was not justified in entering in to meticulous examination of the evidence is correct or erroneous. At the stage of considering the question of issue of process after enquiry u/s 202 of the Code, the Magistrate has to be prima facie satisfied on the basis of evidence adduced before him that a case is made out for proceeding against the accused. The Magistrate is not to weigh the pros and cons of the evidence at that stage and enter into appreciation of evidence as is done at the trial. The Apex Court in the case of Kewal Krishan Vs. Suraj Bhan and Another, while considering the scope of Sections 203/204 of the Code has observed as follow-

At the stage of Sections 203 and 204, in a case exclusively triable by the Court of Session, all that the Magistrate has to do is to see whether on a cursory perusal of the complaint and the evidence recorded during the preliminary inquiry u/s 200 and 202, there is prima facie evidence in support of the charge levelled against the accused, All that he has to see is whether or not there is "sufficient

ground for proceeding"" against the accused. At this stage, the Magistrate is not to weigh the evidence meticulously as if he were the trial court. The standard to be adopted by the Magistrate in scrutinising the evidence is not the same as the one which is to be kept in view at the stage of framing charges. Even at the stage of framing charges the truth, veracity and effect of the evidence which the complainant produces or proposes to adduce at the trial, is not to be meticulously judged. The standard of proof and judgment, which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of framing charges. A fortiori, at the stage of Sections 202/204, if there is prima facie evidence in support of the allegations in the complaint relating to a case exclusively triable by the Court of Session, that will be a sufficient ground for issuing process to the accused and committing them for trial to the Court of Session.

The proposition that in cases instituted on complaint in regard to an offence exclusively triable by the Court of Session, the standard for ascertaining whether or not the evidence collected in the preliminary inquiry discloses sufficient grounds for proceeding against the accused is lower than the one to be adopted at the stage of framing charges in a warrant case triable by the Magistrate, is now evident from the scheme of the new Code of 1973. Section 209 of the Code of 1973 dispenses with the inquiry preliminary to commitment in cases triable exclusively by a Court of Session, irrespective of whether such a case is instituted on a criminal complaint or a police report, if the Committing Magistrate thinks that it is not necessary to commit the accused who may be on bail to custody, he may not cancel the bail. This has been made clear by the words "subject to the provisions of this Code relating to bail" occurring in Clause (b) of Section 209. Therefore, if the accused is already on bail, his bail should not be arbitrarily cancelled. Section 227 of the Code of 1973 has made another beneficent provision to save the accused from prolonged harassment which is a necessary concomitant of a protracted trial. This section provides that if upon considering the record of the case, the documents submitted with it and the submissions of the accused and the prosecution, the Judge is not convinced that there is sufficient ground for proceeding against the accused, he has to discharge the accused under this Section and record his reasons for so doing.

7. It has been held by the Apex Court in the said case that where the Magistrate meticulously examines evidence and dismisses the complaint u/s 203 of the Code, he exceeds his jurisdiction.

8. This Court also in the case of *Sadan Singh v. Ram Sugar Singh* 1980 BLJR 289 has held that where the allegations made in the complaint or the statement of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of offence alleged against the accused the issuance of process against the accused would be illegal. In the present case, the learned Sessions Judge has discussed the reasons given by the learned Magistrate and

may be said to have found that it is not a case where the complaint on its face does not disclose the essential ingredients of offence or that the statement of witnesses taken at their face value do not make out any case. The view taken by the learned Sessions Judge in the order under revision can not be said to suffer from any illegality. The Magistrate could not have dismissed the complaint on meticulous examination of evidence which is usually done at the trial. It may also be observed that entire approach of the learned Magistrate was as if he was holding trial to record a finding whether the prosecution case is proved or not. The learned Magistrate himself in the concluding portion of his order has observed "it is apparent that the complainant has not been able to prove his case". Such an approach on the part of the learned Magistrate was not in accordance with law and the learned Sessions Judge has rightly set aside the order passed by the learned Magistrate.

9. In view of above discussion, it does not appear to be fit case for interference by this Court in its revisional jurisdiction, the application is dismissed accordingly.