
(2010) 10 PAT CK 0005

In the Patna High Court

Case No : Criminal Miscellaneous No. 16665 of 1998

Md. Sagir Ansari and Others

APPELLANT

Vs

The State of Bihar, Md. Nishar Ahmad Ansari

RESPONDENT

Date of Decision : 29-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 227, 482
Penal Code, 1860 (IPC) — Section 227, 232, 328, 34, 366

Citation : (2010) 10 PAT CK 0005

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar, J.—Five petitioners, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, have prayed for quashing of an order dated 18.7.1998 passed by Shri S.P. Sharma, 5th Additional Sessions Judge, East Champaran at Motihari in Sessions Trial No. 66 of 1998 , arising out of Motihari Town P.S. Case No. 194 of 1996(T.R. No. 552 of 1997). By the said order, the learned 5th Addl. Sessions Judge has rejected the petition for discharge filed on behalf of the aforesaid five petitioners.

2. Short fact of the case is that Opp. Party No. 2, who was husband of petitioner No. 3 initially filed a complaint in the Court of learned Chief Judicial Magistrate, Sadar Motihari, East Champaran vide Complaint Case No. 952 of 1996. After filing of the complaint petition, the learned Magistrate u/s 156(3) of the Code of Criminal Procedure referred the complaint to the police for its institution and investigation. Accordingly, an F.I.R. vide Motihari Town P.S. Case No. 194 of 1996 was registered against the aforesaid petitioners for the offences under Sections 406, 420, 366, 497 and 498 of the Indian Penal Code. It was alleged by Opp. Party No. 2 that immediately after the marriage, petitioner No. 1 on false pretext took away petitioner No. 3, who was wife of the complainant along with entire ornaments etc. After registering F.I.R., the police investigated the same.

However, final report was submitted by the police. After submission of final report, the learned Magistrate on the prayer made by the informant, differing with the police report took cognizance of the offences against all the accused persons under Sections 406, 420, 366, 497 and 498 of the Indian Penal Code. At the stage of charge, a petition was filed u/s 227 of the Code of Criminal Procedure on behalf of the petitioners for their discharge. However, learned 5th Addl. Sessions Judge, Motihari , East Champaran vide its order dated 18.7.1998 passed in Sessions Trial No. 66 of 1998 rejected the discharge petition and fixed the date for framing of the charge.

3. Aggrieved with the order of rejection of discharge petition, all the five petitioners approached this Court by filing the present petition. On 11.9.1998 , while issuing notice to Opp. Party No. 2 this Court directed that until further orders further proceeding in Sessions Trial No. 66 of 1998 pending in the Court of Sri S.P. Sharma, 5th Addl. Sessions Judge, Motihari shall remain stayed so far the petitioners are concerned. Subsequently, on 16.2.1999 the petition was admitted for hearing. It was directed that the interim order dated 11.9.1998 shall continue. The order of stay is still continuing.

4. Sri Kanhaiya Prasad Singh, learned Senior Counsel appearing on behalf of the petitioners, while challenging the order of rejection of discharge petition, submits that the present petition was filed maliciously. It has been submitted by Sri Singh, learned Senior Counsel for the petitioners that petitioner No. 3, who was wife of the informant, i.e. Opp. Party No. 2 , had earlier filed a maintenance case against her husband and in the maintenance case, order was also passed in favour of petitioner No. 3. Learned Senior Counsel has referred to Annexure-3 to the petition i.e. an order dated 30.06.1997 passed in Maintenance Case No. 66(M) of 1996. Learned Senior Counsel for the petitioners has also argued that on earlier occasion an F.I.R. was lodged by the petitioner No. 1 against Opp. Party No. 2 (informant) for the offences under Sections 498A, 232, 371/34 and 328 of the Indian Penal Code. It has been submitted that since cases were filed against opp. Party No. 2, who was none else but the husband of petitioner No. 3, the present case was filed in a calculated manner. Accordingly, it has been prayed to set aside the order of rejection of discharge petition.

5. Sri Ramakant Sharma, learned Senior Counsel appearing on behalf of Opp. Party No. 2 has vehemently opposed the prayer of the petitioners. It has been submitted by Sri Sharma, learned Senior Counsel for Opp. Party No. 2 that even though there were specific allegations in the F.I.R., which was lodged against four petitioners and during investigation, number of witnesses had categorically supported the prosecution case and the Dy. Superintendent of Police, while supervising the case had also opined to file chargesheet against the accused persons , to the reasons best known to the Investigating Officer, a final report was submitted. After submission of final report, an application was filed by Opp. Party No. 2 with a prayer to take cognizance on the basis of materials in the case diary. Thereafter, the learned Magistrate thoroughly examined the case diary and

after being satisfied with a prima facie case has taken cognizance of the offences. Subsequently, the case was committed to the Court of Session and at the stage of charge when petition for discharge u/s 227 of the Code of Criminal Procedure was filed, learned Addl. Sessions Judge thoroughly examined the entire materials and by assigning a detailed reason has rejected the discharge petition. Accordingly, it has been prayed to reject the petition.

6. Sri A.M.P. Mehta, learned Addl. Public Prosecutor appearing on behalf of the State has supported the stand taken by Sri Rama Kant Sharma, learned Senior Counsel appearing on behalf of Opp. Party No. 2.

7. Besides hearing learned Counsel for the parties, I have also perused the materials available on record. I have carefully examined the impugned order. On perusal of the impugned order, the Court is satisfied that the learned Addl. Sessions Judge has committed no error while rejecting the discharge petition. Time without number, it has been reiterated that at the stage of charge only requirement is to see as to whether prima facie case is made out or not. The Court is of the opinion that while rejecting the discharge petition, the learned Addl. Sessions Judge, East Champaran at Motihari has committed no error.

8. Accordingly, I do not find any merit in the petition and the petition stands rejected.

9. In view of rejection of the present petition, interim order of stay dated 11.9.1998 stands automatically vacated.

Office is directed to remit back the lower court record along with a copy of this order `forthwith.