

(2020) 01 PAT CK 0143

In the Patna High Court

Case No : Criminal Miscellaneous No.17363 Of 2015

Md. Serajuddin

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 08-01-2020

Acts Referred:

Indian Penal Code, 1860 — Section 182, 211, 364

Code Of Criminal Procedure, 1973 — Section 156(3), 173, 203

Citation : (2020) 01 PAT CK 0143

Hon'ble Judges : Birendra Kumar, J

Bench : Single Bench

Advocate : Sanjay Kumar, Neeraj Kumar Singh, Bimlesh Kumar Pandey, Sunil Kumar Pandey

Final Decision : Allowed

Judgement

1. Heard learned counsel for the parties.
2. The petitioner filed Complaint Case No. 880(C) of 2008 before the learned Chief Judicial Magistrate, Bettiah against opposite party no. 2 to 9 alleging therein that on 26.04.2008, when the complainant was returning along with his wife Hazra Khatoon, the accused persons abducted to Hazra Khatoon and threatened to kill. The complaint was filed under Section 364 of the Indian Penal Code. On the order of the learned Judicial Magistrate, under Section 156(3) Cr.P.C., the police registered Bettiah Muffasil (Manuapul) P.S. Case No. 60 of 2009 under Section 364 of the Indian Penal Code. During investigation, statement of the victim was recorded wherein she stated that no one had kidnapped her, rather she had voluntarily married a year back with opposite party no. 2 Aurangjeb.
3. Thereafter, on 31.05.2009, the police filed a petition before the court of

learned Chief Judicial Magistrate, Bettiah that the petitioner has committed offence under Section 182 and 211 of the Indian Penal Code, hence, he should be prosecuted on the ground that after investigation, report, under Section 173 Cr.P.C., was submitted as allegation false and untrue.

4. The petitioner had filed a protest petition in the case on 27.05.2009. That was registered separately as complaint case No. 2965(C) of 2010 which was subsequently dismissed under Section 203 Cr.P.C. on 06.01.2016 and the order has attained finality.

5. By order dated 01.12.2010 passed in Sessions Trial No. 368 of 2011 arising out of Case No. 65 NF of 2009, the learned court below took cognizance against the petitioner for offence under Section 182 and 211 of the Indian Penal Code.

6. Learned counsel for the petitioner has challenged the impugned order on different grounds including on the ground that no offence under Section 182 and 211 of the Indian Penal Code is made out and the cognizance is barred by limitation.

7. Contention is that the impugned order would show that the court below had issued notice against the petitioner and service report was not available.

Therefore, the impugned order was passed in violation of the principle of natural justice as the petitioner was not heard. He further submits that the

record of Bettiah Muffasil (Manuapul) P.S. Case No. 60 of 2009 would show that the final form submitted by the police, under Section 173 Cr.P.C.,

was accepted by the court without service of notice against the petitioner, as such, opportunity of hearing was not there to the petitioner.

8. Learned counsel for the opposite party no. 2 to 9 has opposed the prayer, however, he is unable to satisfy the Court that service of notice was ever

affected on the petitioner before the impugned order was passed.

9. Whether notice to the petitioner is requirement of law or not need not be considered in view of the facts and circumstances of this case that the

court below decided to notice the petitioner first and then pass any order. Therefore, the court below should have ensured that proper service of notice against the petitioner was there.

10. Since the impugned order was passed in violation of the natural justice, the same is not sustainable in law. Accordingly, stands quashed and the

matter is remitted back to the court below to pass necessary order after giving

opportunity of hearing to the parties.

11. The order has been passed in presence of learned counsel for the parties. Hence, the matter be listed before the court below on 12.02.2020, when

the parties shall remain present before the court below. No further notice need be sent to any of the parties by the court below.

12. This application stands allowed.