
(2010) 04 PAT CK 0100
In the Patna High Court

Md. Zahid and Others

APPELLANT

Vs

The State of Bihar and Md. Ahmad Raza @ Bhattu

RESPONDENT

Date of Decision : 01-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 147, 379

Citation : (2010) 04 PAT CK 0100

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar, J.—Twelve petitioners, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, have prayed for quashing of the order dated 8.12.1998 passed in Complaint Case No. 71 C /98. By the said order, Sri A.A. Gauri, learned Addl. Chief Judicial Magistrate, Sheikhpura had taken cognizance of offences under Sections 147 and 379 of the Indian Penal Code and also ordered for issuance of processes for securing appearance of the accused persons and the case was transferred to the Court of Sri Gangadhar Prasad, learned Sub Divisional Judicial Magistrate, Sheikhpura.

2. Sri Anisur Rahman, learned Counsel appearing on behalf of the petitioners, while challenging the impugned order, submits that for lodging the complaint petition in question, the complainant had got no locus standi. He further submits that so far petitioner Nos. 2 and 3 are concerned, they were not present at the place of occurrence, rather on the date of occurrence, they were in Patna and, as such, he submits that the petitioners, particularly petitioner Nos. 2 and 3 have been falsely implicated by the complainant.

3. I have perused the complaint petition as well as the impugned order of cognizance.

4. The learned Magistrate, while passing the impugned order, has examined the

materials available on the record. He has examined the complaint petition, statements of the complainant on solemn affirmation and evidence of three witnesses, who had deposed in support of the complainant. Prima facie, I do not find any error in the order of cognizance.

5. So far the stand taken by the learned Counsel for the petitioners that petitioner Nos. 2 and 3 were not present at the place of occurrence, rather on the date of occurrence they were at Patna is concerned, same cannot be examined and looked into by this Court while exercising power conferred u/s 482 of the Code of Criminal Procedure. It is a defence of alibi which can be looked into by the trial Court at the appropriate stage. Time without number, the Hon"ble Supreme Court has restrained the superior Court from interfering at the initial or interlocutory stages of the cases. In this case, only order of cognizance was passed and, thereafter, petitioners rushed to this Court while invoking inherent jurisdiction u/s 482 of the Code of Criminal Procedure. However, by the order dated 21.7.1999, the petition was admitted. While admitting the case, this Court had directed that during pendency of this application, further proceedings in court below shall remain stayed.

6. I do not find any merit in this petition and the petition stands rejected.

7. In view of the rejection of this petition, the order of stay granted by order dated 21.7.1999 stands automatically vacated.

Let this order be communicated to the court below forthwith.