

(1976) 02 PAT CK 0017

In the Patna High Court

Nagendra Nath Verma and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 03-02-1976

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 482
Penal Code, 1860 (IPC) — Section 147, 148, 323, 379, 427

Citation : (1977) CriLJ 45

Hon'ble Judges : Rameshwar Prasad Sinha, J

Bench : Single Bench

Judgement

Rameshwar Prasad Sinha, J.—This is an application u/s 482 of the Code of Criminal Procedure by the petitioners for quashing an order passed by the Chief Judicial Magistrate, Saharsa, on the 2nd January, 1975, taking cognizance under Sections 148 379 and 448 of the Indian Penal Code against the three petitioners and one more accused person.

2. It appears that Opposite Party No. 2, Kunkun Rai, had filed a petition for complaint against these petitioners and one more on the 30th April, 1973, in respect of an occurrence which had taken place on the 28th April, 1973, wherein offences under Sections 147 148 323 379 427 and 448 of the Indian Penal Code were alleged. The learned Magistrate after examining the complainant (Opposite Party No. 2) on solemn affirmation on that very date, i.e., on the 30th April, 1973, directed a Magistrate First Class to hold an inquiry at the spot. Accordingly, an inquiry was held by a Magistrate, who submitted his report on the 11th December, 1974. On receipt of the inquiry report and having perused the same, the learned Magistrate purported to take cognizance of the offences under Sections 148 379 and 448 of the Indian Penal Code, and transferred the case to the court of Shree D.P. Sinha, for disposal. The petitioners have preferred this application for quashing the impugned order of the learned Magistrate taking cognizance and issuing summonses against the petitioners.

3. The learned lawyer for the petitioners has submitted that the learned

Magistrate was not justified in taking cognizance and summoning the accused persons to stand their trial as the inquiry held by the inquiring Magistrate was not properly held, that there has been a land dispute between the parties, as has been held by the inquiring Magistrate, and that the petitioners will be unnecessarily harassed in the Criminal Case, and for these reasons the impugned order of the learned Magistrate should be quashed. It has also been urged that the inquiry has not been held according to the provisions of Section 539B of the Code of Criminal Procedure.

4. It appears that the learned Sub-divisional Magistrate after the examination of the complainant on solemn affirmation thought it proper to get the spot inquiry held by a competent authority. Hence, under the provisions of Section 202 of the Code of Criminal Procedure, ordered a Magistrate First Class, to hold an inquiry and report. The learned Magistrate, who was directed to hold the inquiry, after conducting the inquiry, submitted a report on the 11th December, 1974, a copy of which is Annexure "10" to this application. From the inquiry report, it is quite evident that the learned inquiring Magistrate recorded the statements of three witnesses, who supported the case of the complainant and on visiting the spot, he found pillars etc., fixed there. Hence he was satisfied that the incident alleged in the petition of complaint had taken place. The inquiring Magistrate also found that the occurrence had taken place on account of land dispute between the parties and hence he recommended for the summoning of the accused persons and putting them on trial. On the 2nd January, 1975, the learned Chief Judicial Magistrate passed the impugned order, which is as follows:

Complainant , present. Perused the report of the Inquiring Officer. Cognizance is taken under Sections 379 148 448, Indian Penal Code. The case is transferred to Shri D.P. Sinha for disposal.

The Supreme Court in the case of R.P. Kapur Vs. The State of Punjab, has very clearly laid down that the inherent power of the High Court u/s 561A (which is now Section 482) of the Code of Criminal Procedure, cannot be exercised in regard to the matters specifically covered by the other provisions of the Code. The inherent jurisdiction of the High Court can be exercised to quash a proceeding in appropriate cases either to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Ordinarily Criminal Proceedings instituted against an accused person must be tried under the provisions of the Code and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. Some of the categories of cases where the inherent jurisdiction to quash the proceedings can be exercised are (i) where it manifestly appears that there is a legal bar against the institution or continuance of a proceeding in respect of an offence alleged; (ii) where the allegation in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; (iii) where the allegation made against the accused person do constitute an offence as alleged, but there is either no legal evidence adduced in support of the case or

the evidence adduced clearly or manifestly fails to prove the charge, etc. Here the petitioners have come against the very first order of the Chief Judicial Magistrate, by which cognizance against them has been taken by him and they have been summoned to stand the trial on the basis of a complaint filed against them after examination of the complainant on solemn affirmation and after having an inquiry conducted u/s 202 of the Code. An inquiry u/s 202 of the Code can be directed by the Sub-divisional Magistrate to be made by any other Magistrate subordinate to him for the purpose of ascertaining the truth or falsehood of the complaint and the learned Magistrate, on receipt of the inquiry report, was perfectly justified in passing the impugned order. In my opinion, in view of what has been stated by the Supreme Court in the case referred to above, there is no ground to quash the impugned order of the learned Chief Judicial Magistrate.

5. In the result, this application fails and is accordingly dismissed.