
(2009) 01 PAT CK 0077
In the Patna High Court

Narendra Kumar Pandey @ Sunil Pandey APPELLANT
Vs
The State of Bihar and Others RESPONDENT

Date of Decision : 19-01-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 2, 212, 220, 221, 300
Penal Code, 1860 (IPC) — Section 34, 385, 386, 71

Citation : (2009) 2 PLJR 487

Hon'ble Judges : S.P. Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.P. Singh, J.—Heard learned Counsel for the parties.

2. In the writ petition, the petitioner prays for amalgamating Aurangabad (Town) Police Station case No. 281 of 2006 dated 26.8.2006 under Sections 386/34 I.P.C. with Budha Colony Police Station case No. 156 of 2006 dated 26.8.2006 under Sections 385, 386/34 of the I.P.C.

3. Before considering the points raised by the petitioner, it would be relevant to notice the facts of the case in brief which are as follows:

4. One V.G. Naidu, Manager of Vijay Electrical Limited filed a written report before the Superintendent of police stating that on 24.8.2006, one Narendra Pandey alias Sunil Pandey, MLA of Piro Assembly constituency and one Butas Tiwary, contractor of Station came to his office at 12.45pm along with three persons, two of them were in police uniform having arms. The aforesaid Sunil Pandey threatened the informant to kill him if does not allot work to Butas Tiwary. Accused persons remained in the informant's office for about one and a half hour. In the intervening period, the petitioner took the mobile phone of the informant and threatened Sri K. Kanchan Rao, the General Manager of Vijay Electrical Limited, Rattan Niwas, Boring Canal Road, Patna that latter would be killed if five percent of contract value is not paid immediately.

On the aforesaid complaint dated 25.8.2006, Aurangabad Town Police Station case No. 261 of 2006 dated 26.8.2006 was registered for offences under Sections 386/34 I.P.C.

It appears that the General Manager of Vijay Electrical Limited to whom threatening on mobile phone was made also filed a complaint before the Superintendent of Police, Patna alleging therein that on 14.5.2006 as well as 24.5.2006, aforesaid Sunil Pandey threatened him that he would be killed if he does not part with five percent of the contract value. On the aforesaid complaint, another FIR Budha colony Police Station case No. 156 of 2006 dated 2006 was registered under Sections 385, 386 and 34 I.P.C. against the petitioner and one D. N. Singh.

5. Grievance of the petitioner is that two cases, namely, Aurangabad case and Patna case have been instituted against him for one and same offence for which two separate cases could not have been instituted. Learned Counsel for the petitioner submits that Patna case ought to have been amalgamated with the case lodged at Aurangabad where substantially the main cause of occurrence took place. In support of his submission, learned Counsel for the petitioner relied upon the provisions of Section 220 of the Cr.P.C. which reads as follows:

220. Trial for more than one offence:-(1) If, in one series of acts so connected together as to form the same transaction, more offence than one are committed by the same person, he may be charged with, and tried at one trial for every such offence.

(2) when a persons charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provide in Sub-section (2) of Section 212 or in Sub-section (1) of Section 2, 9, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.

(3) if the act alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

(4) if several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts.

(5) Nothing contained in this section shall affect Section 71 of the Indian Penal Code (45 of 1860).

6. This Court on perusal of both FIRs finds that acts complained by the two informants against accused persons including the petitioner make one series of

act having co-relevance with each other forming the part of the same transaction. As I have noticed earlier, allegations made in complaint lodged at Aurangabad, by V. Naidu covers the allegations contained in the complaint lodged with the Budha colony Police Station, Patna by Kanchan Rao.

7. As such, this Court finds that the prayer of the petitioner has due substance. Nevertheless, the relief sought for by the petitioner could not be granted any more as he has been acquitted in Patna case. So, the question of amalgamating two cases does not arise at all now.

8. Learned Counsel for the petitioner now alternatively submits that the petitioner may not be tried in Aurangabad case in view of Section 300 Cr.P.C. as he has been acquitted in Patna case which acts were committed in the same transaction. Before I discuss this submission of learned Counsel for the petitioner it would be expedient to quote Section 300(1) Cr.P.C. which reads as follows:

A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under Sub-section (1) of Section 221, or for which he might have been convicted under Sub-section (2) thereof.

9. Section 300 Cr.P.C. prohibits person from being tried again for the same offence and on the same facts. Only when aforesaid conditions are fulfilled, Section 300 Cr.P.C. becomes applicable, otherwise not. In view of aforesaid background let us see whether in the facts and circumstances of the case the petitioner is entitled to protection u/s 300 Cr.P.C. The petitioner has been acquitted in Patna case. The allegation made in Patna case does not at all cover the allegations made by Sri G.B. Naidu, in Aurangabad case. The informant of Patna case merely alleges the threat given to him by the petitioner. He is no way refers to alleged threat given by the petitioner to informant of Aurangabad case. To recapitulate, the informant of Aurangabad case alleged that petitioner threatened him by show of force of gun that he would be killed if he does not give contract work to his men. The aforesaid allegation does not form part of Patna case. The accused petitioner has not been tried in Patna case for offence which formed basis of Aurangabad case.

10. In this view of the matter, I find that though both the offences have been committed in same transaction, the offence is not the same nor it is based on same facts, as such, the prayer of the petitioner not to be tried in Aurangabad case as he has been acquitted in Patna case, is bereft of any merit, as such this writ petition is rejected.