

(1976) 11 PAT CK 0019
In the Patna High Court

Nilu Devi and Another

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 12-11-1976

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 211, 406

Citation : (1977) CriLJ 1777

Hon'ble Judges : P.S. Sahay, J;B.D. Singh, J

Bench : Division Bench

Judgement

1. In this application under Articles 226 and 227 of the Constitution of India the two petitioners have prayed for quashing of Bachhwara P. S. case No. 11(4) 74 instituted against the petitioners u/s 406 of the Indian Penal Code (hereinafter referred to as the "Code").

2. In order to appreciate the points involved in this case it will be necessary to state some material facts. One Ramsobhit Rai resident of village Rajapur, Police Station Bachhwara in the district of Begusarai, had lodged first information report against the petitioners on the 9th April 1974 in respect of the offence u/s 406 of the Code alleging therein that petitioner No. 1 is a dancing girl and petitioner No. 2 is her mother. The informant fell in love with petitioner No. 1 and on that account the members of the family of the informant were annoyed with him. The informant was carrying on business of loading and unloading of coal at Dalsingsarai Railway Station and out of lucrative business he had purchased an Ambassador Car which was registered as B. B. J. 2530. Due to the contact of the informant with petitioner No. 1 in the matter of love with her, his business was closed in the month of October 1973. The members of the family of the informant were demanding money from the informant. During the course of the business the informant used to visit Muzaffarpore. Due to the closure of the business, he went to his village home and his other members of the family threatened him to partition the ancestral properties. The informant was keeping indifferent health. Hearing about his illness both the petitioners visited his village

home at Rajapur on the 4th March, 1973, and learnt about the family dispute. The petitioners advised him to keep whatever money he possessed in the bank locker of petitioner No. 2. Thereupon he handed over Rs. 1000/- to the petitioners in order to keep the same in the locker of petitioner No. 2. He also transferred his Ambassador car in the farzi name of one Meena Kumari and handed over the document of transfer to the petitioners. After some time the petitioners went away in the said car which was being driven by his driver Hia Lal. When the informant came to Muzaffarpore on the 3rd April 1974 he did not see his car in the possession of the petitioners. On being asked petitioner No. 1 told him that the car had gone out. But even after two or three days, the car did not return and he could not know what had happened with the car, He was also demanding back Rs. 31000/- from the petitioners whereupon both the petitioners refused to return the same and threatened the informant that they would get him killed which led to the filing of the case referred to above.

3. On the third October 1974 the Investigating Officer sought permission of the Superintendent of Police (respondent No. 2) to submit final form and also for permission to prosecute the informant u/s 211 of the Code.

4. On the 17th November 1975 the petitioner moved this Court under criminal writ jurisdiction which was registered as Criminal W. J. C. No. 341 of 1975 for quashing the investigation and making out allegations therein that the Superintendent of Police was sleeping over the matter and was not giving necessary permission to the Investigating officer. On the 19th November 1975, a Bench of this Court passed an order directing the Superintendent of Police, Begusarai to pass necessary order within one month of the receipt of the order passed in the above case. A true copy of the said order has been made Annexure 2 to this application. The relevant portion of the said order is to this effect.

...From the statements made in the petition it appears that the investigating officer has completed the investigation, which had also been supervised by the Deputy Superintendent of Police and he has sought permission of the Superintendent of Police to submit final form, and to prosecute the Informant. It is said that this matter has been pending before the Superintendent of Police for about a year now and that no orders have been passed by him up till now. It is indeed surprising that the matter should have remained pending with him so long. The emphasis is always on expeditious investigation of cases by the police and such delays only serve to defeat that purpose. We dismiss this application as nothing appears to have been said against the petitioners by the investigating officer and the Deputy Superintendent of Police, who supervised the case, but we do trust that the Superintendent of Police will pass necessary orders within one month of the receipt of this order, a copy of which should be sent to him for the needful.

In the present application the petitioners have stated that in spite of the said order respondent No. 2 has not passed any order on the permission sought for by the investigating officer although notice of this case was also served upon

respondent No. 2.

5. Learned Counsel appearing on behalf of the State has pointed out that the letter dated the 6th March, 1976 was also sent to respondent No. 2 from the office of the Advocate General inter alia requesting therein to the District Magistrate, Muzaffarpore as well as the Superintendent of Police, Begusarai (respondent No. 2) to send necessary instruction and position of the Bachhwara P. S. case No. 11(4) 74 by the 12th March, 1976 respectively. They were also requested to intimate as to why the final form has not yet been submitted in this case in spite of the order passed in Criminal W. J. C. No. 841 of 1975. Learned Counsel for the State has submitted that in spite of the said letter no instruction has been received from him so far.

6. In the present application the petitioners have also alleged mala fide against respondent No. 2, for not passing necessary order and sleeping over the matter since a long time.

7. Learned Counsel for the State has submitted that the investigation could not be quashed merely on the ground of delay in submission of the final form. In order to find support to his submission, he has cited a decision of this Court in the case of Amal Chandra Bose (Basu) and Others Vs. The State of Bihar and Others, In that case the delay was for more than five years in submission of the final form. Their Lordships (S. P. Singh and A. N. Mukherji, JJ.) after surveying various decisions including Pala Singh and Another Vs. State of Punjab, Jaichand Lall Sethia Vs. State of West Bengal and Others, and R.P. Kapur Vs. The State of Punjab, have held that merely because the police had made a great delay in investigating the case, it would not be inferred that the investigation was mala fide or tainted. The onus to prove that the investigation of the police was mala fide was on the accused and it was not discharged by simply asserting that fact in the petition. Learned Counsel has pointed out that in that case the application filed by the petitioner under Article 226 of the Constitution was dismissed. In our opinion, the observations made by their Lordships in that case are not applicable to the facts and circumstances of the instant case. It may be observed that in that case by the time of the consideration of the application of the petitioners, chargesheet was already submitted against them and cognizance was taken by the competent Court, In the instant case, as mentioned earlier, in spite of the direction of this Court respondent No. 2 did not take any steps, nor he cared even to file a counter affidavit. Learned Counsel for the State referred us to a decision in the case of R. P. Kapur (supra) in order to show that the grounds mentioned in the application of the petitioner were not sufficient for quashing the investigation proceeding. He pointed out further that in the aforesaid case their Lordships of the Supreme Court have laid down the categories of cases where the inherent jurisdiction to quash the proceedings should be exercised. In that case only three categories were mentioned. In our opinion those categories are merely illustrative and not exhaustive, It depends upon the facts and circumstances of each case. It may be noted that their Lordships have clearly

mentioned there that only some of the categories of the cases were being mentioned. Therefore, according to us, the submission of the learned Counsel for the State is not acceptable.

8. In the result, the application is allowed and the Bachhwara P. S. Case No. 11(4) 74 started against the petitioners and pending in the Court of the Chief Judicial Magistrate Begusarai, is hereby quashed.