
(2010) 04 PAT CK 0040

In the Patna High Court

Paras Lall @ Parsuram Prasad Shrivastav

APPELLANT

Vs

Hans Nath Lall

RESPONDENT

Date of Decision : 05-04-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 465, 468, 471

Citation : (2010) 04 PAT CK 0040

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—The petitioner has approached this Court with a prayer to quash the order dated 31.10.1998 passed in Complaint Case No. 1007 of 1998/ Misc.58 of 1998 by Shri P.C. Chaudhary, Judicial Magistrate, Gopalganj. By the said order, learned Magistrate had taken cognizance for the offences under Sections 465, 468 and 471 of the Indian Penal Code.

2. Sri Sanjay Kumar, learned Counsel appearing on behalf of the petitioner submits that on same and similar allegation, the opposite party No. 1 had earlier filed a complaint case vide Complaint Case No. 440 of 1991. In the said complaint case, by order dated 25.6.1993, court had directed for issuance of summons after conducting enquiry. Subsequently, the said complaint petition was dismissed on 20.10.1993 due to none prosecution of the case. However, by order dated 7.12.1993, the learned Magistrate recalled its earlier order and restored the complaint petition to its original file.

3. Aggrieved with the order of recall/restoration dated 7.12.1993, petitioners filed a revision vide Cr. Revision No. 30 of 1994/10 of 1994. The said revision petition stood dismissed. Petitioners, thereafter, approached this Court, while invoking its writ jurisdiction vide Cr. W.J.C. No. 347 of 1997. Before the writ court, the order of restoration/recall as well as order of revisional court, both were challenged on the ground that the learned Magistrate after dismissing the

complaint petition was not having any authority to recall its own order or restore the complaint petition. It was also argued that the allegations levelled in the complaint petition was primarily civil in nature.

4. The writ petition i.e. Cr. W.J.C. No. 347 of 1997 was heard at length and by assigning detailed reason, this Court by its order dated 1.10.1997 allowed the writ petition and quashed the prosecution of petitioners. The said order has been annexed as Annexure-1 to the petition. While allowing the writ petition on the ground that the Magistrate had committed error in recalling its own order this Court further observed as follows:

This apart, after going through the contents of the allegations, it appears that the dispute between the parties is purely of a civil nature. The fact whether Vindhyachal Lal had executed a document or whether the witnesses mentioned herein are dead or alive is a subject matter to be decided in a civil suit pending between the parties. Such dispute cannot be resolved by a criminal court. Even assuming that the court has power to review or recall its interlocutory order, I am of the view that allowing the prosecution to continue in such a case will be an abuse of the process of the court. Accordingly, this application is allowed and the prosecution of the petitioner is quashed.

5. In the present complaint petition, it was disclosed that Durbal lall and Ramsubhag Lall were full brothers. The land of Khata No. 116, Plot No. 574 comprising an area of 0-3-15 (3 Katha 15 dhurs) was of the family of Ramsubhag Lall. Ramsubhag Lall had three sons - Sheosunder Lal, Bindhyachal Lal and Sheopujan Lal, out of whom Bindhyachal Lal and Sheopujan Lal had died at the age of 10 to 11 years due to Cholera. Ultimately the said land was inherited by survivorship by Sheonandan Lal, father of the Complainant Hansnath Lal, upon which they are in possession. It was also alleged that in absence of the complainant and his two brothers, when there were only females in the house, the accused had encroached 0.0.7 dhurs of land and constructed a Pacca house over it and tried to take forcible possession of 0 -0- 6 dhurs of land, for which the Complainant has filed Title Suit No. 27 of 1991 on 15.1.91, which is pending. The complainant's case is that on 22.4.91, the complainant learnt, when show cause in the injunction matter was filed that the accused has created a false document by creating a receipt dated 7.12.1921 for the oral sale deed in the name of Bindhyachal Lal in collusion with his henchmen on an old stamp paper in which the names of Chhathu pandey and Sheonandan Mishra has been given as witnesses and Nawrangi Lal as Scribe, all of whom have died. The complainants' case is that the signatures of witnesses are not of those persons. The said receipt is forged and fabricated and it is used as genuine document.

6. In view of the facts and circumstances mentioned hereinabove, learned Counsel for the petitioners has argued that once earlier complaint petition on same and similar allegation was finally adjudicated by this Court and the opposite party No. 2 never challenged that order, which was passed in Cr. W.J.C. No. 347 of 1997, the order dated 1.10.1997 had attained its finality. After the

order of this Court passed in writ petition, the learned Magistrate had no authority to further proceed with the second complaint petition on the same and similar allegation. Besides this, learned Counsel for the petitioners submits that the perusal of the complaint petition itself indicates that the allegation/dispute was purely civil in nature and for that very dispute, the opposite party No. 2 may not be allowed to use the criminal proceeding in the second complaint. On these grounds, learned Counsel for the petitioners has challenged the order of cognizance.

7. I have also examined the materials available on record. I have perused the order dated 1.10.1997 passed in Cr. W.J.C. No. 347 of 1997. I am of the view that in view of the finding recorded by this Court, the learned Magistrate has completely erred in proceeding with the second complaint of the complainant. Besides this, I am also of the view that the nature of allegation, which has been made in the complaint petition cannot be looked into/enquired into in the criminal proceeding as initiated vide Complaint Case No. C 1007 of 1998.

8. Accordingly, the order of cognizance dated 13.10.1998 is quashed and further proceeding in respect of petitioners are also set aside. Accordingly, the petition stands allowed.