
(2000) 03 PAT CK 0175

In the Patna High Court

Case No : Criminal Revision No. 593 of 1997

Parmeshwar Bharti and Kameshwar Bharti

APPELLANT

Vs

The State of Bihar and Bijay Kumar Tiwary

RESPONDENT

Date of Decision : 16-03-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401, 482
Penal Code, 1860 (IPC) — Section 34, 406, 420

Citation : (2001) 1 PLJR 460

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

Bench : Single Bench

Advocate : Bhawesh Kumar, for the Appellant; Manindra Nath Tiwary and A.H.M. Rahman, for State, for the Respondent

Final Decision : Dismissed

Judgement

I.P. Singh, J.—This is an application under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (in short "the Code"). It is directed against the order dated 30.8.1997 passed in Tr. No. 1354/94 by Shri R.B. Roy, Chief Judicial Magistrate, Siwan, whereby he had taken cognizance for the offences under Sections 406 and 420/34 of the Indian Penal Code and had ordered for the issue of summons to the accused persons (present Petitioners). He also transferred the case for trial to the court of Shri Manoj Srivastava, Judicial Magistrate 1st Class, Siwan.

2. It appears that on a written report filed by the informant on 23.9.1996 a formal F.I.R. was drawn up by the police on 23.12.1996. The prosecution case, in short, is that the informant Bijay Kumar Tiwary, (opposite party No. 2) and Surya Bhushan Tiwary had sold their vehicle-Tata 407 bearing registration No. BR-29P 3775 for a consideration of Rs. 1,75,000/- to the Petitioners. In token of the consideration money Petitioner No. 1 took opposite party No. 2 to Dhanbad to his brother, Kameshwar Bharti (Petitioner No. 2) where a Bank draft of Rs. 75,000/- was prepared in his name. Subsequently it was agreed that the rest amount of

Rs. 1,00,000/- will be paid to opposite party No. 2 through a financier of Calcutta, who undertook to pay Rs. 1,00,000/- to opposite party No. 2 and had also agreed to supply him with a chasis of the bus on a cash down payment of Rs. 2,00,000/-. On this assurance the informant handed over the necessary papers of this truck including the owner book, tax token etc. to the Petitioners. When, however, after the expiry of two months the informant went to Calcutta he could neither find the financier nor his office there. The informant (opposite party No. 2) came to the village in search of the Petitioners where he found them traceless. Thus, the informant could learn that he has been cheated by both the Petitioner as well as the financier named Pranamay Biswas.

3. The Petitioners have contended that as per the F.I.R. no offence under Sections 406 and 420/34 of the Indian Penal Code is made out against them. The opposite party No. 2 has not denied the receipt of consideration money of Rs. 1,75,000/- for this vehicle. All other necessary papers were executed by him on full payment of the consideration money. The instant, case has been filed with mala-fide intention simply because the financier has not supplied opposite party No. 2 with the chasis. Actually what transpired between financier and the informant is not known to these Petitioners. No offence as alleged in the F.I.R. has been made out against the Petitioners. It was, accordingly, prayed that the order dated 30.8.1997 passed by Shri R.B. Roy, Chief Judicial Magistrate taking cognizance of the offence under Sections 406 and 420/34 of the Indian Penal Code may be quashed.

4. A show cause has been filed on behalf of the informant opposite party No. 2. He has admitted that this revision application is not maintainable and is fit to be rejected. So far as the purchase of new chasis for Rs. 2,00,000/- is concerned it was agreed between the parties and the financier in Calcutta that the informant was to pay only Rs. 25,000/- and will get a new chasis as amount of Rs. 1,75,000/- (the price as old bus) will be adjusted against the same. In this connection a reference may be made to the order dated 14.7.97 passed in Cr. Misc. No. 5868/97 by this Court in which it was observed that this appeared to be a case of civil nature as has been stated in the order of the court below. On behalf of this opposite party it has been submitted that this observation made by the court in this order (Annexure-1) is hardly of any consequence since the observation made by the lower court has been reproduced. It has accordingly, been prayed that this revision application be rejected.

5. I have heard the parties in detail. It appears that this revision application has been filed against the cognizance taken in this case by the Chief Judicial Magistrate under Sections 406 and 420/34 of the Indian Penal Code against the present Petitioner. On behalf of the Petitioners it has been submitted that actually no offence under these two sections has been made out as per the F.I.R. At best it can said to be a case of civil nature and, therefore, the cognizance taken in this case against the present Petitioner is fit to be quashed. This takes us to the consideration of law with respect to the quashing of the cognizance at this stage

of the case. In this connection I will firstly refer to the case of R.P. Kapur Vs. The State of Punjab, , in which it was held that ordinarily criminal proceedings instituted against an accused must be tried under the provisions of the Code and High Court would be reluctant to interfere with the said proceeding at an interlocutory stage. In this decision, however, some of the categories of cases in which the inherent power, to quash proceedings can and should be exercised by the High Court has been given. One of them is when the allegation in the F.I.R. or the complaint petition even when they are taken at their face value and accepted in their entirety do not constitute the offence alleged. It has further been held that when there is some evidence the High Court will not embark on an enquiry whether it is sufficient or not since this is the function of the trial court. In the present case as will appear from the record the police has already submitted the charge sheet and the cognizance has already been taken by the learned Chief Judicial Magistrate under Sections 406 and 420/34 of the Indian Penal Code. The impugned order shows that the learned Chief Judicial Magistrate also perused the case diary along with the F.I.R. and the charge sheet on the basis of which he was satisfied that a prima facie case under Sections 406 and 420/34 of the Indian Penal Code was made out. Under these circumstances this case will not come in this category in which the inherent power of this Court to quash a proceeding should be exercised.

6. In this connection a reference may also be made to the case of Dr. Sharda Prasad Sinha Vs. State of Bihar, . In this decision the Hon''ble Supreme Court has clearly held that when the allegation set out in the complaint petition or charge sheet do not constitute any offence the High Court u/s 482 of the Code can quash the order taking cognizance of the offence. In the said case it was clear that the allegation contained in the complaint petition did not constitute any offence hence it was held that the High Court should have quashed the complaint petition. In the present case, however, it may be pointed out that a prima facie case has been made out before the police which submitted the charge sheet and the learned Chief Judicial Magistrate after examining the F.I.R., charge sheet and the case diary came to the conclusion that a prima facie case under Sections 406 and 420/34 of the Indian Penal Code was made out against the Petitioners.

6A. In this connection a reference may also be made to the case of State of Bihar Vs. Murad Ali Khan and Others, . In this case the Hon''ble Supreme Court has held that one thing, however, appeared clear and it was that when the High Court is called upon to exercise the jurisdiction to quash a proceeding at the stage of the Magistrate taking cognizance of an offence the High Court is guided by the allegations whether those allegations set out in the complaint or the charge sheet, do not in law constitute or spell-out any offence and that resort to criminal proceedings, would, in the circumstances, amount to an abuse of the process of the court or not. In the present case as has been noticed above the police had found a prima facie case under Sections 406 and 420/34 of the Indian Penal Code made out against the present Petitioners and had submitted the charge sheet. The learned Chief Judicial Magistrate after examining the case

diary, F.I.R. charge sheet came to the conclusion that prima facie (sic--case?) under these two sections was made out against two Petitioners and he, accordingly, took cognizance of the offence. It is not one of those cases in which the charge sheet did not spell out any offence hence the law on this point has been well settled by this decision.

7. I will next refer to the case of State of Bihar v. Shri P.P. Sharma and Anr. 1991 (2) P.L.J.R. 11 (S.C). In the said case the F.I.R. and another materials disclosed in the police report had shown that a prima facie offence was made out against the accused and the allegation if taken as correct disclosed the commission of a cognizable offence. As such it was held that the High Court would be falling into a grave error and would be acting with patent illegality in quashing the criminal proceeding. It was further held that appreciation of evidence is the function of the criminal court. The High Court cannot assume jurisdiction and put an end to the process of investigation and trial provided under the law by converting itself into a trial court. From this decision also it becomes perfectly clear that at this stage the cognizance taken against the present Petitioner can not be quashed for the reasons stated above.

8. In the result, this revision petition is dismissed.