

(2010) 10 PAT CK 0073

In the Patna High Court

Case No : Criminal Miscellaneous No. 13347 of 2007

Raja Ram Rai and Others

APPELLANT

Vs

The State of Bihar and Binda Rai

RESPONDENT

Date of Decision : 28-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 203, 482
Penal Code, 1860 (IPC) — Section 120B, 420, 464, 466, 471

Citation : (2010) 10 PAT CK 0073

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—Six Petitioners, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, have prayed for quashing of an order dated 2.2.2007 passed by the learned Judicial Magistrate 1st Class, Vaishali at Hajipur in Complaint Case No. 1603 of 2005, Tr. No. 2109 of 2007. By the said order, learned Magistrate has taken cognizance of offences under Sections 420, 466 and 471 of the Indian Penal Code and summoned the Petitioners to face trial.

2. Short fact of the case is that Opp. Party No. 2 on 27.3.1999 filed a complaint in the court of learned Chief Judicial Magistrate, Hajipur at Vaishali, which was numbered as G 459 of 1999. The complaint was subsequently referred to the police for its registration and investigation u/s 156(3) of the Code of Criminal Procedure and, as such, an F.I.R. vide Mahua P.S. Case No. 56 of 2000 was registered on 5.4.2000 for the offences u/s 420, 464, 466 and 120B of the Indian Penal Code against all the Petitioners. While investigation was going on, Opp. Party No. 2 (the complainant) apprehending that the police may not do justice with the investigation filed a protest petition. During the investigation, the police found the allegation as untrue and thereafter final report was submitted. Subsequently, the complainant filed complaint-cum-protest petition before the

learned Chief Judicial Magistrate, which was numbered as Complaint Case No. 1603 of 2005. After conducting enquiry in the complaint case, learned Magistrate came to the conclusion that there were no sufficient materials to proceed with the case and, as such on 11.11.2005, the learned Magistrate rejected the complaint petition u/s 203 of the Code of Criminal Procedure.

3. Aggrieved with the order of rejection of complaint petition, Opp. Party No. 2 preferred a revision vide Cr. Revision No. 290 of 2005 in the court of learned Sessions Judge, Vaishali at Hajipur. The learned Sessions Judge vide its order dated 16.11.2006 set aside the order of rejection of the complaint petition dated 11.11.2005 and remitted back the matter to the court below with a direction to hold further enquiry and pass necessary order in accordance with law. After the case was remitted back to the learned Magistrate, the learned Magistrate by the impugned order, i.e. order dated 2.2.2007 has taken cognizance of offences under Sections 420, 466 and 471 of the Indian Penal Code.

4. Aggrieved with the order of cognizance dated 2.2.2007, the Petitioners approached this Court by filing the present petition. On 1.10.2007, while issuing notice to Opp. Party No. 2, this Court directed that in the meanwhile, no coercive action shall be taken against the above named Petitioners. Subsequently, on 9.9.2008, the petition was admitted for hearing. It was directed that in the meantime, further proceeding in Complaint Case No. 1603 of 2005 pending in the court below shall remain stayed. The order of stay is still continuing.

5. Sri Arvind Kumar Sinha, learned Counsel appearing on behalf of the Petitioners, while challenging the order of cognizance, has submitted that the order of cognizance is itself contrary to the direction given by the revisional court. Learned Counsel for the Petitioners has referred to the order of the revisional court dated 16.11.2006. It has been submitted that the learned Sessions Judge has remitted back the matter after setting aside the order of rejection of the complaint with a direction to hold further enquiry. The learned Magistrate without conducting any further enquiry was not authorized to take cognizance of the offences. Since learned Magistrate on the same material, which was earlier available, has taken cognizance of the offences, it can be termed as review of earlier order. Meaning thereby that once on the same material, if the learned Magistrate has rejected the complaint petition, at subsequent stage on same material, he was not required to review the earlier order and pass order of cognizance. Accordingly, it has been prayed to set aside the order of cognizance.

6. Sri Anirudh Kumar Sinha, learned Counsel appearing on behalf of Opp. Party No. 2 has vehemently opposed the prayer of the Petitioners. He has submitted that during the enquiry sufficient materials were brought on record showing commission of offences by the Petitioners and, as such, the learned Magistrate by the impugned order has rightly taken cognizance of offences. It has been prayed to reject the present petition.

7. I have also heard Sri M.K. Khare, learned Addl. Public Prosecutor appearing

on behalf of the State.

8. Besides hearing learned Counsel for the parties, I have also perused the materials available on record. The Court is of the opinion that the impugned order of cognizance is liable to be set aside firstly on the ground that the learned Magistrate on the same material on which earlier he had rejected the complaint petition, has taken cognizance of offences at subsequent stage, which is not permissible in the eye of law. Secondly in the complaint petition, it is alleged that whatever offence was committed, was committed in the year 1999. After lapse of such a long period, particularly in view of the facts and circumstances of the present case, the Court is of the opinion that allowing prosecution of the Petitioners on such complaint will amount to abuse of the process of the Court.

9. Accordingly, the Court is of the opinion that it is a fit case for exercising inherent jurisdiction u/s 482 of the Code of Criminal Procedure in favour of the Petitioners. The order of cognizance dated 2.2.2007 passed in Complaint Case No. 1603 of 2005 is hereby set aside and the petition stands allowed.