

(2001) 08 PAT CK 0020

In the Patna High Court

Case No : Criminal Miscellaneous No. 5602 of 1997

Raja Ram Singh, Oversiar Singh and Saraju Singh

APPELLANT

Vs

The State of Bihar and Kedar Singh

RESPONDENT

Date of Decision : 24-08-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 192, 192(1), 200, 202

Citation : (2001) 4 PLJR 683

Hon'ble Judges : P.K. Sinha, J

Bench : Single Bench

Advocate : Rajesh Kumar Singh and K.D. Narayan, for the Appellant; Sudama Singh and Rajani Kant Singh for Opposite Party No. 2, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Sinha, J.—With consent of all the parties concerned the aforesaid two applications have been heard together and this order will dispose of both the cases since the impugned order in both the cases is same.

2. These applications are for quashing the order of cognizance recorded by Chief Judicial Magistrate, Sasaram by impugned order dated 20.7.1996.

3. The facts in brief are that one Kedar Singh filed a complaint case bearing No. 775 of 1995 in the Court of Chief Judicial Magistrate, Rohtas at Sasaram alleging therein that he was Secretary to the Thakurji Math in the village which was constructed by Mohan Mahto and by a registered deed of Tamliknama dated 28.2.1936 he had given 5 acres and 49 decimals of land in favour of the deities and temple specifically stating in the deed that he had no heir and that no one would have right to transfer the property to any one else. Further allegation is that after his death one Sudarshanacharya came as Shebait of the temple and after his death in 1979 the villagers in a general meeting decided that the management of the temple would be conducted by the public of the village. The income coming out of the property under Tamliknama was utilized for the upkeep

and maintenance of the temple and for the purpose of worship.

4. It was alleged in the complaint that since 1979 the accused persons had removed part of the properties and had converted the properties of the temple to their own use and that they were also not giving any account of the income. It was also alleged that they had started selling the lands. Allegation was that they had misappropriated huge amount which was the property of the temple.

5. It may be mentioned here that Complaint Case No. 775 of 1995 was instituted against Raja Ram Singh and two others which relates to Cr. Misc. No. 5602 of 1997 and the same complainant had filed another Complaint bearing No. 776C of 1995 relating to the other case under consideration. Whereas the former complaint was against three persons, the complaint Case No. 776C of 1995 was against the same persons plus three other persons. The former application has been preferred by Raja Ram Singh, Oversiar Singh, and Saraju Singh son of Ramdahin Singh, whereas Cr. Misc. No. 19805 of 1998 has been preferred by I only Badri Narayan Singh.

6. It will appear that both the complaint cases were amalgamated and the cases were placed before the learned Chief Judicial Magistrate, Sasaram who by order dated 20.7.1996 recorded following order: (English translation) :

The records placed to-day. Case called out. Heard learned Counsel for the complainant and perused the complaint petition. Taking cognizance this case is transferred to the Court of Sri S.P. Pandey, Judicial Magistrate, 1st Class, Sasaram, u/s 192(1) of the Code of Criminal Procedure for enquiry and trial.

7. This order is under challenge in se two cases. Before proceeding further may also be mentioned here that in complaint Case No. 776C of 1995 it was claimed that the accused persons also part of the lands in question, giving details in the complaint petition.

8. In course of arguments of the parties has come that Mohan Mahto had daughters and Petitioner Nos. 1 to 3 in Cr. Misc. No. 5602 of 1997 were sons those two daughters whereas Petitioner 4 Saraju Singh son of Ramdahin Singh was one of the purchaser of the land and the Petitioner in Cr. Misc. No. 19805 of 1998 was the purchaser.

9. learned Counsel for the Petitioners in both the cases has argued that by the impugned order cognizance of offence could not have been taken without first examining the complainant on solemn (sic) and without examining the witness who might have been present on day the complainant was so examined on solemn affirmation as procedure ("the Code", in short). For this the learned Counsel has relied upon a decision of this Court in the case of Ram Lakhan Mahto v. Ramesh Mahto 1974 P.L.J.R. 476. In that case the Petitioner ad filed an F.I.R. for cognizable offence and subsequently filed protest petition before Subdivisional Magistrate which was ordered to be kept on the record. The police after investigation subsequently submitted final report and the learned

Subdivisional Magistrate, accepting the final report also rejected the protest petition. It was held that the order of the learned Magistrate keeping the protest petition on the record was not legal.

10. However, the facts of this case differ because in that case the protest petition was dismissed after it was ordered to be only kept on the record whereas in the instant case by the impugned order the complaint petition was ordered to be transferred to a Court of competent jurisdiction u/s 192 of the Code for enquiry (under Section 202 of the Code) and for trial.

11. The second point submitted by the learned Counsel was that no case whatsoever was made out, the allegations being of civil nature. For this learned Counsel pointed out Annexure-3 which was final report submitted by the police in a case instituted by the same complainant relating to the same property holding that dispute was of civil nature and that the Title Suit No. 73 of 1996 relating to the same land was pending.

12. However, in course of arguments when it was pointed out that the impugned order was only an order passed u/s 192 of the Code and it might be that by subsequent order the transferee court after enquiry had passed order for summoning the accused persons, but learned Counsel submitted that the Petitioners were impugning only the order dated 20.7.1996 since as per law the cognizance of offence could not have been taken without examining the complainant on solemn affirmation.

13. Though term "cognizance" has not been defined anywhere in the Code but it means an act of the Magistrate applying his mind in respect of the facts constituting the offence for considering further action in the matter. As soon as the Magistrate applies mind to the facts of the case he is said to have taken cognizance. Obviously the expression cognizance does not mean ultimate act of summoning of the accused to face trial.

Section 200 of the Code runs as follows:

A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses.

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate u/s 192:

Provided further that if the Magistrate makes over the case to another Magistrate u/s 192 after examining the complainant and the witnesses, the later Magistrate

need not re-examine them.

14. From the aforesaid provision it is clear that a Magistrate taking cognizance of an offence on complaint has to examine the complainant on oath and the witnesses present, if any, but if the Magistrate makes over the case to another Magistrate u/s 192 of the Code he need not examine the complainant and witnesses, but if the Magistrate makes over the case to another Magistrate u/s 192 of the Code after examining the complainant and the witnesses, the later Magistrate need not re-examine them.

15. Section 190 of the Code provides under what circumstances a Magistrate can take cognizance of offence upon receiving complaint which constitutes such offence. Section 192 of the Code runs as follows:

192(1) Any Chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to any competent Magistrate subordinate to him.

(2) Any Magistrate of the first class empowered in this behalf by the Chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to such other competent Magistrate as the Chief Judicial Magistrate may, by general or special order, specify, and thereupon such Magistrate may hold the inquiry or trial.

16. From this provision it is clear that any Chief Judicial Magistrate or so empowered Magistrate of the 1st Class after taking cognizance of offence may make over the case for inquiry or trial to any competent Magistrate subordinate to him.

17. From the impugned order it is obvious that the learned Chief Judicial Magistrate had heard the learned Counsel for the complainant and also had perused the complaint petition which means that the learned Magistrate had applied his judicial mind to the facts of the case. In other words, having taken cognizance of offence the learned Magistrate could have transferred the case u/s 192 of the Code to any competent Magistrate subordinate to him for enquiry or trial. The impugned order clearly states that this case was transferred to the Court of Sri S.P. Pandey, Judicial Magistrate, 1st class Sasaram for inquiry and for trial.

18. In view of the aforesaid I don't find that there is any illegality in the impugned order.

19. In so far as the merits of the case is concerned, suffice it to say that missions of the learned Counsel for Petitioners in both the cases was that lands were sold by the grand sons of Mohan Mahto who was khatiani Raiyat hence the vendors were the only legal heirs through their mother. Therefore, in that view and in view of the title suit, this case should not proceed. On the other hand, the learned Counsel for opposite party has submitted that as per a Tamliknama, registered by Mohan Mahto, the lands were given to the Deities with stipulations that those

lands could not be sold to any one as per allegations in the complaint petition, hence selling or purchase of such lands prima-facie, was with malafide and dishonest intention for securing personal gain in connivance with each other. Therefore, it cannot be said that while taking cognizance of offence the learned lower court had no material before it to do so. However, the question as to whether or not accused should have been summoned to face the trial is a matter to be decided after enquiry o the allegations which was to be done by the transferee court, which order is not (sic) challenge.

20. Finding no illegality and impropriety in the impugned order, both the petitions stand dismissed. However, it is made clear that none of the findings or observations of this Court, which are strictly for deciding the matter in hand would be taken into consideration by the learned trial court in course of trial including while deciding, at appropriate stage, whether or not the charges should be framed against the accused.