
(2010) 03 PAT CK 0043
In the Patna High Court

Rajauddin and Others

APPELLANT

Vs

The State of Bihar and Md. Nasir

RESPONDENT

Date of Decision : 25-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 204
Penal Code, 1860 (IPC) — Section 323, 341

Citation : (2010) 03 PAT CK 0043

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—Five petitioners, who were arrayed as accused in Complaint Case No. 318 of 1996, are before this Court with a prayer to quash entire proceeding relating to T.R. No. 1102 of 1998/C.R. No. 318 of 1996 pending in the court of Judicial Magistrate, Ist Class, Madhubani.

2. Though, in the petition, a prayer has been made to quash the order dated 10.11.1997 whereby learned Magistrate had passed an order for issuance of processes against petitioners and one another, for quashing of order dated 26.9.1997 passed in Cr. Revision No. 1056 of 1997 and order dated 28.7.1998 passed in Cr. Revision No. 402 of 1998, Sri Ajay Kumar Thakur, learned Counsel appearing on behalf of the petitioners makes a prayer to confine the relief to the extent of quashing of the order dated 26.9.1997 and all the consequential relief relating to quashing of the proceeding of the complaint case afore referred.

3. Only ground which has been taken by the learned Counsel for the petitioners is that without complying with the principle of natural justice, the revisional court had passed an order on 26.9.1997 in Cr. Revision No. 1056 of 1996. By the said order, the learned Sessions Judge allowed the petition filed on behalf of the complainant against part of the order dated 6.8.1996 in Complaint Case No. 318(C) of 1996. By the said order, learned Judicial Magistrate had taken cognizance of offence under Sections 323 and 341 of the Indian Penal Code and

directed to issue process only against Accused No. 1 of the complaint case. Meaning thereby that the learned Magistrate had rejected the complaint petition in respect of Accused Nos. 2 to 6 which includes all the five petitioners before this Court.

4. In the complaint petition, it was alleged by the complainant that Accused No. 1 instigated Accused Nos. 2 to 6 to assault the complainant on a small dispute relating to use of a tube well and thereafter, accused persons chased the complainant and he was assaulted. On these allegations, the complaint petition was filed. After examination of complainant on solemn affirmation and few witnesses during the enquiry, the learned Magistrate came to the conclusion that prima facie case exist only against Accused No. 1 and he refused to issue process against Accused Nos. 2 to 6 to the complaint petition.

5. Aggrieved with the said order, the complainant filed a revision petition vide Cr. Revision No. 1056 of 1996. Learned Counsel for the petitioners, while referring to paragraph-4 of the petition, submits that in the said revision only State was made party and petitioners, though were necessary parties, were not impleaded as party. The said revision petition was allowed on 26.9.1997 and the learned Magistrate was directed for holding further enquiry as against Accused Nos. 2 to 6 i.e. petitioners. Thereafter, by order dated 10.11.1997, the learned Judicial Magistrate passed an order for issuance of summons against Accused Nos. 2 to 5 (petitioners before this Court). Meaning thereby that court after taking cognizance passed an order for issuance of processes u/s 204 of the Cr.P.C. In this case before the Magistrate, next date was fixed to 5.1.1998. On 5.1.1998, one another order was passed by the learned Magistrate with respect to further enquiry. Again aggrieved with this order i.e. order dated 5.1.1998, the complainant filed a revision vide Cr. Revision No. 402 of 1998. In the said revision, it appears, the complainant mainly argued that once court has passed an order for issuance of summon u/s 204 of the Cr.P.C., it will be deemed that after enquiry, the court was satisfied with the prima facie case and cognizance was taken. The revisional court by its order dated 28.7.1998 set aside the order dated 5.1.1998 mainly on two grounds; first is that when an order was already passed, there was no occasion for the Magistrate to recall the said order subsequently and second was that the Magistrate court, when by its order dated 10.11.1997 had passed an order for issuance of process, it will be considered that order was passed u/s 204 of the Cr.P.C. after completion of the enquiry u/s 202 of the Cr.P.C. And as such, the learned Sessions Judge, Madhubani by its order dated 28.7.1998 allowed the revision petition of the complainant and held that recall of order dated 10.11.1997 by subsequent order dated 5.1.1998 by the same court was an illegal act of the Magistrate. The order passed by revisional court in Cr. Revision No. 402 of the Cr.P.C. suffers with no infirmities. The order is in accordance with law.

6. Sheet anchor of the argument of learned Counsel for the petitioner is that the entire subsequent order i.e. after the order dated 6.8.1996, which was passed by

learned Magistrate whereby he had rejected the complaint against Accused Nos. 2 to 4 are void ab initio. The petitioners were never heard and accordingly, all the subsequent orders are void due to non compliance of principle of natural justice. Once the complaint against Accused Nos. 2 to 6 was rejected, it was heavy duty on the part of the complainant to implead all the petitioners while the complainant had filed first revision i.e. Cr. Revision No. 1056 of 1996. Apparently, neither the complainant impleaded the opposite party Nos. 2 to 4 (petitioners before this Court) nor the learned Sessions Judge had taken pain to enquire from the complainant as to under what circumstances, they were not impleaded as party in the revision petition.

7. Accordingly, the learned Sessions Judge, while hearing and allowing Cr. Revision No. 1056 of 1996, had grossly erred and the order dated 26.9.1997 is not sustainable and is liable to be set aside.

8. Accordingly, I set aside the order dated 26.9.1997. Consequent to setting aside the order dated 26.9.1997, all subsequent orders passed against the petitioners automatically becomes inoperative. However, to leave no confusion, it is appropriate to quash all subsequent orders passed against these petitioners. Accordingly, the petition stands allowed.