
(2004) 03 PAT CK 0109

In the Patna High Court

Case No : Criminal Miscellaneous No. 6856 of 2003

Rajendra Prasad and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 11-03-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164
Penal Code, 1860 (IPC) — Section 181, 182, 211, 34, 364

Citation : (2004) 2 PLJR 824

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Advocate : Lal Babu Keshari and Bhuneshwar Pandey, for the Appellant; Pramod Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Mridula Mishra, J.—Heard counsel for the Petitioners and the opposite party No. 2.

2. The Petitioners have filed this application for quashing the order dated 11.2.2003, passed by the Additional. Chief Judicial Magistrate, Hilsa in Chandi P.S. Case No. 370 of 2001 by which cognizance has been taken.

3. The facts of the case is that Dularchand Prasad (opposite party No. 2) filed a petition on 25.12.2001 before the Chandi Police Station alleging therein that his son Ram Krishna Kumar alias Sudhir Prasad has been abducted by unknown persons. On the statement of the informant Chandi P.S. Case No. 370 of 2001 was registered under Sections 364/34 of the Indian Penal Code. During the course of investigation the victim Ram Krishna Kumar alias Sudhir Prasad was rescued. Several witnesses were examined who have supported the case of the informant. Ignoring the statement of the witnesses u/s 161 Code of Criminal Procedure. The Investigating Officer submitted final form on 19.9.2002. It is relevant to state here that on 14.1.2002 the victim appeared before, the police and he named the Petitioners of the present case as accused who have participated in his abduction. After submission of the final form on 12.11.2002

the Investigating Officer filed a petition before the court concerned for initiating a proceeding under Sections 181 and 211 of the Indian Penal Code against the informant. It seems, that the final form which was submitted before the Magistrate remained pending for consideration and in the meantime the proceeding was initiated against the informant and cognizance was taken against the informant on 9.1.2003. The informant had filed several applications before the court concerned stating that the Investigating Officer is not investigating the case properly and he is not sending requisition for recording the statement of the informant u/s 164 Code of Criminal Procedure and also that he has gone in connivance with the accused. The learned Magistrate subsequently on 11.2.2003 proceeded for, considering the final form submitted by the Investigating Officer he also perused the case diary and disagreeing with the final report submitted by the Investigating Officer took cognizance against the accused persons named by the victim before the police officer by his order dated 11.2.2003.

4. The Petitioners have challenged the order taking cognizance on the ground that once the Magistrate has proceeded against the informant and has taken cognizance against him under Sections 182 and 211 of the Indian Penal Code he could not have taken cognizance against the Petitioners as it will amount to reviewing of his own order by which he has taken cognizance against the informant. The submission of the counsel appearing for the Petitioner is not convincing because from the order impugned it is apparent that the final form which was on record was not accepted by the Magistrate and it was mandatory for the Magistrate before accepting the final form he should have issued notice to the informant and should have assigned opportunity of hearing to the informant. There is no order by which he has accepted the final form. The Magistrate has taken cognizance against the Petitioners on consideration of the evidence recorded by the Investigating Officer in course of investigation and also different petitions filed by the informant and the victim. There are sufficient material in the case diary considering which the cognizance has been taken.

5. I find no illegality in the order impugned. This application is accordingly dismissed.