

(2006) 06 PAT CK 0049

In the Patna High Court

Case No : Criminal Miscellaneous No. 10332 of 2004

Rajeshwar Prasad and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 26-06-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 482
Penal Code, 1860 (IPC) — Section 182, 211, 323, 34, 343

Citation : (2006) 3 PLJR 335

Hon'ble Judges : Rekha Kumari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rekha Kumari, J.—This is an application filed u/s 482 of the Code of Criminal Procedure, 1973 for quashing the order dated 12.1.2004 passed by Shri Vinay Kumar Shrivastava, J.M. 1st Class, Gaya in Case No. 2242 of 2001/Tr. No. 956 of 2003 by which cognizance has been taken against the petitioners under sections 365, 343 and 323/34 of the Indian Penal Code. It appears that the Fardbeyen of one Rana Pratap Sharma (Opposite Party No. 2) was recorded by the Officer-in-charge of Kotwali Police Station, Civil Lines, district Gaya in Pilgrims Hospital, Gaya in which the informant has alleged his abduction by the petitioners. The formal F.I.R. was drawn up and the case was investigated. Final report was submitted as case false and a proceeding under sections 182 and 211 of the Indian Penal Code was recommended by the police against the Opposite Party No. 2. The final report was accepted. Thereafter, the informant filed a complaint-cum-protest petition. After examining the complainant on solemn affirmation and the statements of the witnesses examined u/s 202 Cr.P.C. and considering their statements the impugned order was passed by the learned Magistrate.

2. Contention of the learned counsel for the petitioners is that this is a malicious prosecution on account of the land dispute between the parties. He also submitted that when the matter has already been investigated by the police and

final report was submitted and the same was also accepted, then there was no reason for the Chief Judicial Magistrate to proceed with the protest complaint. Therefore, the order taking cognizance is bad in the eye of law.

3. He further submitted that no eye witness has been examined in enquiry and the statements of the witnesses do not make out a prima facie case against the petitioners.

4. It is well settled that even after submission of the final report and acceptance of the same by the Chief Judicial Magistrate, the case may proceed on the basis of the protest-cum-complaint petition. Therefore, on that ground the impugned order cannot be said to be bad.

5. In the protest complaint the allegations are that the petitioners assaulted, abducted Opposite Party No. 2 on a jeep, made him unconscious and thereafter he found himself in the hospital. In his statement on solemn affirmation, the Opposite Party No. 2 has supported the allegations. P.Ws. 1 and 5 in their statements have also supported the fact of abduction. The other witnesses examined u/s 202 Cr.P.C. are hearsay witnesses. At this stage, the Magistrate has to see whether there is a prima facie case against the accused persons and the statements of Opposite Party No. 2 and witness Nos. 1 and 5 are sufficient to show a prima facie case of abduction/confinement. Therefore, I do not find any reason to interfere with the impugned order. This application, hence, is dismissed.