
(2010) 07 PAT CK 0161
In the Patna High Court

Rakesh Ranjan Sinha

APPELLANT

Vs

The State of Bihar, Shashank Shekhar and Binita Devi

RESPONDENT

Date of Decision : 30-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 156(3), 173, 210, 210(2)
Penal Code, 1860 (IPC) — Section 323, 34, 379, 384, 406

Citation : (2010) 07 PAT CK 0161

Hon'ble Judges : Akhilesh Chandra, J

Bench : Single Bench

Judgement

Akhilesh Chandra, J.—Heard learned Counsel for the petitioner and learned Additional Public Prosecutor for the State. None turned up on behalf of opposite party Nos. 2 and 3.

2. The petitioner complainant-cum-informant has preferred this application u/s 482 of the Criminal Procedure Code seeking quashing of the order dated 27.02.2004 passed by Chief Judicial Magistrate, Katihar in Katihar(Town) P.S. Case No. 72/2003 accepting the final form submitted by the police.

3. The relevant facts of the case is that the petitioner filed complaint case No. 51/2003 for offences u/s 420, 406, 323, 452, 384, 379 of the Indian Penal Code against opposite party Nos. 2 and 3, who are none else than his full brother and his wife.

4. On receipt of the complaint petition on 08.01.2003, the court below sought a report from the police station concerned u/s 210 of the Criminal Procedure Code, "whether any case was instituted or not regarding the alleged incident" fixing the date 19.02.2003, requisition was sent to the police station, annexing copy of the complaint petition. On the date fixed i.e. 19.02.2003, no report was received and Presiding Officer was absent, so the case was adjourned for 04.03.2003.

5. Katihar (Town) P.S. Case No. 72/2003 was registered for the offence under Sections 452, 323, 406, 379/34 of the Indian Penal Code. First Information

Report was received on 21.02.2003. It is further relevant to mention here that this First Information Report was instituted on the basis of copy of the complaint case No. 51/2003 received whereon report was called for u/s 210 of the Criminal Procedure Code. This fact is not only admitted by the petitioner but also appeared from the impugned order dated 27.02.2004.

6. After institution of the case, the complainant informant petitioner filed a protest complaint on 06.03.2003, subsequently, on 26.04.2003, police after investigation submitted final form whereupon notice was ordered to be issued against the informant who appeared by filing Vakalatnama on 03.05.2003, prayed for case diary and the prayer was accepted, accordingly, case diary was received on 04.05.2003. A few dates thereafter on 14.02.2004 informant was heard and vide order dated 27.02.2004, the court below accepted the final form finding no evidence and since the complainant informant did not press the protest complaint filed earlier on 06.03.2003 did not pass any order thereon.

7. On 17.03.2004, another petition was filed on behalf of the petitioner before the court below praying therein to proceed with the case on basis of protest complaint after hearing vide order dated 18.03.2004, the court below arriving at the conclusion that earlier on 27.02.2004, final form was accepted after hearing the informant, the case was instituted on the basis of complaint petition itself and at no point of time, the informant complainant pressed the protest complaint, so there is no reason to reopen the case, accordingly, prayer was refused, said order is not under challenge. Rather, this petition has been filed challenging earlier order dated 27.02.2004 accepting the final form.

8. Learned Counsel for the petitioner tried to led emphasis that the copy of the complaint was not sent to the police station u/s 156(3) of the Criminal Procedure Code, so the case could not have been instituted. The entire investigation thereon and subsequent submission of final form and acceptance thereof is not tenable under law. Learned Additional Public Prosecutor submitted that even the case was not sent before the police and report was called for whether any case was instituted or not, and the police on receipt of copy of the complaint petition u/s 156 of the Criminal Procedure Code is empowered to investigate the case after instituting the same. Further no objection was raised earlier at any point of time and the petitioner informant participated in the hearing at every stage in his presence final form was accepted, he did not press the protest complaint filed. He has now no right to challenge.

9. The duty of the court on receipt of report and investigation u/s 173 of the Criminal Procedure Code is to either accept the same or differ and pass appropriate order thereafter the court below on submission of final form finding the case untrue filed only to put undue pressure upon brother and sister-in-law submitted final form and the court below after giving full opportunity to the informant and hearing him accepted the report, no wrong was committed. Learned Counsel for the petitioner could not point out any illegality in institution of the case, even if, a copy of the petition was not sent to the police u/s 156(3)

of the Criminal Procedure Code but if a report was called for u/s 210 of the Criminal Procedure Code which reads as such:

210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence - (1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer u/s 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.

And police on institution of the case on the basis of complaint petition sent before the police along with requisition Sub-section (2) of Section 210 aforementioned comes into play and there is sufficient compliance and no wrong is done.

10. No other irregularity or illegality is pointed out and I find no reason to interfere in the impugned order to allow this case.

Accordingly, it is hereby dismissed.