

(2010) 10 PAT CK 0006

In the Patna High Court

Case No : Criminal Miscellaneous No. 5993 of 2007

Ram Chandra Singh and Krishna Chandra Singh @ Krishna
Kr. Singh

APPELLANT

Vs

The State of Bihar and Kapildeo Singh

RESPONDENT

Date of Decision : 26-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 201, 302, 34

Citation : (2010) 10 PAT CK 0006

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—Two Petitioners, while invoking inherent jurisdiction of this Court u/s 482 of the code of Criminal Procedure, have prayed for quashing of entire criminal prosecution including the order of cognizance dated 26.08.2006 passed by Sri Sampat Kumar, Judicial Magistrate, Ist Class, Saran at Chapra in Complaint Case No. 2943 of 2004 (Inquiry No. 264 of 2006). By the said order, the learned Magistrate has taken cognizance of offence under Sections 302, 201/34 of the Indian Penal Code and summoned the Petitioners to face trial.

2. Short fact of the case is that opposite party No. 2 in the month of December, 2004 filed a complaint in the Court of Chief Judicial Magistrate, Saran at Chapra, which was numbered as Complaint Case No. 2943 of 2004, disclosing therein that in between 2.11.1990 and 3.11.1990 his father in law was murdered. It was disclosed that due to the reason that Petitioners were agnates of the father in law of the complainant had committed, the occurrence of murder of his father in law namely Baleshwar Singh. After the complaint was filed the learned Magistrate conducted enquiry and by the impugned order dated 26.8.2006 cognizance has been taken for the offence under Sections 302 and 201 of the Indian Penal Code.

3. Aggrieved with the order of cognizance, the Petitioners approached this Court by filing the present petition.

4. Mr. Ashwini Kumar Singh, learned senior counsel appearing on behalf of both the Petitioners has argued that the complainant of the present case was accused in the murder of his father in law and Petitioner No. 1 was informant in the said case. It has been submitted that as per the instance of Petitioner No. 1 immediately after detection of the murder of father in law of the complainant a First Information Report vide Chapra Sadar P.S. Case No. 306 of 1990 was registered on 3.11.1990, in which the complainant of the present case was made sole accused. It has been submitted that in the said case after thorough investigation police submitted charge sheet on 30.1.1992 against the complainant/opposite party No. 2 and thereafter on 6.2.1991 cognizance was taken. The case was subsequently committed to the Court of Session on 17.6.1992. It has been asserted that on the date of filing of the present petition before this Court altogether four witnesses had already been examined in support of the prosecution case. It has been argued by Sri Singh that only with a view to create a defence in calculated manner, the present complaint petition was filed after almost 14 years from the date of occurrence. It has been submitted that occurrence in the case had taken place in the Month of November, 1990 and the present complainant was filed in the Month of December, 2004 i.e. after 14 years from the date of occurrence. It has been submitted that it is not in dispute that the complainant was sole accused in Chapra (M) P.S. Case No. 306 of 1990 in which after completion of investigation the complainant was put on trial and evidences in the said case is going on. It has been argued that allowing the proceeding on such complaint will amount to allowing abuse of the process of the Court. It has been prayed to quash the order of cognizance.

5. Sri Ganesh Prasad Singh, learned Counsel on behalf of opposite party No. 2 has vehemently opposed the prayer of the Petitioner. It has been submitted that it is not a case that at a belated stage, complaint was filed by opposite party No. 2. It has been argued that even in the year 1991-92 complaint was filed by the opposite party No. 2 and subsequently, that complaint Case No. 2943 of 2004 was attached with the Sessions Trial, in which the complainant is facing trial. Learned Counsel for the opposite party No. 2 while referring to the impugned order submits that it has been noticed by the learned Magistrate that even for the same occurrence two cases are permissible. Accordingly it has been submitted that present complaint petition is maintainable and the learned Magistrate has committed error while taking cognizance of the offence.

6. Sri A.M.P. Mahto, learned Additional Public Prosecutor appearing on behalf of the State has supported the stand of the learned Counsel for the Petitioners.

7. Besides hearing learned Counsel for the parties, I have perused the materials available on record. In this case, it is not in dispute that occurrence had taken place long back in the year 1990 and in the said occurrence the complainant opposite party No. 2 was made sole accused, who is facing trial before the Court

of Session. The present complaint was filed after expiry of more than 14 years. The Court is of the opinion that allowing prosecution of Petitioners in the present complaint petition will amount to allowing abuse the process of the court.

8. Accordingly, order of cognizance dated 26.08.2006 passed by learned Judicial Magistrate, Ist Class, Saran at Chapra in Complaint Case No. 2943 of 2004 is hereby set aside and petition stands allowed.