
(2000) 02 PAT CK 0048

In the Patna High Court

Case No : Criminal Revision No. 516 of 1995

Ram Nandan Sharma

APPELLANT

Vs

The State of Bihar and Sri Ranjit Prasad

RESPONDENT

Date of Decision : 03-02-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 2(1), 378, 378(1) 397, 397(1) 397(2) 401

Citation : (2000) 3 PLJR 441

Hon'ble Judges : I.P. Singh, J

Bench : Single Bench

Advocate : Arun, for the Appellant; Ranjit Sahay, for O.P. No. 2 and , Assistant Public Prosecutor for State, for the Respondent

Final Decision : Dismissed

Judgement

I.P. Singh, J.—This is an application under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (in short "the Code"). It is directed against the order dated 23.8.1995 passed in Criminal Revision No. 314/94 by 8th Additional Sessions Judge, Patna by which he set aside the order dated 18.4.1994 passed by Shri R.K. Singh, Judicial Magistrate, 1st Class, Danapur in Tr. No. 728/94, G.R. No. 1822/82. By the aforesaid order dated 18.4.1994 the learned Magistrate had rejected a petition filed by the Additional Public Prosecutor to grant him time to go up in revision against his order dated 5.1.1994.

2. From the record it appears that one Ram Somari Devi had filed a complaint petition in the court of the Sub-Divisional Judicial Magistrate, Danapur alleging therein that the accused persons had abducted her husband, Brij Nandan Singh, on 5.5.1984 and got certain forged and fabricated documents executed by him while he was under the influence of some drug administered to him. Subsequently Brij Nandan Singh returned back on 8.5.1984 and fell ill on 20.5.1984. Some of the accused persons again took Brij Nandan Singh to Patna for treatment where he died. On the receipt of this complaint petition the learned

Sub-divisional Judicial Magistrate, Danapur by his order dated 16.10.1984 directed the Officer Incharge, Bikram Police Station to institute a case and to submit final form. Accordingly, Bikram P.S. Case No. 374/84 was registered against 12 persons under various sections and the charge sheet was submitted on 30.4.1990 after a long delay about 6 years. The cognizance was taken on 25.6.1990 against the accused persons named in the charge sheet. One of them, namely, Budhdeo Singh, filed an application u/s 482 of the Code (Cr. Misc. No. 12541/92) before this Court for quashing the order dated 30.2.1992 passed by the learned Judicial Magistrate by which the prayer of the accused for discharge was rejected. The aforesaid criminal misc. case was placed under the heading for admission before Hon''ble Mr. Justice S.B. Sinha on 22.10.1992 which was dismissed with a direction to the court below to dispose of this case as early as possible preferably within two months from the date of receipt of the order (Annexure-1).

3. The copy of this order was received by the trial court on 17.11.1992 and the charges were framed against the accused persons on 24.2.1993. When on the date fixed for recording of evidence no prosecution witness appeared, the Additional Public Prosecutor prayed for issue of summons to be given to him for service at his risk. Thereafter several dates were fixed and bailable warrants of arrest were also issued against the witnesses. No witness, however, could be produced till 21.8.1993 and the trial court fixed 28.9.1993 as a last date for the production of the witnesses. On this date one witness was produced. The trial, however, could not make much progress on account of the fact that the witnesses were produced in a piece-meal manner. The trial court directed the Additional Public Prosecutor to examine all the witnesses by 21.12.1993 in view of the order passed by the Hon''ble High Court as contained in Annexure-1. Finally the case was adjourned to 5.1.1994. Even on this date neither any witness was produced nor any document was filed. The prosecution filed a petition for the issue of Dasti summons for the production of the witnesses. This petition of the prosecution was rejected by the learned trial court by the order dated 5.1.1994 and the evidence of the prosecution was closed.

4. Against this order passed by Shri A.K. Singh, Judicial Magistrate, Danapur a petition was filed by the prosecution for staying the further proceeding in the case since the State wanted to go up in revision against the order dated 5.1.1994. The learned Magistrate granted time till 26.2.1994. On this date the learned Additional Public Prosecutor filed a petition alongwith a certificate from the Advocate that a revision petition was filed before this Court in which the order was passed on 18.3.1994. Inspite of it; without waiting for the communication of this order; the learned Magistrate adjourned the case to 2.3.1994 for the recording the statement of the accused u/s 313 of the Code. The State, however, did not file any revision application in the first instance, On the other. hand, a person claiming to be the son-in-law of the complainant filed Criminal Revision No. 111/94 which was placed for admission before the Hon''ble Mr. Justice P.K. Sarin on 18.3.1994. The Hon''ble Judge dismissed it by holding

that the Petitioner had no locus standi.

5. Again the learned Additional Public Prosecutor on 18.4.1994 filed another petition for adjournment of the ground that he would be filing a revision application against the order dated 5.1.1994 passed by the learned Magistrate closing the case of the prosecution. This petition of the learned Additional Public Prosecutor was rejected by the learned Magistrate by the order dated 18.4.1994. Against this order Sri Rajniti Prasad, the learned Additional Public Prosecutor filed a revision application before the Sessions Judge, Patna which was heard and disposed of by the 8th Additional Sessions Judge who by the impugned order dated 23.8.1995 set aside the order of the learned Magistrate by which he had refused time to the State for filing revision petition against his order dated 5.1.1994. It may be mentioned in this connection that with respect to the same cause of action Title Suit No. 246/84 was pending before the Subordinate Judge, Patna.

6. In this revision application the Petitioner has contended that the Criminal Revision No. 314/94 filed by Shri Rajniti Prasad, Additional Public Prosecutor, (opposite party No. 2,) was not maintainable as it was neither on behalf of the State nor on behalf of the any of the witnesses of the case. The order of the learned Magistrate refusing time was an interlocutory order and, therefore, the impugned order is without jurisdiction as the same is barred u/s 397(2) of the Code. The learned court below assumed power not vested in it and without considering the fact that there has been inordinate delay in the disposal of the case. The alleged occurrence is said to have taken place in May, 1984 and police submitted charge sheet in April, 1990 after more than 5 years. The charges were framed on 5.3.1993 and till January, 1994 only seven witnesses could be examined. The learned court below lost sight of these facts. On these grounds amongst others, it has been contended that the impugned judgment passed in Cr. Rev. No. 314/94 be set aside.

7. The parties have been heard at length on the various points raised in this application. Since, however, certain important questions of law are involved in this Criminal revision they have to be decided in accordance with law.

8. On behalf of the Petitioner it has been submitted that the criminal revision before the Sessions Judge (Criminal Revision No. 314/94) was filed by the Additional Public Prosecutor who had no authority under law to file the same. It was the submission on behalf of the Petitioner that it is only the State Government and not the Additional Public Prosecutor who could have filed the Criminal Revision No. 314/94 before the Sessions Judge and on this ground, amongst others, the impugned order dated 23.8.1995 is liable to be set aside. In this connection my attention has been drawn to Section 378 of the Code also, which regulates the filing of the appeal in the case of acquittal. According to this section the State Government may direct the Public Prosecutor to present an appeal to the High Court from a revisional or appellate order passed by any court other than a High Court or an order of acquittal passed by the court of session in

revision. In the present case no order of acquittal has been passed and it is obvious that the provisions of this section are not attracted under the facts and circumstances of this case. Here the question for consideration is whether the Additional Public Prosecutor could have filed revision application before the Sessions Judge against an order passed by the trial court closing the case of the prosecution. At the time of the hearing it has been very seriously contended before me on behalf of the Petitioner that even the revision application can only be filed by the State in its name and not by any of its officers much-less by the Additional Public Prosecutor who is supposed to act as per the instructions of the State. Before taking up for consideration this contention of the Petitioner I will refer to certain provisions of the Code to find out how far this contention is correct.

9. Section 2(1) of the Code defines the Public Prosecutor. It runs as follows:

2(1) "Public Prosecutor"-means any person appointed u/s 24, and includes any person acting under the directions of a Public Prosecutor.

So far as Section 24 is concerned its Sub-sections (4) and (5) read as follows:

24(4)-The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons who are are, in his opinion fit to be appointed as Public Prosecutor or Additional Public Prosecutors for the district.

24(5)-No person shall be appointed by the State Government as Public Prosecutor or Additional Public Prosecutor for the district unless his name appears in the panel of names prepared by the District Magistrate under Sub-section (4).

10. From the aforesaid it would appear that the Additional Public Prosecutor acting under the direction of a Public Prosecutor comes within the definition of the "Public Prosecutor" as given in Section 2(u) of the Code. In the case of Mansoor and Others Vs. State of Madhya Pradesh, the Hon'ble Supreme Court while dealing with the provisions of Section 378(1) of the Code held that an appeal can be filed by a Public Prosecutor as defined in Section 2(u) of the Code. As pointed out above here there is no question of any appeal filed u/s 378 of the Code. Here a criminal revision has been filed by the Additional Public Prosecutor in his own name. However, in the aforesaid case it has been held that the appeal u/s 378(1) of the Code could be filed by a Public Prosecutor as defined u/s 2(u) of the Code. Applying the same principle I do not find any difficulty in holding that the Additional Public Prosecutor who with the aid of Section 2(u) of the Code can be said to be the Public Prosecutor (while acting under his directions) can file criminal revision also. The only difficulty as has been pointed out here, is that the Additional Public Prosecutor should not have been filed any revision in his own name as has been done in the instant case. On this ground it has been contended that the learned Sessions court did not get any jurisdiction to entertain any such revision application and on this ground alone the impugned order is liable to be set aside.

11. I, however, do not find any force in this contention of the learned Counsel. In this connection a reference may be made to Section 397(1) of the Code. A perusal of this Sub-section clearly shows that the High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior criminal court for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding sentence or order, recorded or passed, or as to the regularity of any proceedings of such inferior court. From the language of this Sub-section it becomes clear that the High Court or the Sessions Judge can exercise the power u/s 397(1) of the Code even suo-motu. If that be so, the question whether this power was exercised at the instance of opposite party No. 2, Sri Rajniti Prasad, Additional Public Prosecutor is hardly material since the Sessions Judge or the Additional Sessions Judge could have exercised this power even suo-motu in order to prevent any illegality or miscarriage of justice. This view has been consistently taken by the Hon'ble Supreme Court in different decisions two of which are the following: (1) Pratap Vs. State of U.P. and Others, and (2) Municipal Corporation of Delhi Vs. Girdharilal Sapuru and Others, . In view of these authoratative pronouncements by the Hon'ble Supreme Court it can be safely held that the court of session in exercise of its power u/s 397(1) of the Code could have even acted suo-motu to prevent illegality or miscarriage of justice and, therefore, it was hardly material whether the attention of the court towards the illegality or miscarriage of justice was drawn by the opposite party No. 2 in his own name describing himself as Additional Public Prosecutor or by anybody else. Hence I do not find any force in this contention of the learned Counsel for the Petitioner.

12. On behalf of the Petitioner it has been further urged that since the impugned order dated 18.4.1994 passed by the learned Magistrate was an interlocutory order no revision application against the same can be filed in view of the provisions of Section 397(2) of the Code. This takes up to the consideration of this provision of law which runs as follows:

397(2)-The powers of revision conferred by Sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

13. By order dated 18.4.1994 the learned Magistrate has rejected the prayer of the learned Additional Public Prosecutor for time. From the impugned order it appears that the prosecution case was closed in view of the direction given by this Court on 22.10.1992 in Cr. Misc. No. 12541/92, as contained in Annexure-1. Under the circumstances the important question that will arise in this connection would be whether the impugned order rejecting the prayer of the learned Additional Public Prosecutor for time for the examination of the witnesses can be said to be an interlocutory order so as to attract the provisions of Section 397(2) of the Code or not. From the impugned order it would appear that before the learned court the additional Public Prosecutor had pointed out that the statements of some of the witnesses were recorded u/s 164 of the Code which

are not available on the record. It further appears that even the learned Judicial Magistrate could find out from the record that an order was passed by the court for recording the evidence of some of the witnesses u/s 164 of the Code. No such statement was available on the record and an explanation was called for from the Bench Clerk. Even inspite of it the impugned order has been passed. Be that as it may the important question that arises in this connection is whether the impugned order can be said to be an interlocutory order or not?

14. In this connection a reference may be made to the case of Amar Nath and Others Vs. State of Haryana and Another, . The Hon''ble Supreme Court observed in this decision that the words "interlocutory order" used in Section 397(2) of the Code have been used in a restricted sense and they merely denote orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. It has further been held that an order which substantially affects or decides certain rights of the parties can not be said to be an interlocutory order so as to constitute bar u/s 397(2) of the Code. Also it was observed that the orders which are matters of moment and which affect or adjudicate the rights of the parties or a particular aspect of the trial can not be said to be an interlocutory order so as to be barred u/s 397(2) of the Code. From the aforesaid it would appear that the impugned order before the learned Additional Sessions Judge which has resulted in rejection of the petition of the learned Additional Public Prosecutor and closing down the case of the prosecution can not be said to be an interlocutory order within the meaning of Section 397(2) of the Code. By this order a valuable right of the prosecution was taken away and hence this order was a matter of moment and it involved a decision about the rights of the State. As such in view of this authoratative pronouncement by the Hon''ble Supreme Court this order can not be said to be an interlocutory within the meaning of Section 397(2) of the Code.

15. It will not be out of place to mention here that the judgment in the case of Amarnath (supra) has been to some extent modified in a subsequent decision of the Hon''ble Supreme Court in the case of Madhu Limaye Vs. The State of Maharashtra, . This modification was only on the point where a revision against a particular order is expressly barred u/s 397(2) of the Code to such a case the provisions of Section 482 of the Code will or will not apply. While in the case of Amarnath (supra) it was held that in such a situation the provision of Section 482 of the Code will not apply, this finding has been modified in the case of Madhu Limaye (supra) in which it was held that a plain reading of Section 482 will, however, show that nothing in the Code which will include Section 397(2) also shall be deemed to limit or affect the inherent power of the High Court. However, so far as this case is concerned the determination of this question is not in issue. Thus from the decision in the case of Amarnath (supra) it becomes clear that the impugned order before the learned Additional Sessions Judge could not be said to be an interlocutory order and I do not find any force in this connection of the learned Counsel for the Petitioner.

16. On behalf of the Petitioner it has further been submitted that there is inordinate delay in disposal of the case and, therefore, it was not proper for the learned Additional Sessions Judge to delay the matter any further by passing the impugned order. I do not find any force in this contention specially in the light of the facts and circumstances of this case.

17. From the order dated 5.1.1994 passed by the learned Magistrate it appears that before him prosecution has filed petition for issuing summons to the witnesses and also for calling for the documents. However, the learned Magistrate in this order has observed that the Hon''ble High Court had directed his court to conclude and to dispose of this case within two months from 17.11.92 and in the light of this direction of this Court the petition filed by the State for time to give evidence was rejected, though the State had prayed before him for issuing summons to the Investigating Officer and other Officers as per the petition dated 21.12.1993. It was pointed out to me that the learned Magistrate had wrongly interpreted the order dated 20.10.92 passed by this Court in Cr. Misc. No. 12541/92. In particular my attention has been drawn to the relevant portion of this order which runs as follows:

The learned court below should make the endeavour to dispose of the matter as early as possible preferably within two months from the date of receipt of the copy of this order.

It has been pointed out to me that what this Court has observed in this order was that all efforts must be made to dispose of the case as soon as possible preferably within two months. It will not mean that in all circumstances this case has to be disposed of within two months of the communication of the order even if for doing so the petition filed by the State for summoning the Investigating Officer as also other Officers for their evidence in the court may have to be rejected. This could never be the meaning of this order as this Court had directed only that it may be disposed of as early as possible preferably within two months and not that it must in all cases and under all circumstances be disposed of within two months. Actually it appears that the learned trial court wrongly felt that its hands were fettered and he was not left with any option or alternative in the matter except to close the prosecution case within two months of the receipt of this order though actually this order passed by this Court nowhere made it mandatory to do so.

18. From the detailed discussions made above I find that there is no merit in this revision application. It is, accordingly, dismissed and the impugned order passed by the learned Additional Sessions Judge is confirmed.