
(2010) 10 PAT CK 0008

In the Patna High Court

Case No : Criminal Miscellaneous No. 7116 of 2007

Ram Nath Pandey and Others

APPELLANT

Vs

State of Bihar and Surendra Pandey

RESPONDENT

Date of Decision : 25-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 147, 148, 149, 188, 379

Citation : (2010) 10 PAT CK 0008

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Judgement

Rakesh Kumar, J.—Five Petitioners, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, have prayed for quashing of an order dated 28.4.2003 passed by Sub Divisional Judicial Magistrate, Bikramganj, Rohtas in Nasriganj (Kachwan) P.S. Case No. 174 of 2002 (G.R. No. 1008 of 2002). By the said order, learned Magistrate has taken cognizance of offence under Sections 147, 149, 188, 379 of the Indian Penal Code.

2. Short fact of the case is that opposite party No. 2, who is own brother of Petitioner Nos. 1 to 4, filed a written complaint before the Officer-in-charge, Kachwan Police Station, Rohtas alleging therein that Petitioners had stolen crops from the field of the informant. It was disclosed that accused persons, at the time of occurrence, were variously armed. On the basis of the written complaint, an F.I.R. vide Nasriganj (Kachwan) P.S. Case No. 174 of 2002 was registered against all the five accused persons and after thoroughly investigating the case submitted charge sheet under Sections 147, 148, 149, 188 and 379 of the Indian Penal Code. Thereafter, the learned Magistrate, by the impugned order, has taken cognizance of the offence.

3. Shri Sanjay Kumar Tiwary, learned Counsel appearing on behalf of the Petitioners, has submitted that the land in question was khatiyani land of Petitioners. It was further submitted that the informant himself has admitted in

the F.I.R. that civil dispute in between the parties was going on. Learned Counsel for the Petitioners has referred to Annexure-3 to the petition i.e. copy of khatiyan. On the aforesaid ground, it has been submitted that order of cognizance may be set aside.

4. Shri Surendra Kumar Chaubey, learned Counsel appearing on behalf of opposite party No. 2, has opposed the prayer of the Petitioners. It has been submitted that despite the fact that 144 proceeding was going on, the accused persons had committed the present occurrence, which was controverted by Shri Tiwary and it was clarified by Shri Tiwary, learned Counsel for the Petitioners that 144 proceeding was already dropped prior to the date of occurrence.

5. Besides hearing learned Counsel for the parties, I have also perused the F.I.R. as well as impugned order. In the present case, since after investigation, police had already submitted charge sheet and the learned Magistrate, on the basis of materials available on record, has taken cognizance of the offence, I do not think it proper to interfere with the order of cognizance. Time without number, it has been held that at initial or interlocutory stage, this Court should refrain from interfering with the criminal proceeding.

6. Accordingly, the court is of the opinion that it is not a fit case for exercising inherent jurisdiction in favour of the Petitioners and petition stands rejected.

7. So far as stand, which has been taken by the learned Counsel for the Petitioners, the court is of the opinion that same can well be raised at appropriate stage before the court below. It is expected that if such petition is filed at appropriate stage, the learned Magistrate, without being prejudiced with this order, may pass appropriate order in accordance with law.

8. With above observation, petition stands rejected.

9. In view of rejection of this petition, interim order dated 7.4.2009 stands automatically vacated.

10. Let a copy of this order be sent to the court below forthwith.