

(2006) 06 PAT CK 0022

In the Patna High Court

Case No : Criminal Miscellaneous No. 18008 of 2003

Ram Swarup Singh and Others

APPELLANT

Vs

The State of Bihar and Yogendra Prasad Singh

RESPONDENT

Date of Decision : 23-06-2006

Acts Referred:

Citation : (2006) 06 PAT CK 0022

Final Decision : Dismissed

Judgement

Rekha Kumari, J.—This is an application filed u/s 482 of the code of Criminal Procedure, 1973 (hereinafter referred to as the code) for quashing the order dated 3.6.2003 passed by the Additional Sessions Judge IV, Vaishli at Hajipur in Sessions Trial No. 82 of 2001 by which he has rejected the petition of the petitioners u/s 227 of the Code to discharge them.

2. Heard learned Counsel for the petitioners and learned A.P.P. for the State. No one appeared for Opposite Party No. 2.

3. It appears that a complaint was filed by opposite Party No. 2 against the petitioners before the Chief Judicial Magistrate, Vaishali for taking against them for the offence under Sections 363, 364, 387/34 of the Indian Penal Code for wrongfully abducting him and his son and keeping them confined and threatening them to commit their murder unless the complainant (Opposite Party No. 2) executed a sale deed in respect of his house and land situated in village Desri, Vaishali. The complainant was examined on solemn affirmation and examined three witnesses in enquiry u/s 202 of the Code. The petitioners thereafter was summoned to face trial under Sections 363, 364, 368, 387/34 of the Indian Penal Code. The case was committed to the court of Session for trial.

4. The petitioners filed a petition under Sections 227 of the Code on 7.5.2003 for discharging them. The learned 4th Additional Sessions Judge, Vaishali after hearing the parties and considering the complaint petition and the statement of the complainant and his witnesses found that they have supported the

prosecution case and hence, by the impugned order dismissed the prayer of the petitioners and adjourned the case for framing of charges.

5. Learned Counsel for the petitioners submitted that the complaint petition would show that Nagiya Devi, wife of Opposite Party No. 2 had given information at Desri police station about the missing of her husband and Annexure-2 would show that the police had found the allegation to be false. He further submitted that Annexure-3 would show that A.S.I. Desri police station had made enquiry and found that Opposite Party No. 2 had no house at Desri. He also submitted that the petitioners are uncles and cousin of the daughter-in-law of Opposite Party No. 2 and the daughter-in-law Anita Kumari had filed a complaint against Opposite Party No. 2 and others under Sections 498A, 323 and 379 of the Indian Penal Code and Section 3/4 of Dowry Prohibition Act (Annexure-5) which was registered as Desri P.S. Case No. 138-93 dated 6.11.1993 and in order to put pressure on the petitioners, Opposite Party No. 2 filed the instant complaint on 17.7.1995

6. Learned Counsel has also submitted that out of 10 witnesses cited in the complaint petition, Opposite Party No. 2 examined only three witnesses during enquiry which is in contravention of the provisions of Section 202(2) of the Code and thus fatal to the prosecution case. His submission also is that the petitioners have been falsely implicated in this case and the three witnesses examined during enquiry were not competent to say about the confinement etc. of Opposite Party No. 2 and his son but the learned Additional Sessions Judge without applying his mind rejected the prayer of the petitioners.

7. It is well settled that the trial court can discharge and accused u/s 227 of the Code only when after considering the evidence on record and hearing the parties he finds that there is no sufficient ground for proceeding against them i.e. either there is no legal evidence of that the facts do not disclose any offence at all. At this stage the court is also not to meticulously judge the evidence proposed to be adduced by the prosecution ground for conviction. It is also settled that the Sessions judge at this stage has also not to attach any weight to the probable defence of the accused.

8. This Court in exercise of its inherent power also cannot quash the order by weighing the correctness of sufficiency of the evidence. It cannot also consider the defence documents. In such cases, the High Court has only to see as to if the entire evidence produced by the prosecution is to be believed, whether it constitutes an offence or not. It is only at the stage of trial that the truthfulness sufficiency or acceptability of the evidence can be judged.

9. It is not denied that the complaint petition discloses any offence against the petitioners. The impugned order also shows that the learned Additional Sessions Judge after perusing the statement of the complainant and his witnesses has found that they all have supported the allegations made in the complaint petition and so has passed the order impugned. Therefore, I do not find any infirmity in

the impugned order. This Court cannot also consider the above defence of the petitioners or the documents filed by them. It cannot also consider the correctness or sufficiency of the evidence and quash the impugned order.

10. As regards the non examination of some of the witnesses named in the complaint petition during enquiry, it has been held by the Supreme Court in the case of Rosy and Another Vs. State of Kerala and Others, that non compliance with the proviso to Sub-section (2) of Section 202 of the Code in Sessions triable cases does not vitiate trial unless prejudice caused to the accused is established. Nothing has been said by the learned Counsel as to how the petitioners were prejudiced for non-compliance of the above provision. So, on this ground also the impugned order cannot be set aside.

11. In view of the above discussions, I do not find any merit in this application this application is accordingly dismissed.