
(2010) 11 PAT CK 0047

In the Patna High Court

Case No : Criminal Miscellaneous No. 19713 of 2007

Ramashish Prasad Sah, Deo Nath Prasad and Birendra Kumar APPELLANT
Vs
The State of Bihar and Kaushlendra Kumar RESPONDENT

Date of Decision : 04-11-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 192(1), 397(3), 482
Penal Code, 1860 (IPC) — Section 182, 211, 34, 409, 420

Citation : (2010) 11 PAT CK 0047

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Judgement

Rakesh Kumar, J.—Three 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 15.7.2005 passed by Sri Alok Raj, Judicial Magistrate, 1st Class, Biharsharif, Nalanda in Complaint Case No. 1182 (C) of 2003. By the said order, learned Magistrate has taken cognizance of offences under Sections 409, 420/34 of the Indian Penal Code.

2. Short fact of the case is that Opp. Party No. 2, who was a member of below poverty line, was sanctioned loan by the Block Development Officer and the same was to be disbursed through Gramin Bank, Nalanda. Petitioner Nos. 1 and 2 were at the relevant time Manager and Field Officer of Gramin Bank, Nalanda and Petitioner No. 3 was dealer and dealing with the Diesel Pump Set and Holler to the complainant. As per the agreement, Petitioner No. 3 was to supply Diesel Pump Set and Holler to the complainant since the loan amount was sanctioned by the Block Office and payment was to be made by the Gramin Bank. It was alleged in the complaint petition that subsequently agreement was executed and the complainant was called in the Bank. Thereafter, signature of the complainant was obtained on several papers. It was further alleged that accused persons never supplied Diesel Pump Set or Holler to the complainant. It is specifically alleged in the complaint that accused conspiring with each other had obtained signature of the complainant and thereafter accused persons had

misappropriated the loan amount which was sanctioned in favour of the complainant. After filing of the complaint petition in the court of Chief Judicial Magistrate, Biharsharif (Nalanda), the learned Chief Judicial Magistrate u/s 192(1) of the Code of Criminal Procedure transferred the complaint to the court of learned Magistrate and the learned Magistrate after conducting enquiry by the impugned order has taken cognizance of offences u/s 409, 420/34 of the Indian Penal code and directed for summoning accused persons.

3. Aggrieved with order of cognizance dated 15.7.2005, the Petitioners firstly preferred a revision before the court of learned Addl. Sessions Judge, Fast Track Court No. II, Nalanda at Biharsharif, which was heard and rejected vide its order dated 3.4.2007.

4. Aggrieved with both the orders i.e. order dated 15.7.2005 passed by the learned Magistrate as well as order dated 3.4.2007 passed by the learned Addl. Sessions Judge, F.T.C. No. II, the Petitioners approached this Court by filing the present petition. On 26.7.2007, while issuing notice to Opp. Party No. 2, this Court directed that till next date, further proceeding in the court of Additional Sessions Judge/ F.T.C. No. II, Nalanda at Biharsharif in Complaint Case No. 1182 C of 2003 shall remain stayed. On 12.5.2009, the petition was admitted for hearing and it was directed that till further order, the interim order of stay dated 26.7.2007 shall continue to operate. The order of stay is still continuing.

5. Sri Devendra Kumar Sinha, learned Senior Counsel appearing on behalf of the Petitioners, while challenging both the orders, has firstly submitted that Opp. Party No. 2 had earlier filed a complaint vide Complaint Case No. 208C of 2001, which was referred to the police for its registration and investigation and thereafter an F.I.R. vide Harnaut P.S. Case No. 121 of 2001 was registered against the three Petitioners. It was submitted that the police thoroughly investigated the case and final form was submitted recommending prosecution of the complainant for the offences under Sections 182 and 211 of the Indian Penal Code. It was submitted that final form, which was submitted by the police, was accepted on 30.5.2003 by the learned Magistrate. However, before submission of the final form, a protest petition was filed by the complainant, which was treated as complaint vide Complaint Case No. 479 of 2003, which stood rejected on 27.6.2003 due to non-prosecution. It was submitted that the present complaint is the third complaint for the same allegation and, as such, the present complaint is liable to be rejected outrightly. It has further been submitted that the complainant had made incorrect allegation against the Petitioners. Learned Senior Counsel has even disputed that the complainant had never been duped by the accused persons. Accordingly, it has been submitted that keeping in view the fact that the matter was thoroughly investigated by the police and in absence of any material showing commission of offence by the Petitioners, it is a fit case where this Court may interfere with both the orders i.e. order of cognizance as well as the order passed by the revisional court.

6. Sri Prem Chandra Yadav, learned Counsel appearing on behalf of Opp. Party

No. 2 has vehemently opposed the prayer of the Petitioners. At the very outset, a preliminary objection was raised by the learned Counsel for Opp. Party No. 2 that the present petition is fit to be rejected on the ground that in the garb of filing a petition u/s 482 of the Code of Criminal Procedure, the Petitioners have virtually filed second revision, which is barred u/s 397(3) of the Code of Criminal Procedure. It has been submitted that the order of cognizance was challenged by the Petitioners in a revision vide Cr. Revision No. 399 of 2005. While referring to the impugned order of the revisional court, learned Counsel for Opp. Party No. 2 has submitted that even the learned Sessions Judge had examined the entire submission of the Petitioners and thereafter by assigning a detailed reason has rejected the revision petition. It has further been submitted by the learned Counsel for Opp. Party No. 2 that the points, which have been raised in the present petition can well be examined by the concerned court at the appropriate stage. This is not the stage for examining those disputed facts. Accordingly, it has been prayed to reject the present petition.

7. Smt. Indu Bala Pandey, learned Addl. Public Prosecutor appearing on behalf of the state has supported the stand of learned Counsel appearing on behalf of Opp. Party No. 2.

8. Besides hearing learned Counsel for the parties, I have also perused the materials available on record. It is true that in the present case earlier complaint, which was referred to the police was investigated and was found untrue and final report was submitted. However, the fact remains that even before submission of the final report, Opp. Party No. 2 apprehended that he may not get justice from the police and, as such, he had filed a protest petition before the concerned court. Subsequently, the protest petition was treated as complaint vide Complaint Case No. 479 of 2003. However, the said complaint was subsequently rejected due to non-prosecution. On the ground of rejection of petition due to non-prosecution, it cannot be said that the second complaint cannot be maintained. In the present case after rejection of the complaint Case No. 479 C of 2003 due to non-prosecution, the instant complaint petition was filed by the complainant disclosing therein specific case of commission of offence which was inquired by the learned Magistrate and thereafter order of cognizance was passed. The said order was challenged by the Petitioners before the revisional court. It may not be elaborated that second revision is not permissible.

9. In view of the facts and circumstances of the present case, the Court is not inclined to entertain the present petition and the petition stands rejected.

10. Keeping in view the fact that the matter remained pending for a long time before this Court, it is desirable to direct the court below to proceed with the case expeditiously, so that the case may come to its logical end without any further delay.

11. In view of rejection of the present petition, interim order of stay stands automatically vacated.