

(2007) 02 PAT CK 0142

In the Patna High Court

Case No : Criminal Miscellaneous No. 7611 of 1998

Ramjanam Singh and Others

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 01-02-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 482

Citation : (2007) 4 PLJR 46

Hon'ble Judges : Madhavendra Saran, J

Bench : Single Bench

Advocate : Ramashish, for the Appellant; Nawal Kishore Kashyap and Rajesh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Madhavendra Saran, J.—This application u/s 482 of the Code of Criminal Procedure (in short as "the Code") has been filed for quashing the order dated 17.1.1998 passed by Shri Bipin Dutt Pathak, 2nd Additional Sessions Judge, Aurangabad in Cr. Revision No. 16 of 1991/14 of 1994 whereby and whereunder he remanded the matter to the court of learned CJM for further enquiry. The case of the prosecution case. in short is that Opposite Party No. 2 Mahendra Sharma on 22.9.1987 filed a written report before the Officer In-charge of Goh Police Station, District Aurangabad alleging therein that the petitioners have stolen away one attachee of the informant which contained two pants, two shirts and one HMT watch. On the basis of above written report, the police registered Goh P.S. Case No. 100 of 1987 and after investigation, submitted final form stating the case found to be false. As protest petition filed by OP. No. 2 was pending before the Chief Judicial Magistrate, Aurangabad and therefore, the same was treated as complaint. The Opposite Party No. 2 was examined on solemn affirmation and during enquiry u/s 202 of the Code, two witnesses were examined on behalf of the complainant and the learned Chief Judicial Magistrate after considering the material available on the record, by order dated 20.12.1990

dismissed the complaint petition. Against the said order of dismissal, the Opposite Party No. 2 complainant preferred Cr. Revision No. 16 of 1991/14 of 1994 before the Sessions Judge, Aurangabad which was heard and disposed of by 2nd Additional Sessions Judge, Aurangabad who allowed the revision and remanded the "matter for further enquiry. Against the said order dated 17.1.1998 of the Learned 2nd Additional Sessions Judge, the petitioners have preferred the present application of quashing before this court.

2. It has been contended that petitioner Ram Janam Singh is father-in-law of the other petitioner named Birendra Singh @ Virendra Kumar whose wife is also a teacher with Opposite Party No. 2 in the School. He further contended that at the very initial stage Head Master of the School had sworn an affidavit that no occurrence as alleged has taken place in the school on the date of the alleged occurrence. The complainant was not present in the school. He also contended that the statement of witnesses recorded during enquiry are contradictory nature and therefore, the learned Additional Sessions Judge was not correct in remanding the matter for further enquiry.

3. Learned APP on the other hand, supported the impugned order dated 17.1.1998 and submitted that no interference is required by this court. It is settled view that the High Court should not act as a Second revisional court under the garb of exercising inherent powers. While exercise the inherent powers in such matter like present one, it has to be kept in mind that the learned Sessions Judge has exercised his revisional power in the matter, I have seen the order of learned Additional Sessions Judge and I find no error in the same. In the above facts and circumstances of the case, at this stage no interference is required by this court. This application is accordingly, dismissed. The petitioners will be at liberty to raise their grievance the court below at the appropriate stage of the case.