
(2010) 07 PAT CK 0051
In the Patna High Court

Ramjee Prasad

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 01-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120B, 34, 406, 420

Citation : (2010) 07 PAT CK 0051

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—Heard Shri Yogesh Chandra Verma, learned Senior Counsel appearing on behalf of the petitioner and Mrs. Indu Bala Pandey, learned Additional Public Prosecutor appearing on behalf of the State.

2. The sole petitioner, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, has prayed for quashing of an order dated 19.2.2008 passed by the Chief Judicial Magistrate, West Champaran, Bettiah in Purushottampur P.S. Case No. 47 of 2006. By the said order, the learned Magistrate, differing with the police report, has taken cognizance of the offence under Sections 420 and 406 read with Section 120B/34 of the Indian Penal Code.

3. In the case, after expiry of more than three (3) years from the so-called withdrawal of Rs. 100/ -, an enquiry was made on the basis of a petition filed by one Mr. Khursheed Alam, the then Pramukh Panchayat Samiti, Mainatar, which was filed on 16.8.2005 before the District Magistrate, West Champaran, Bettiah enclosing therewith photo copy of death certificate of one Most. Dev Jhari Devi. It was alleged in the said application that this petitioner, being Mukhiya, had identified a dead person and thereafter, for the month of March, Rs. 100/ - was mis-appropriated in the name of grant of Old Age Pension under the scheme of the Government. On the basis of that report, an enquiry was got conducted and thereafter, on the basis of a written report of Block Development Officer,

Mainatar, an F.I.R. vide Purushottampur P.S. Case No. 47 of 2006 was instituted. After investigating the case, the police thoroughly investigated the same. It may be mentioned that in this case, earlier case diary was called for, which was received. After conducting thorough investigation, the police did not notice commission of any offence and thereafter, final form was submitted.

4. After submission of the final form by the police, the learned Magistrate issued notice to the informant as to why final form may not be accepted. The informant on whose written report, the F.I.R. was lodged did not appear. However, Mr. Khursheed Alam, who had filed earlier petition before the District Magistrate in the year 2005 voluntarily appeared as if he was informant in the present case and on his behalf, it was informed that there were sufficient material in the case diary to proceed against the accused persons and the learned Chief Judicial Magistrate, by the impugned order differing with the final report, has passed the impugned order.

5. Learned Counsel for the petitioner, while challenging the order of cognizance, has argued that due to political rivalry, Mr. Khursheed Alam without any basis, had filed an application before the District Magistrate enclosing therewith photo copy of so-called death certificate in respect of Most. Dev Jhari Devi. In paragraph-23 of the petition, it has been categorically stated that petitioner is a Mukhiya and Mr. Khursheed Alam is Ex-Pramukh now (MLA), who has got an inimical and political rivalry against the petitioner and he, for that reason, has contested the case in his personal capacity.

6. In this case, Mr. Bimlesh Kumar Pandey, learned advocate had appeared before the court with a view to assist the court on behalf of the Mr. Khursheed Alam. He has accepted that before learned Magistrate, at the time of cognizance, Mr. Khursheed Alam had appeared through his advocate.

7. In this case, I may myself has perused the entire case diary. During investigation, the Investigating Officer had tried to ascertain as to how death certificate in respect of Most. Dev Jhari Devi was obtained. In paragraph-67 and paragraph-74 of the case diary, it has been categorically stated that Chandrika Mahto, son of Late Raghunath Mahto as well as son of Most. Dev Jhari Devi was examined and he categorically stated that he never filed any application for obtaining death certificate in respect of her mother. It has also come during investigation that Chandrika Mahto, son of Late Raghunath Mahto and Late Dev Jhari Devi was residing in a straw hut and there was no requirement for them to obtain death certificate of his mother. During investigation, witnesses have categorically stated that Most. Dev Jhari Devi had received Rs. 100/- as Old Age Pension for the month of March, 2002 and subsequently due to paralytic attack and ailment she died. The case was also thoroughly supervised by the superior officers.

8. On perusal of the case diary and record, it also appears that the District Magistrate, who had earlier directed for instituting F.I.R., subsequently, vide

Memo No. 412 dated 5.10.2006, had passed an order for withdrawing the decision for filing the F.I.R. Surprisingly, at subsequent stage, F.I.R. was filed, which is based mainly on the application of Mr. Khursheed Alam and so-called enquiry. After perusal of the entire case diary and materials available on record, the court is of the opinion that the learned Chief Judicial Magistrate was not required to proceed with the case in absence of any material suggesting involvement of petitioner and one another accused persons.

9. The court is conscious that at initial or interlocutory stage, it is not required to exercise inherent jurisdiction for quashing of a criminal case, but in view of peculiar facts and circumstances of the present case, it is necessary to interfere with the impugned order even at this initial stage and, accordingly, the order dated 19.2.2008 passed in Purushottampur P.S. Case No. 47 of 2006 by the Chief Judicial Magistrate, West Champaran, Bettiah is hereby set aside and petition stands allowed.