

(2007) 01 PAT CK 0188

In the Patna High Court

Case No : Criminal Miscellaneous No. 12351 of 2006

Ranju Choudhary and Another

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 05-01-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)
Penal Code, 1860 (IPC) — Section 120B, 323, 34, 347, 406

Citation : (2007) 2 PLJR 217

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mridula Mishra, J.—Heard counsel for the petitioner, the State and the counsel appearing for opposite party no.2 the complainant. This application has been filed for quashing the order taking cognizance dated 21.11.2005, passed by S.D.J.M., Dalsingsarai whereby cognizance has been taken under Sections 406, 323, 347, 420, 467, 468, 471 and 120B/34 of the Indian Penal Code in Ujiarpur P.S. Case No. 118 of 2004.

2. Ujiarpur P.S. Case No. 118 of 2004 has been instituted on the basis of complaint u/s 156(3) Cr.P.C. Opposite party no. 2 the complainant filed Complaint Case No. 342 of 2004 in the Court of S.D.J.M., Dalsingsarai alleging that one Sanjiv Kumar Choudhary who was well known to the complainant from before approached him for some loan. This loan was for starting brick kiln in the name of R.B.I. The complainant gave the money and also became a partner of Sanjiv Kumar Choudhary. Partnership agreement was executed in between Sanjiv Kumar Choudhary and the complainant. They started their business of selling brick. Subsequently when the complainant asked for his share in the profit it was denied by Sanjiv Kumar Choudhary saying that the agreement has no legal value as the brick kiln stands in the name of his sister-in-law Ranju Choudhary (Petitioner No.1). The complainant went to the house of Sanjiv Kumar Choudhary

along with other villagers. Sanjiv Choudhary and other two accused (petitioners) assaulted him.

3. Counsel for the petitioners states that in the entire F.I.R. there is no whisper against the petitioners that either they demanded money or participated in any transaction with the complainant. Petitioners are not the parties to such agreement on the basis of which the complainant was demanding his share in the profit. Petitioners name has simply been mentioned in the F.I.R. as another accused Sanjiv Kumar Choudhary said that the brick kiln stands in the name of his sister-in-law. Since unrebutted allegations made in the F.I.R. prima facie do not make out any offence against the petitioners. The order taking cognizance is bad and it must be quashed.

4. Counsel appearing for opposite party has not denied this fact that in the F.I.R. there is no specific allegation against the petitioners. So far the offence under Sections 406, 323, 347, 420, 467, 468, 471 and 120B/34 of the Indian Penal Code is concerned, it has been stated that in the last paragraph of the F.I.R. the line has been mentioned that all assaulted the complainant as well as all the accused persons are living together as such they must have full information about this transaction and it cannot be said that they are not the party to the transaction.

5. Considering the submissions of the parties as well as the allegations made in the F.I.R. I find that there is no allegation against the petitioners making out any offence against them under Sections 406, 323, 347, 420, 467, 468, 471 and 120B/34 of the Indian Penal Code. There is nothing to show that either the petitioners participated in any transaction, received any money, become the partner of the complainant and assured him that they will give the profit to the complainant. Entire allegation is against Sanjiv Kumar Choudhary. Name of the petitioners have been mentioned in the F.I.R. for some oblique motive i.e. to put pressure on them. No prosecution should continue against any person if in the F.I.R. itself there is no allegation against them. On consideration of the entire materials the present case comes within the category of case where even on the basis of unrebutted allegation made in the F.I.R. prima facie no offence is made out. It is a fit case for quashing the order taking cognizance. Accordingly the order dated 21.11.2005 passed by S.D.J.M., Dalsingsarai in Ujiarpur P.S. Case No. 118 of 2004/G.R. No. 324 of 2004 is quashed and this application is allowed.