
(2010) 04 PAT CK 0199
In the Patna High Court

S. Ali Imam

APPELLANT

Vs

The State of Bihar and Manish Kumar Agrawal

RESPONDENT

Date of Decision : 13-04-2010

Acts Referred:

Citation : (2010) 04 PAT CK 0199

Final Decision : Dismissed

Judgement

Rakesh Kumar, J.—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 5.1.1998 passed by Smt. Rita Mishra, Judicial Magistrate, Patna. By the said order, learned Magistrate has taken cognizance for offence u/s 406 of the Indian Penal Code in Complaint Case No. 1297 of 1997.

2. Short fact of the case is that the complainant, who claims to be nephew of one Binod Kumar, had hired a double storied building from Binod Kumar and thereafter, he established a Poly-clinic in the name and style of Banarsi Das Parasram House, which is commonly known as B.P. Hospital. It was alleged in the complaint petition that the petitioner, who was a doctor by profession, was employed on the salary basis in the said hospital. Subsequently, after the hospital started running smoothly, the petitioner got his wife and son employed in the said hospital and after the hospital was fully established and started showing huge earning the petitioner took over possession of entire account and record of the hospital. It was alleged by the complainant that the petitioner committed an offence of criminal breach of trust and due to which the complainant was put to a loss of about Rs. 50,000/-. It was further alleged that the petitioner illegally took forceful control over the instruments and equipments of the hospital in question and virtually, he started to enjoy all the benefits of the hospital in question independently. It was alleged that it was a case of criminal breach of trust. It was alleged that offence under Sections 201, 341, 380, 409, 452 and 120B of the Indian Penal Code was committed by the petitioner. The said complaint was filed on 13.11.1997.

3. After filing of the complaint petition, the complainant was examined on S.A. and in support of the complaint, three witnesses were also examined and thereafter, the learned Magistrate by its order dated 5.1.1998 took cognizance of the offence u/s 406 of the Indian Penal Code.

4. Shri Naresh Dikshit, learned Counsel appearing on behalf of the petitioner firstly submits that in the entire complaint petition, there is no allegation of entrustment to the petitioner. He further submits that in the complaint petition even the complainant had not alleged commission of offence u/s 406 of the Indian Penal Code. It appears that in complaint petition under the heading nature of offence, mechanically and ornamentally sections were mentioned as 201, 341, 380, 406, 452 and 120B of the Indian Penal Code. Learned Counsel for the petitioner has further referred to Annexure-2 to the petition, which was an order passed by S.D.M., Patna whereby a proceeding u/s 107 of Cr.P.C. was initiated. He submits that since the petitioner has proceeded with the said case, the present complaint was filed by the complainant. He further, by referring to paragraph-12 of the petition, submits that the petitioner had filed a case for fixation of fair rent on 27.11.1997 and said case was pending at the time of filing of the present petition.

5. Sri Naresh Dikshit submits that the complaint petition does not disclose commission of offence u/s 406 of the Indian Penal Code and he further submits that since the petitioner has filed afore referred cases, the present complaint petition was maliciously filed by the complainant. He has also referred to Annexure-3 series to the petition, which are typed copy of affidavits filed by some imminent doctors of Patna and said doctors have stated on oath that the petitioner is Director and Proprietor of B.P. Hospital, Arya Kumar Road, Rajendra Nagar, P.S. Kadamkuan, District Patna. He further submits that the complaint petition does not indicate any criminal offence but at best it can be termed as a dispute which is civil in nature and he has relied upon a judgment of Hon''ble Supreme Court reported in AIR 2006 Supreme Court 2780 (M/S Indian Oil Corporation and another Vrs. E.P.C. India Limited and others) and G. Sagar Suri and Another Vs. State of U.P. and Others, . He has specifically referred to paragraph-10 of Indian Oil Corporation Case (Supra) and paragraphs 7, 8, 14 and 15 of the judgment passed in G. Sagar Suri Case (Supra). In some and substance, he submits that if the court is satisfied that the dispute is purely civil in nature, then this Court even while exercising power u/s 482 of the Code of Criminal Procedure can intervene into the matter and quash such proceeding.

6. He has prayed for quashing of order of cognizance as well as quashing of entire proceeding subsequent to the order of cognizance.

7. Shri Surendra Prasad Singh, learned Additional Public Prosecutor has appeared on behalf of the State. He submits that perusal of the complaint petition itself indicates commission of offence u/s 406 of the Indian Penal Code. He submits that there is specific averment in the complaint petition that the petitioner was employed by the complaint and the records/accounts of the hospital in question

was in the possession of the petitioner and since the complainant has alleged that he had with hold the accounts as well as mis-appropriated the proceeds earned from the hospital, it can be specifically said that there was an entrustment and commission of offence of criminal breach of trust by this petitioner. He submits that specific case of offence u/s 406 of the Indian Penal Code is made out. He further submits that the complainant was also examined on S.A. and in support of complaint, three witnesses were examined. They supported the case of the complainant. He further submits that at this stage, the learned court after being satisfied with the materials available on record has taken cognizance of the offence and case is at very initial stage. He submits that it is not advisable for this Court to intervene into the matter that too, while exercising power u/s 482 of the Code of Criminal Procedure. He submits that this power is to be exercised in exceptional and rarest of rare cases. Accordingly, he has prayed for rejection of the present petition.

8. In this case, none has come forward on behalf of the opposite party No. 2.

9. I have also examined the materials available on record as well as complaint petition and impugned order. Only perusal of the complaint petition, I am of the view, indicates commission of the alleged offence. Submission of Shri Dikshit that since the petitioner and opposite party-complainant were in litigating term, the present complaint petition was filed by the complainant in a design manner has got no legal force. I have examined the materials available on record of the case. Of course, at this stage, I was not required to look into such document but with a view to arrive to a just conclusion I had cursorily perused some of the annexures, which have been enclosed with the petition. The Annexure-2 indicates that the order was passed on 27.11.1997. Similarly, statement made in paragraph-12 of the petition indicates that the petitioner had filed a case for fixation of rent on 27.11.1997. It appears that after filing of the present complaint petition, which was filed on 14.11.1997, the petitioner after being advised, had taken such steps only with a view to create a defence in the present case. So far as Annexure-3 series are concerned, this further indicates that evidences are being created by the petitioner in support of his defence. Moreover, while hearing this petition, I am not recording any opinion on any of the enclosures including Annexure-3 series to this petition.

10. In view of the facts and circumstances, I am of the view that while passing order of cognizance, the learned Magistrate has committed no error and, accordingly, there is no merit in the present petition and petition stands rejected.

11. On 20.3.1998, while issuing notice to opposite party No. 2 in the present case, this Court had directed that in the meantime, further proceeding in Complaint Case No. 1297 of 1997 pending in the court of Smt. Rita Mishra, Judicial Magistrate, Patna shall remain stayed. Subsequently, on 11.8.1998, the petition was admitted for hearing and it was directed that till final hearing of the case, interim order dated 20.2.1998 shall continue. In view of rejection of present petition, interim order of stay stands automatically vacated.

12. Let a copy of this order be communicated to the court below forthwith.