

(2005) 08 PAT CK 0001

In the Patna High Court

Case No : Criminal Revision No. 286 of 2003

Saiyed Abrarul Hasnain

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-08-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 203
Penal Code, 1860 (IPC) — Section 144, 341, 467

Citation : (2005) 3 PLJR 759

Hon'ble Judges : Nagendra Rai, J

Bench : Single Bench

Advocate : Indu Bhushan, for the Appellant; Anjani Pd. Singh for O.Ps. No. 2 to 4, for the Respondent

Final Decision : Allowed

Judgement

Nagendra Rai, J.—This revision is directed against the revisional order dated 17.2.2003, passed by the Additional Sessions Judge IX, Munger, whereby he has set aside the order of the Additional Chief Judicial Magistrate (for short" the A.C.J.M.") dated 5.10.2001 taking cognizance against opposite parties No. 2 to 4 under sections 144, 341 and 467 of the Indian Penal Code. The shorn of all details, necessary facts are that a Police case was registered by the petitioner, in which Police submitted a final form, which was accepted. A protest petition was filed and that protest petition was treated as complaint case being numbered as Complaint Case No. 62C/2000. The A.C.J.M. examined the complainant and one another witness and, thereafter, dismissed the complaint petition. Against that, the petitioner filed a revision being Cr. Rev. No. 10 of 2000 before the Sessions Judge, Munger, who, by a long order, after having come to the conclusion that a prima-facie case is made out, set aside the order of the A.C.J.M. and remitted the case to him to make further enquiry and to write out order afresh in accordance with law. Thereafter, the A.C.J.M., after perusal of the materials on the record, took cognizance against opposite parties No. 2 to 4. The revisional court set aside the order of the A.C.J.M. on the ground that the earlier revisional

order was not complied with by holding an enquiry and, accordingly, remanded the matter for compliance of the revisional order passed by the Sessions Judge earlier as stated above on 11.5.2001 in Criminal Revision No. 10 of 2000.

2. I am of the view that the revisional court has misconceived the legal proposition. The law is well-settled that after enquiry if a complaint is dismissed and revisional court orders for a further enquiry on finding a prima-facie case then the court below has nothing to do except t(sic) take cognizance for the simple reason that there cannot be another further enquiry This point has been settled by two Division Bench judgments of this Court i.e. one in the case of Brijnath Sahai vs. Babu Lal. reported in 1956 B.L.J.R. 575 and the other in the case of Jugeshwar Choudhary vs. A. Lakra, reported in 1966 B.L.J.R 693. In the case of Brijnath Sahai (supra) it has been held as follows:--

"Where a judicial enquiry is held and then the complaint is dismissed under Sec. 203 and, the superior court holds that the order of dismissal is wrong and the accused should be put on trial, the direction for a further enquiry can only be complied with by putting the accused persons on trial. Otherwise, the result may be an absurd and impossible position. There is no need for second judicial enquiry which may result in an impasse. Obviously that cannot be the meaning of a further enquiry directed by a superior court."

3. The revisional court has relied upon a judgment in the case of Hit Narayan Choudhary vs. State of Bihar, reported in 1999(2) B.L.J. 251 [: 1999(2) PLJR 278], which is a judgment rendered by a learned Single Judge. It appears that the attention of the learned Single Judge was not drawn to the aforesaid two Division Bench judgments of this Court and as such the conclusion arrived at by the learned Single Judge in paragraph 11 is contrary to the settled law by the Division Bench of this Court and, accordingly, the said judgment is held to be per incurium having laid down the law in ignorance of the two earlier Division Bench judgments of this Court. In the result, this revision application is allowed and the order passed by the revisional court is set aside and the order passed by the A.C.J.M. is restored.