

(2015) 02 PAT CK 0041

In the Patna High Court

Case No : Criminal Miscellaneous No. 21891 of 2012

Sanjeev Kumar and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 18-02-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 269, 34, 431

Citation : (2015) 02 PAT CK 0041

Hon'ble Judges : Aditya Kumar Trivedi, J.

Bench : Single Bench

Advocate : Suraj Narain Pd. Sinha, Senior Advocate, Mukesh Kumar, P.R. Srivastava and Shivjee Singh, for the Appellant; Suraj Pd. Singh, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

Aditya Kumar Trivedi, J.—Petitioners/accused, being aggrieved and dissatisfied with an order dated 17.06.2006 passed by Chief Judicial Magistrate, Patna in Kadam Kuan P.S. Case No. 659 of 2005 directing the petitioners for their appearance to face trial, have challenged the said order under the present petition.

2. Surendra Prasad, Junior Engineer, Patna Municipal Corporation filed a written report before O/C, Kankarbagh PS putting an allegation that petitioners (named) who happens to be proprietor of Nandan Apartment had open sewage resulting accumulation of water over road, without any permission, leading to damage of road to some extent and accordingly attracting criminal prosecution as per Patna Municipal Corporation Act, 1951.

3. On the basis thereof, Kadam Kuan P.S. Case No. 659 of 2005 was registered under Sections 431, 269/34 IPC as well as 313 and 314 of Patna Municipal Corporation Act, and having been summoned vide order dated 17.06.2006 on account of submission of charge-sheet, led a ground of institution of instant

petition.

4. It has been submitted on behalf of the petitioners that inception of present prosecution happens to be bad in the background of the fact that the Junior Engineer was not at all legally competent to institute a case in terms of Section 505 of the Act. Not only this, institution of police case has been forbidden and instead thereof, complaint is maintainable. Therefore, on both counts the present proceeding happens to be illegal, hence the same is fit to be dismissed.

5. On the other hand, learned APP opposed the prayer and submitted that as the petitioners have not raised issue at an earliest, therefore, at such belated stage, they would be found estopped from raising such plea. However, admitted the legal provisions as has been canvassed at the end of petitioners.

6. Because of the fact that legal deficiency in the proceeding has been raised in the background of Section 505 of the Patna Municipal Act, 1951 (Applicable on the date of occurrence) therefore, the same is quoted below:-

"505. Procedure in prosecution.--(1) No court shall take cognizance of any offence under this Act or under any rule or bye-law made thereunder except on a complaint signed by the Chief Executive Officer.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898], it shall not be necessary in respect of any offence punishable under this Act to examine the complainant when the complaint is presented in writing."

7. On plain reading of Section 505, it is apparent that complaint is permissible that too, at the behest Chief Executive Officer. Certainly, apart from the present proceeding arising out on account of police case, the status of informant is not that of Chief Executive Officer rather Junior Engineer.

8. Furthermore, after going through 506 of the Act, it is apparent that rigour of limitation is also found there. From the written report, it is apparent that neither the alleged date on which such violation was made has been incorporated nor the alleged date on which informant came to know. For want of compliance of aforesaid mandatory requirements, the prosecution is also found duly eclipsed.

9. Consequent thereupon, the order dated 17.06.2006 passed by Chief Judicial Magistrate, Patna in Kadam Kuan P.S. Case No. 659 of 2005 is set aside. Petition is allowed.