

(2010) 04 PAT CK 0087

In the Patna High Court

Sardar Darshan Singh, Sardar Parshan Singh and Rambabu	APPELLANT
Vs	
The State of Bihar and Sardar Surjit Singh	RESPONDENT

Date of Decision : 05-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 203, 482
Penal Code, 1860 (IPC) — Section 323, 34, 341, 379, 427

Citation : (2010) 04 PAT CK 0087

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—Three petitioners, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, have prayed for quashing of the order dated 2.9.1994 passed by the 5th Additional Sessions Judge, Patna in Cr.Revision No. 562 of 1991. By the said order, the learned Additional Sessions Judge, Patna allowed the revision petition preferred by Opp.Party No. 2, who was complainant in Complaint Case No. 111 of 1991.

2. The complainant had filed Complaint Case No. 111 of 1999 alleging therein that the accused persons including the petitioners have committed offence under Sections 323, 341, 448, 427, 379, 504/34 of the Indian Penal Code. It was alleged that the wall of the complainant was forcefully demolished by the accused persons and in the said occurrence, the complainant was also assaulted and he has suffered a loss of Rs. 1000/-. After filing of the complaint petition and examining the complainant on S.A., the learned Magistrate referred the matter for conducting an enquiry by a police officer. Subsequently, a report was submitted by the police. On perusal of Annexure-2, i.e. order of the learned Sub Divisional Judicial Magistrate, whereby the complaint petition was rejected, it appears that the enquiring officer during enquiry found that the dispute in between the parties were purely of civil nature. It was also pointed out by the enquiry officer that a title suit vide Title Eviction Suit No. 61 of 1988 was pending

in between the parties. Accepting the report of the Sub Inspector of Police and after examining the materials available on the record, the learned Sub Divisional Judicial Magistrate, u/s 203 of the Code of Criminal Procedure rejected the complaint petition.

3. Aggrieved with the rejection of the complaint petition, the complainant filed Cr.Revision vide Cr.Revision No. 562 of 1991/ 5 of 1992. The Addl.Sessions Judge, by its order dated 2.9.1994 allowed the Criminal Revision. Aggrieved with the order of allowing Criminal Revision , the petitioners approached this Court by filing the present petition. On 2.8.1999 while issuing notice to Opp.Party No. 2, this Court had directed that there shall be stay of further proceedings in Complaint Case No. 111/91 in the court below , in the meantime. Subsequently, on 8.2.2000, this application was admitted for hearing. While admitting the case, this Court directed that pending disposal of this application the interim order of stay dated 2.8.1999 shall continue. The stay order is still continuing.

4. Learned Counsel appearing on behalf of the petitioners, while challenging the order of the Addl. Sessions Judge 5th, Patna submits that on the basis of materials available on the record, it is evident that it is a dispute of the civil nature and for that the complainant would not be allowed to use the criminal court. He submits that allowing the proceeding, in the facts and circumstances of the present case, will amount to allow the abuse of the process of the court. He further submits that though there was no defect or illegality in the order, whereby the learned Sub Divisional Judicial Magistrate had rejected the complaint petition, the learned Addl. Sessions Judge without any authority directed the Sub Divisional Judicial Magistrate to virtually take cognizance of the offence. By the impugned order, the learned Addl.Sessions Judge while allowing the revision petition observed The learned S.D.J.M. , Patna City is hereby directed to issue summons against the accused persons named in column No. 2 of the complaint petition, to face trial for commission of the offence punishable u/ s 448 and 427 of the I.P.C.

5. I have also perused the order passed by the revisional court and orders passed by the Sub Divisional Judicial Magistrate dated 12.8.1991 and also examined the complaint petition. Prima facie, I am of the view that the learned Addl. Sessions Judge while directing the Sub Divisional Judicial Magistrate to summon the accused persons to face the trial has committed grave error. The discretion to take cognizance was completely within the domain of the Sub Divisional Judicial Magistrate, Patna City and if the discretion lies with the concerned court, no superior court should have directed the concerned court to exercise its discretion in a particular manner. Instead of directing the Sub Divisional Judicial Magistrate to examine the matter afresh, the learned Addl. Sessions Judge has committed error in directing the Sub Divisional Judicial Magistrate to issue summon to the accused persons to face the trial. I am of the view that the order passed by the Addl. Sessions Judge is completely erroneous and liable to be set aside. Besides error of directing the Sub Divisional Judicial

Magistrate to take cognizance, learned Addl.Sessions Judge has also failed to appreciate that in the facts and circumstances of the present case the criminal court should not have been allowed to be used by the complainant. It is evident that during the investigation conducted by the Sub-Inspector of Police, he found that the dispute was purely of civil nature. The civil case was also pending in between the parties. The learned Sub Divisional Judicial Magistrate has also observed that it appears that the present complaint petition was filed only with a view to pressurize the present accused persons, so that he may get favourable order in the civil case.

6. In view of the facts and circumstances as indicated above, I am of the view that the order dated 2.9.1994 passed by the learned Addl.Sessions Judge 5th, Patna in Cr.Revision No. 562 of 1991/5 of 1992 is liable to be set aside.

7. Accordingly, the same is quashed and the petition stands allowed.

In this case earlier Lower court records was called for. In view of the disposal of the present case, lower court records may be remitted back.