

(2010) 10 PAT CK 0071

In the Patna High Court

Case No : Criminal Miscellaneous No. 4195 of 2002

Seikh Ibrahim @ Md. Ibrahim

APPELLANT

Vs

The State of Bihar and Md. Taiyab Ali

RESPONDENT

Date of Decision : 01-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 420, 467, 468

Citation : (2010) 10 PAT CK 0071

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Judgement

Rakesh Kumar, J.—On call, none appeared on behalf of the petitioner either to press this petition or to make a prayer for adjournment. However, Sri Md. Musowir, learned Counsel appearing on behalf of Opp.Party No. 2 is present.

2. In this case on earlier occasion, i.e. 31.08.2010 on the prayer made on behalf of the petitioner, the case was adjourned for four weeks to enable learned Counsel for the petitioner to bring on record a copy of the complaint petition of Complaint Case No. 1396 of 2000 by filing supplementary affidavit. From the record, it appears that the petitioner has not complied with earlier order. Meaning thereby that no supplementary affidavit has been filed till today, although the time granted earlier has already expired.

3. I have perused the materials available on record.

4. 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 18.10.2001 passed by Sri Vijay Bahadur Yadav, learned Judicial Magistrate, 1st Class, Katihar in C.A. Case No. 705 of 2001. By the said order the learned Magistrate after being satisfied with the prima facie case has taken cognizance of offences under Sections 468, 467 and 420 of the Indian Penal Code against accused persons including the petitioner.

5. Aggrieved with the order of cognizance dated 18.10.2001, the petitioner approached this Court by filing the present petition and on 9.9.2002 while issuing notice to Opp.Party No. 2, this Court directed that until further orders, further proceeding in court below in C.A. No. 705 of 2001 pending before Judicial Magistrate, 1st Class, Katihar shall remain stayed. Subsequently, on 26.2.2004, while the case was admitted for hearing, it was directed that during the pendency of the application, order dated 9.9.2002 shall remain operative. The order of stay is still continuing.

6. It was alleged by the complainant that accused persons by putting a fictitious person had got the land in the share of the complainant and his father transferred through false deed. After filing of the complaint petition, the complainant was examined on SA and in support of the complaint, two witnesses were examined, who corroborated the complaint case and thereafter the learned Magistrate has taken cognizance of offence by its order dated 18.10.2001.

7. Learned Counsel appearing on behalf of Opp.Party No. 2 has argued that on perusal of the complaint petition, it is evident that prima facie case was made out and, accordingly, the learned Magistrate has rightly passed the order of cognizance.

8. In this case, Sri A.M.P. Mehta, learned Addl. Public Prosecutor appears on behalf of the State, who also submits that the complaint petition indicates commission of offence and he has opposed the prayer of the petitioner.

9. Besides hearing learned Counsel for Opp.Party No. 2 as well as the State, I have perused the materials available on record including the complaint petition and impugned order. After going through the impugned order, I am of the view that while taking cognizance, the learned Magistrate has committed no error. Moreover, it is not a fit case for exercising inherent jurisdiction in favour of the petitioner. Time without number, it has been held that this power is to be exercised in exceptional and rarest of rare cases. The petitioner has not made out an exceptional case warranting exercise of power u/s 482 of the Code of Criminal Procedure.

10. Accordingly, the petition stands rejected.

11. In view of rejection of the present petition, the order of stay granted earlier stands automatically vacated.