

(2008) 08 PAT CK 0159

In the Patna High Court

Case No : Criminal Miscellaneous No. 30202 of 2006

Shailesh Bhushan @ Shailesh

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 05-08-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482, 82, 83
Penal Code, 1860 (IPC) — Section 406, 409

Citation : (2008) 4 PLJR 394

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Judgement

Abhijit Sinha, J.—Heard Sri Srinandan Prasad Singh, the Learned Counsel for the petitioner, Ms. Usha Kumari No. 1, the Learned Counsel for O.P. No. 2 and Sri Jharkhandi Upadhayay, the learned A.P.P. for the State. The petitioner herein is sought to be prosecuted for the alleged commission of offences under Sections 406 and 409 I.P.C. said to have taken place on 28.7.1982 and 6.4.1983, through a complaint case, being case no. 2006 of 1996, filed after an unexplained lapse of almost 13 years on 1.11.1996 on the ground that for clothes worth about Rs. 6,363/- having been borrowed for vending on those two days only a paltry sum of Rs. 2,651/- in all had been deposited till 26.3.1994 towards the sale proceeds and neither the balance amount was forthcoming nor had the remaining clothes been returned, wherein cognizance only u/s 406 I.P.C. was taken another 21/2 years later on 23.2.1999 by Sri Rakesh Kumar, learned Judicial Magistrate, 1st Class, Muzaffarpur.

2. Taking into account the chequered history and the mystique circumstances a copy of the entire order-sheet of the Court below and a status report was called for. The order-sheet and the status report makes morbid reading and only displays the lackadaisical conduct of the complainant on S.A. was recorded on 25.2.1997 ever since when he conveniently became conspicuous by his absence. The enquiry proceeded at a pathetically lethargic pace and complaint's only other witness Govind Prasad Agarwal (C.W.1) was not examined till 9.2.1998 and

cognizance was eventually taken on the basis thereof on 23.2.1999 in absentia of the complainant. On the other hand notwithstanding the issuance of summons, warrant non-bailable and processes under Sections 82, 83 Cr.P.C., none of which appear to have been executed, the petitioner by order dated 30.3.2005 was proclaimed an absconder and a permanent warrant was issued. His foray to the High Court in search of anticipatory bail ended in a direction for him to surrender and seek regular bail which does not appear to have been carried out by the petitioner.

3. This case has to succeed.

4. Admittedly the offence alleged is said to have been committed on 28.7.1982 and 6.4.1983 but the complaint was not filed till a pathetic lapse of 13 years, on 1.11.1996, and there is no explanation either in the complaint petition itself or the statement on S.A. as to the cause for such belated filing. Even the sole witness of the complainant examined at the inquiry does not disclose the reasons for such belated filing. There is a requirement for putting a limitation on prosecutions filed belatedly after a long time as filing vexatious and belated prosecutions long after the date of offence and that too for unexplained reasons would amount to an abuse of the process of the Court and this Court in exercise of its jurisdiction u/s 482 Cr.P.C. cannot sit as a mute spectator. Accordingly, this application succeeds and the cognizance taken by the court below almost 15 1/2 years after the alleged dates of occurrence is hereby quashed.