
(2011) 01 PAT CK 0056

In the Patna High Court

Case No : Criminal Miscellaneous No. 35188 of 2002

Sheo Pujan Rai @ Sheo Pujan Bhar @ Sipahi Bhar

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 24-01-2011

Acts Referred:

Citation : (2011) 01 PAT CK 0056

Final Decision : Dismissed

Judgement

Rakesh Kumar, J.—The sole Petitioner, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, has prayed for release of his gun and also to quash/set aside the order dated 5.9.2002 passed in Rajpur P.S. Case No. 63 of 2001 by the learned Chief Judicial Magistrate, Buxar, whereby the learned Magistrate had rejected the petition filed by the Petitioner for dropping the proceeding against the Petitioner and for proceeding against the complainant and others and learned Magistrate took cognizance of the offence under Sections 307/351/34 of the Indian Penal Code and 25(1-B), 26 and 27 of the Arms Act against the Petitioner and one another.

2. Short fact of the case is that on 31.7.2001, while Officer Incharge of Rajpur Police Station along with armed forces had gone to Rajpur in connection with investigation with Rajpur P.S. case No. 59 of 2001 for the offence u/s 302/34 of the Indian Penal Code, he received a secret information that some members of the gang of one Suresh Rajbhar, who was involved in the murder case in Rajpur P.S. Case No. 59 of 2001, had assembled in a dilapidated Primary School building and planning to commit some crime. Accordingly, the police party rushed to the said building and while they were about 200-300 meters away from the school, a firing was made from inside towards the police party and while the police came nearer, it was noticed that one person in Dhoti Kurta, started fleeing away towards Soni village. The police tried to apprehend him, however, he escaped. From local Chaukidar and villagers, it was gathered that the Petitioner was the active member of Suresh Rajbhar gang and it was also disclosed that the person,

who had fled away from the place of occurrence was the Petitioner. Thereafter, the police party again came back to the school premises i.e. place of occurrence, from where a single barrel gun and a belt containing 10 cartridges were recovered, which was seized and on the basis of self statement of the Officer Incharge, an F.I.R. vide Rajpur P.S. Case No. 63 of 2001 was registered on 31.7.2001 for the offence under Sections 399, 402 and 307 of the Indian Penal Code and Sections 25(1-B), 26 and 27 of the Arms Act and case was entrusted to an Assistant Sub Inspector of Police for investigation. After conducting investigation and collecting material, police submitted charge sheet against the Petitioner and one Suresh Rajbhar, who was shown as absconder. The Petitioner, thereafter, filed a petition for dropping the proceeding and also initiating prosecution against the complainant (informant of the case) and others. However, same was rejected by order dated 15.9.2002 and the learned Chief Judicial Magistrate, by the same order, took cognizance of the offence under Sections 307/353/34 of the Indian Penal Code and Sections 25(1-B), 26 and 27 of the Arms Act.

3. Aggrieved with the order of cognizance as well as rejection of the petition filed by the Petitioner, the Petitioner approached this Court by filing the present petition. On 23.3.2004, the case was admitted for hearing and it was further directed that pending disposal of this application, further proceeding in Rajpur P.S. Case No. 63 of 2001 pending before the Chief Judicial Magistrate, Buxar shall remain stayed. So far prayer for release of arms, liberty was granted by the said order to the Petitioner to move the court below in accordance with law. The order of stay is still continuing.

4. Shri Vidya Sagar, learned Counsel for the Petitioner, while challenging the impugned order, has firstly argued that in the present case, F.I.R. was not an F.I.R. u/s 154 of the Code of Criminal Procedure, but it was a complaint within the meaning of Section 2(d) of the Code of Criminal Procedure. It was submitted that since it was a complaint, the police was not authorized to investigate the case and similarly, in absence of a police report, the learned Magistrate was not entitled to take cognizance in the present case. On behalf of the Petitioner, several other grounds have also been taken assailing the impugned order as well as even the F.I.R. It was submitted that the police had un-authorizedly seized his licensee gun from his house and thereafter, a false and fabricated case was instituted against the Petitioner. Learned Counsel for the Petitioner has placed the F.I.R., which is Annexure-1 to the petition. It was submitted that the F.I.R. was addressed to the Chief Judicial Magistrate, Buxar and signed by the Officer Incharge. According to learned Counsel for the Petitioner since it was addressed to the Chief Judicial Magistrate, it can be considered that it was a complaint not an F.I.R. and in a complaint petition, without any authorization by the learned Magistrate, police was not entitled to investigate the case. In support of his stand, he has relied on a judgment reported in A.I.R.1940 Lah 208 (Kaniya Ram v. Chanan Mal and Ors.) and also Sheo Pratap Singh and Others Vs. Emperor, . Learned Counsel has highlighted the definition of complaint in the light of

aforesaid two judgments and it was submitted that since the Officer Incharge had addressed the allegation part to the Chief Judicial Magistrate, it can be termed as a complaint and since it was a complaint, all subsequent steps taken by the police was without any competence and same was illegal. Learned Counsel has further submitted that even the said F.I.R., which was lodged on 31.7.2001 at 3.30 P.M., was received in the court of Chief Judicial Magistrate after more than 24 hours. He has highlighted that due to false implication, the Petitioner was granted anticipatory bail by this Court vide Cr. Misc. No. 30838 of 2001 on 7.3.2002. On aforesaid grounds, it has been submitted that the impugned order as well as entire criminal proceeding is fit to be set aside.

5. In this case, on the request of the court, Shri Prasoon Sinha, learned Government Advocate No. 3 has rendered his best assistance to the court. Shri Sinha, at the very outset, submitted that the Petitioner in the present case has now come after order of cognizance, which has been passed after submission of the charge sheet. It was submitted by Shri Sinha that in view of Section 156(2) of the Code of Criminal Procedure, whatever irregularity or illegality was committed during investigation, cannot be questioned at this stage. Moreover, in view of Section 460 of the Code of Criminal Procedure, on the basis of such irregularity, no benefit can be given to the Petitioner. It was submitted by Shri Sinha that it is true that the narration of the occurrence was addressed to the learned Chief Judicial Magistrate by the Officer Incharge of Rajpur Police Station, but the said complaint was recorded in the first information report book and after drawing an F.I.R. same was sent to the learned Magistrate for the purposes of getting necessary directions during investigation. During investigation, processes were also issued by the learned Magistrate and finally, after collecting sufficient material and approval by the Superintendent of Police of the concerned district, charge sheet was submitted against this Petitioner as well as one veteran criminal, namely, Suresh Rajbhar, who was involved in about 28 serious cases. Once, charge sheet was received, the learned Magistrate, on the basis of materials on record being fully satisfied that prima facie case was made out, has rightly passed the impugned order of cognizance. It was also argued by Shri Sinha that Petitioner never challenged the F.I.R., while investigation was going on. Only after submission of the charge sheet and cognizance, the Petitioner has taken the plea that it was not an F.I.R., but a complaint petition. Accordingly, it has been submitted that the present petition has got no merit and is liable to be rejected. Mr. Sinha, learned Government Advocate No. 3, on the basis of materials in the case diary, has argued that processes were issued against the Petitioner during investigation, but he remained absconding. However, he was subsequently, granted anticipatory bail by this Court.

6. Besides hearing learned Counsel for the Petitioner and Shri Prasoon Sinha, learned Government Advocate No. 3, I have also perused the materials available on record. Prima facie, the court is satisfied that the present petition was filed with a sole motive to delay the commencement of trial. In the present case, F.I.R. was lodged on 31.7.2001. Thereafter, processes were issued during

investigation against the Petitioner and once, he was granted anticipatory bail by this Court, after submission of charge sheet, the Petitioner has come out with completely new stand and prayed even to prosecute the police officials. However, the learned Magistrate, after examining every thing in detail, has passed a very reasoned and sound order, while rejecting the Petitioner's petition for dropping the proceeding and the learned Magistrate has taken cognizance of the offence. It is true that the Officer Incharge has addressed the information of commission of offence to the Chief Judicial Magistrate, Buxar, but same information was recorded in the first information report form and thereafter, the F.I.R. was sent to the learned Magistrate. So far as plea of the Petitioner that it was received not within 24 hours in the court of learned Magistrate is concerned, this Court is of the opinion that such fact cannot be examined by this Court, while hearing the present petition. Moreover, only on the basis of delay in respect of belated receipt of the F.I.R. in the court of learned Magistrate, case of prosecution cannot be dis-believed. After the receipt of the F.I.R., the learned Magistrate, time to time, has issued necessary processes also and after completion of investigation, police submitted charge sheet. The learned Magistrate, after examining the materials available in the case diary and charge sheet, has passed the impugned order. So far as plea of learned Counsel for the Petitioner that since the accusation was addressed to the learned Chief Judicial Magistrate, it was a complaint, the court is of the opinion that such argument is only required to be noticed for its rejection. So far as definition of complaint is concerned, it is appropriate to quote Section 2(d) of the Code, which is as follows:

"2(d). "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report."

7. Accordingly, if the allegation is made to the Magistrate regarding commission of offence only then it can be said as a complaint. In the present case, it is true that allegation was proposed to be addressed to the learned Chief Judicial Magistrate, but it was incorporated in the first information report form and thereafter, first information report was sent to the police. Accordingly, in the present case, it cannot be said that it was a complaint, but it was an F.I.R. In the aforesaid two cases on which learned Counsel for the Petitioner has heavily relied the Court had dealt with the definition of the complaint. In the present case, after receipt of the F.I.R., necessary processes were issued by the learned Magistrate on the request of the Investigating Officer and after collecting investigation, a police report u/s 173(2) of the Code of Criminal Procedure was submitted by the police and only thereafter, the learned Magistrate took cognizance of the offence. The court is in agreement with the submission made by Shri Prasoon Sinha that on the ground of irregularity or even illegality committed during investigation, prosecution cannot be set aside. Section 406 of the Code of Criminal Procedure prescribes that such irregularity may not vitiate the proceeding. Accordingly, the court is of the opinion that the learned Chief

Judicial Magistrate has legally and rightly and with a sound reason has rejected the petition of the Petitioner for dropping the proceeding and has rightly passed the order of cognizance, which require no interference by this Court that too while exercising power u/s 482 of the Code of Criminal Procedure.

8. Accordingly, I do not find any merit in this petition and petition stands rejected.

9. In view of rejection of this petition, interim order of stay dated 23.3.2004 stands automatically vacated.

10. Let a copy of this order as well as case diary, which was received earlier, be sent back to the court below forthwith.