
(2007) 02 PAT CK 0012

In the Patna High Court

Case No : Criminal Miscellaneous No. 16473 of 1998

Shiv Ratan Prasad @ Shiw Ratan Pd. Singh

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 15-02-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 182, 211, 379, 411

Citation : (2007) PLJR 200

Hon'ble Judges : Madhavendra Saran, J

Bench : Single Bench

Advocate : Ambika Bhagat and Kamal Kumar Sinha, for the Appellant; S. Azeem, for the Respondent

Final Decision : Allowed

Judgement

Madhavendra Saran, J.—This application u/s 482 of the Code of Criminal Procedure (in short as Code) has been filed for quashing the order dated 24.2.94 passed by the learned Chief Judicial Magistrate. Patna in case No. 90(2) of 1992 arising, out of Gardanibagh PS case No. 1006/1991 whereby and where under he has taken cognizance u/s 182 of the Indian Penal Code (in short as IPC) against the petitioner. It appears that petitioner, Shiv Ratan Prasad @ Shiw Ratan Pd. Singh filed a written report before Officer-in-charge, Gardanibagh PS on 18.12.1991 stating therein that theft of departmental material like channel of No. 4 and shuttering plate was committed by unknown persons. The informant and others searched the materials but could not find the same. On the basis of aforesaid written report of petitioner/ informant the police registered Gardanibagh PS case No. 1006/1991 dated 18.12.91 u/ss 379 and 411 of the IPC and took up the investigation. During investigation the police recovered the said stolen materials from the Kabarikhana of accused Baidnath Yadav for which seizure list was prepared. It appears that police after investigation submitted final report dated 1.2.92. In the meantime, petitioner/informant filed protest petition vide protest-cum-complaint case No. 417(C) of 1992 against accused

Baidnath Yadav before the CJM, Patna. Petitioner/complainant produced evidence during the enquiry and the learned Magistrate after enquiry found prima facie case u/ss 379 and 411 of the IPC against accused Baidnath Yadav and, accordingly, issued summons against him to face the trial. It is said that final report submitted by the police was accepted and on the basis of the prosecution report filed u/ss 182/211 of the IPC learned CJM by order dated 12.2.92 issued show cause notice to the petitioner and ultimately by order dated 24.2.94 he took cognizance against the petitioner/informant u/s 182 of the IPC.

2. It is further said in the protest-cum-complaint case that after cognizance charges were framed against Baidnath Yadav, trial commenced during which witnesses were examined and after trial Baidnath Yadav was convicted in complaint case No. 417C of 1992 by judgment dated 31.8.95 and sentenced to undergo R.I for three months. Baidnath Yadav against the said judgment of conviction filed an appeal before the Sessions Judge, Patna which is pending before the court of Additional Sessions Judge, Patna.

3. Submission of learned counsel for the petitioner is that continuation of the present prosecution of the petitioner u/s 182 of the IPC is illegal in view of the fact that in the criminal case Baidnath Yadav has been convicted by the learned Magistrate. His further submission is that after conviction of Baidnath Yadav it cannot be accepted that information given by the petitioner/informant was false and false to the knowledge of the informant.

4. Thus, the position is that on the basis of statement of petitioner/informant the police registered Gardanibagh PS case No. 1006/91 in which after investigation final report was submitted. It appears that police also submitted report to prosecute the petitioner/informant u/ss 182/211 of the IPC. In the same case when the matter was under police investigation the petitioner/informant filed protest-cum-complaint case No. 417C of 1992 in which after due enquiry cognizance was taken against Baidnath Yadav. He was put on trial and convicted by judgment dated 31.8.95. In face of the said conviction it cannot be accepted that petitioner/informant gave false information about the alleged incident. It also cannot be accepted that informant intentionally gave wrong information to cause any public servant to use his lawful powers to cause injury or annoyance to any person.

5. Learned APP could not controvert the point raised by the petitioner's counsel.

6. In the aforesaid facts and circumstances, in my considered opinion, the continuation of the present prosecution of the petitioner u/s 182 of the IPC would be an abuse of the process of the court. This application is, accordingly, allowed and the impugned order dated 24.2.1994 passed in case No. 90(2) of 1992 is hereby quashed.