
(1972) 02 PAT CK 0002
In the Patna High Court
Case No : Criminal Rev. No. 2795 of 1969

Shivakant Jha

APPELLANT

Vs

Ram Prakash Rai and Bimla Kant Jha

RESPONDENT

Date of Decision : 24-02-1972

Acts Referred:

Penal Code, 1860 (IPC) — Section 420, 465, 466, 467

Citation : (1972) PLJR 372

Hon'ble Judges : C.P. Sinha, J

Bench : Single Bench

Advocate : S.S. Varma and T.S. Tetarve, for the Appellant; Parmeshwar Prasad Sinha and Arun Bihari Mathur, for the Respondent

Final Decision : Dismissed

Judgement

C.P. Sinha, J.—At the time this revision was filed three persons, Ram Prakash Rai, Sakhichand Ram and Bimla Kant Jha, were impleaded as opposite party nos. 1 to 3, respectively. In admission on 10.12.1963 it was admitted only against opposite party nos. 1 and 3 and dismissed against opposite party no. 2 (Sakhichand). The petitioner under this application has prayed for calling upon the Magistrate to commit these opposite parties to the Sessions Court after setting aside the Magistrate's order dated 22.7.1969 in Case No. 2607 of 19(sic)6 under which he has discharged these persons holding that no prima facie case had been made out before him in the commitment enquiry. He has also sought for quashing of the revisional order dated 22.8.1969 of the Sessions Judge under which he had summarily rejected the revision directed against the aforesaid Magistrate's order dated 22.7.1969. This revision has arisen in the following circumstances. One Lakhan Mali filed a case u/s 420, Indian Penal Code, against the aforesaid Sakhichand and some others. In that case the present petitioner Shivakant Jha appeared as a witness (P.W. 1) for the prosecution. The defence, however, alleged enmity with him (P.W. 1) stating that Sakhichand had already filed a case in the Gram Panchayat against him (P.W. 1)

and to prove that they brought on the record the relevant entry in the register of the concerned Gram Panchayat. The Magistrate in that case convicted all the accused persons. They were, however, acquitted in appeal. Subsequently, Lakhan Mali moved the Magistrate u/s 476 of the Code of Criminal Procedure to file a complaint against the accused Sakhichand Ram and others for that forged and fabricated Gram Panchayat document in that criminal case. The Magistrate, after hearing the parties, rejected that prayer of Lakhan Mali to file a complaint against those persons. Then he (Lakhan Mali) went in appeal u/s 476B which was also dismissed on merits.

2. After the dismissal of the above appeal u/s 476B the aforesaid Shivakant Jha filed a regular complaint before the Sub-divisional Magistrate on 20.9.1966 against the three opposite parties of this revision, namely, Ram Prakash Rai, Sakhichand Ram and Bimla Kant Jha. On 21.9.1966 the Sub-divisional Magistrate sent that complaint to the Sub-Inspector of Kurhani Police Station to institute a case and submit final form after necessary investigation. The Police eventually submitted charge sheet in the case and on that basis the Sub-divisional Magistrate took cognizance under Sections 465, 466 and 467 of the Indian Penal Code on 18.10.1967 and transferred the case to Mr. R.A. Singh, Munsif Magistrate, First Class, for disposal. Under the order of the Sessions Judge on 7.3.1968 this case was subsequently transferred to the Court of Mr. S.S. Das, Munsif Magistrate. On 12.6.1968 a petition was moved on behalf of the accused persons to cancel the commitment proceeding and discharge them. It was, however, rejected by the Magistrate on the same day. As it has been pointed out, against that rejection order the accused persons moved this Court on 18.7.1968 in Criminal Revision No. 1321 of 1968, but subsequently on 22.7.1968 it was withdrawn.

3. The case continued in Mr. Das's court from 12.6.1968 to 19.11.1968 without any tangible progress. Again on 19.11.1968 he rejected the petition of discharge filed on behalf of the accused Sakhichand, on the ground that he had already rejected his petition along with other accused persons on 12.6.1968. On 13.12.1968 two witnesses, Nagendra Prasad Verma and Abdul Subhan (P.Ws. 1 and 2) were examined on behalf of the prosecution and some documents were exhibited. On that very day, defence filed a petition to hear them whether the case should proceed as a case on complaint or police report. In his order dated 7.1.1969, the Magistrate refused to treat the case on a complaint and rejected defence prayer for opportunity to adduce evidence. Against this order dated 7.1.1969, the accused persons filed Criminal Revision No. 32 of 1969 before the Sessions Judge which was dismissed with observation that they should be allowed to adduce evidence if they so desired. They took time to produce witnesses but did not do so. On 28.4.1969, however, the case was transferred to another Magistrate, Mr. Jagdish Kumar. On 14.6.1969 a petition was moved before him on behalf of accused Sakhichand challenging the jurisdiction to try the case and to discharge the accused. The Magistrate heard the parties in this matter on that day (14.6.1969) and reserved orders which he eventually made

on 22.7.1969 discharging the accused persons on the finding that no prima facie case was made out against them, and, as already observed, it is this order which is the subject matter of this revision.

4. Mr. S.S. Verma, learned counsel for the petitioner, has assailed the discharge order mainly on two grounds. The first is that since the prayer for discharging the accused persons had been rejected twice on 12.6.1968 and 19.11.1968 by the predecessor Magistrate Mr. S.S. Das, it was not open to the third Magistrate (Mr. Jagdish Kumar) to make an order discharging them giving a finding that the cognizance taken by the Sub-divisional Magistrate in the case was bad which he was not at all competent to adjudicate. Secondly, the Magistrate had before him sufficient evidence like testimony of P.Ws. 1 and 2, opinion of the Government Handwriting Expert as also the concerned entry in the Gram Panchayat register from which it was apparent that there was erasure and fabrication therein which clearly made out a prima facie case for commitment but the Magistrate overlooked to consider them at the time of passing the impugned order. On these contentions the submission of Mr. Varma is that the impugned order is quite illegal and must be set aside and the matter remitted to the Magistrate for commitment of the accused persons on the evidence already on record which does make out a prima facie case for commitment.

5. I am unable to agree with the above contentions raised for petitioner and on the facts of the case I am inclined to think that no revisional interference is called for in the matter.

6. As already observed, this revision at the time of admission has been dismissed against accused Sakhichand. This means that the concerned discharge order, so far as it relates to him (Sakhichand), stands upheld by this Court. The question then arises as to whether on the same facts the discharge order should be justifiably quashed against the other two accused Ram Prakash Rai and Bimla Kant Jha.

7. It is not disputed that in the relevant entry of the Gram Cutcherry register, which was alleged to have been forged and filed in the aforesaid earlier case u/s 420, Indian Penal Code, by Lakhan Mali against Sakhichand Ram and others, the complainant was this Sakhichand Ram and the case against the present petitioner Shivakant Jha and the aforesaid Nagendra Prasad Verma (P.W. 1). In that background it can be said that if there was any such forgery in that register this Sakhichand was the main man behind it, but, as already shown, the present revision has been dismissed against him which in effect amounts to the upholding of his discharge under the impugned order.

8. From a perusal of the complaint petition dated 20.9.1966 filed by this petitioner Shivakant Jha, to which the impugned discharge relates, it appears that the allegations are substantially similar to the complaint that the aforesaid Lakhan Mali had made before the Magistrate for enquiry u/s 476 of the Code of Criminal Procedure, after acquittal of the accused persons in his earlier case u/s

420, Indian Penal Code. In that complaint dated 20.9.1966 also the allegation was that accused Sakhichand Ram and Ram Prakash Rai had forged the relevant entries in the Gram Cutcherry register and filed and used it (Ext. D) in that 420 case before the Magistrate which was then pending.

9. As already pointed out, the Magistrate, after having heard the parties, did not feel satisfied about the necessity of riling any complaint against those accused persons in the matter, and the complainant's appeal under 476B, Criminal Procedure Code against that refusal also failed. As referred to in the impugned order, learned appellate court, while dismissing that appeal u/s 470B, had referred to the specific finding of the Additional Sessions Judge who had heard the appeal against the conviction u/s 420, Indian Penal Code, and allowed it, that on the materials available it was difficult to hold and find the relevant entries of the Gram Panchayat register were in any way forged and fabricated.

10. In view of the fact that the complaint relating to the impugned order was substantially the same as the previous complaint requesting the Magistrate to file a complaint u/s 476, Criminal Procedure Code against these accused, which included this Sakhichand Ram, and in the latter the Magistrate refused to file a complaint which order also was upheld by the appellate court, I do not think, the Magistrate's observation in the impugned order questioning the jurisdiction of the Sub-divisional Magistrate to take cognizance of the offence in those circumstances can be held to suffer from any illegality or impropriety. For entertaining a case in such circumstances a complaint in writing by the court concerned was necessary under the provision of Section 195(1)(c), Criminal Procedure Code, and in its absence, the Sub-divisional Magistrate had jurisdiction to take cognizance in the matter. This being a jurisdictional matter, it was, I think, open to the Magistrate to dwell upon it in his enquiry and if he, found that the Sub-divisional Magistrate lacked in his initial jurisdiction to take cognizance for want of the necessary complaint by the concerned court, he could well refer to it in his order. Accordingly, the Magistrate's finding about this matter in his order cannot be regarded as his sitting in appeal against the Sub-divisional Magistrate's cognizance, as urged by the petitioner.

11. The mere fact that in his two previous orders dated 12.6.1968 and 19.11.1968 the concerned Magistrate Mr. S.S. Das, in whose court the case was then pending, had rejected the prayer to drop the commitment enquiry and discharge the accused persons could not, I think, stand in the way of the next Magistrate Mr. Jagdish Kumar to consider this question on merit and take a decision. It is clearly borne out from the record that those two previous orders dated 12.6.1968 and 19.11.1968 were summary in nature. The accused persons moved the Magistrate to drop the proceeding and he summarily rejected that prayer. Till then the prosecution had not produced its evidence. There was also no question of any evidence being produced by the other side at that time. The impugned order, had, however, been passed by the Magistrate after the prosecution had examined its two witnesses (P.Ws. 1 and 2) who were also cross-

examined by the defence. In the light of the observation of the Sessions Court the learned Magistrate had also given an opportunity to the accused persons to produce their witnesses, and after considering the materials on record, the Magistrate wrote out the impugned order on merit discharging the accused persons with finding that no prima facie case had been made out against the accused.

12. Regarding petitioner's criticism of the Magistrate that he had in the impugned order completely overlooked the evidence of the two witnesses (P.Ws. 1 and 2) examined by the prosecution, it does not appear to be justified. As the order stands, it shows that the Magistrate had looked into their evidence as given in court. In fact, he has recited the substance of their testimony. His non-reference to the Handwriting Expert's opinion, as contained in his report submitted to the police during investigation, may be due to the fact that that document had not been tendered in evidence in the case before him. Its mere presence among the police papers was by itself not sufficient to attract his judicial notice to it for the purpose of his consideration in the case at that time.

13. On the facts, as they are available, the inference that when Lakhan Mali had failed to persuade the Magistrate as well as the appellate court to file a complaint against Sakhichand Ram and others on the allegations that they had forged the relevant entries in the Gram Cutcherry register and used them in the criminal case concerned u/s 420. Indian Penal Code, which he (Lakhan Mali) had filed against them, which had ended in their acquittal, this petitioner Shivakant Jha, who had figured in that 420 case as P.W. 1, thought of filing this regular complaint on substantially the same allegations against Sakhichand Ram and two others, appears to be inevitable (Sic). But that change in the complainant was, I think, not sufficient to avoid the necessity of a court complaint, as required by Section 195, Criminal Procedure Code, on the allegations in the petition of complaint. For the above reasons, there hardly seems any merit in this revision and it must fail. The application is, therefore, dismissed.