

(2006) 07 PAT CK 0081
In the Patna High Court
Case No : Cr. Misc. No. 7791 of 2006

Shyam Sundar Sinha "Shyam"

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 14-07-2006

Acts Referred:

Citation : (2006) 07 PAT CK 0081

Final Decision : Dismissed

Judgement

I.P. Singh, J.—This is an application u/s 482 of the Code of Criminal Procedure 1973 (in short" the Code). It is directed against the order dated 24.9.2005 passed by Sri S.K. Tripathi, Judicial Magistrate Ist Class, Vaishali at Hajipur in Complaint Case No. 2456/2004, Tr.No. 1030 of 2005 by which it has been submitted that the learned Magistrate has taken cognizance of the offences under Sections 323, 324 and 384 of the Indian Penal Code instead of taking cognizance of the offences under the major Sections. 2. The petitioner happens to be the informant of the case. He had lodged a complaint petition before the learned Chief Judicial Magistrate, Vaishali at Hajipur under Sections 307, 394 and 397 of the Indian Penal Code. He was examined on solemn affirmation by the learned Chief Judicial Magistrate who transferred the case to the court of the Judicial Magistrate named above under the provisions of Section 192 of the Code. Before the learned Judicial Magistrate a number of witnesses were examined in an enquiry u/s 202 of the Code and by the impugned order he wrongly held that case only under Sections 323, 324 and 384 of the Indian penal Code was made out. He accordingly held that the case is triable by his court though actually in the complaint petition allegations were also under Sections 307, 394 and 397 of the Indian Penal Code.

3. On behalf of the opposite party Nos. 2 to 4 a counter affidavit has been filed. They have contended that the petitioner has produced a manufactured injury report. No case u/s 307 of the Indian Penal Code has been made out against them. The witnesses examined during the enquiry u/s 202 of the Code do not

inspite confidence. The medical evidence does not fit in with the evidence of the witnesses. On these ground (sic) amongst others, it has been contented that this application be rejected .

4. The parties have been heard at length with respect to the various submissions made on their behalf. The main grievance of the be petitioner appears to be that though he had filed the complaint petition alleging offences under Sections 307, 394 and 397 of the Indian Penal Code. The learned Magistrate by the impugned order has taken cognizance only under Sections 323, 324 and 364 of the Indian Penal Code. He should have taken cognizance also of the offences under Sections 307, 394 and 397 of the Indian Penal Code. In view of this matter he has prayed that the impugned order be quashed.

5. This takes us to the consideration of the law on the subject. It is well known that the cognizance u/s 190 of the Code is taken of the offence or not of any particular section or sections of the Indian penal Code. It runs as follows:

190. Cognizance of offences by Magistrates.-(1) Subject to the provisions of this Chapter any, Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under Sub-section(2), may take cognizance of any offence-

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6. From this section also it clear that the cognizance is taken of the offence and not of any section in the Indian Penal Code or any other law. In this connection a reference may also be made to Section 192 of the Code under which the learned Chief Judicial Magistrate had transferred the case to the le-arned Judicial Magistrate, Sri S.K. Tripathi. Section 192(1) of the Code runs as follows-

192. Making over the cases to Magistrate-

(1) Any Chief Judicial Magistrate may, after taking cognizance of an offence. make over the case for inquiry or trial to any competent Magistrate subordinate to him (emphasis supplied)

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7. From the aforesaid it would appear that the Cognizance is taken of the offence and not of any section of the Indian Penal Code or any other penal law. The word offence has been defined in Section 2(n) of the Code which runs as follows:

2(n)."offence" means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made u/s 20 of the Cattle Trespass Act, 1871(I of 1871).

8. From the aforesaid it would appear that whenever the cognizance is taken it is taken of the offence and not of any particular section of any penal law. In the case of Raghubans Dubey Vs. State of Bihar, it was held as follows:

In our opinion, once cognizance has been taken by the Magistrate, he takes

cognizance of an offence and not the offenders.

In the case of *Sk. Latfur Rahman and Others Vs. The State*, this Court has held that taking cognizance of means cognizance of offence and not of the offenders. The position has been clarified in a Special Bench Case of this Court in the case of *Kuli Singh and Others Vs. The State of Bihar and Others*, .

9. In this decision the principles of law under consideration before the Special Bench were summed up and it was held that the cognizance is taken of the offence and it is immaterial which sections are mentioned while taking cognizance. From all these it would become clear that the petitioner should not have made any grievance with respect to the sections mentioned by the learned Judicial Magistrate in the impugned order because mentioning of section is redundant since the cognizance was taken of the offences and not of any particular section of the Indian Penal Code. In this connection a reference may be made to paragraph 1 of the present petition in which it has been stated that by the order dated 24.9.2005(impugned order) Sri S.K. Tripathi, Judicial Magistrate, Ist Class had taken cognizance of the offence. It appears that it has wrongly been so stated. As pointed out above the learned Chief Judicial Magistrate had already taken cognizance of the offences before transferring the case to the learned Judicial Magistrate u/s 192 of the Code. If I refer to Sub-section(i) of Section 192 of the Code it will become clear that before the case is made over to a Judicial Magistrate by the learned Chief Judicial Magistrate the cognizance of the offence has already been taken. So far as provisions of Section 202 of the Code are concerned it simply authorises the Magistrate to whom the case is made over u/s 192 of the Code either to inquiry into the case himself or to direct an investigation to be made by the Police Officer. It is only after holding the enquiry and finding a *prima facie* case made out that the stage comes of Section 204 of the Code when the Magistrate can issue process to the accused persons. From what has been stated above it becomes clear that no cognizance of the offence was taken by the Learned Magistrate named above and this has wrongly been stated in paragraph No. 1 of the present petition since cognizance of the offences was already taken by the learned Chief Judicial Magistrate.

10. It has already been stated above that mentioning of section by the learned Judicial Magistrate in the impugned order is hardly of any consequence since the trial (*sic*) has to proceed of the offences made out as per the allegations made in the complaint petition. Learned Counsel appearing on behalf of the petitioner has submitted that if the prayer of the petitioner is allowed, as per the allegations made in the complaint petition the case would be exclusively triable by the court of session and, therefore, by not mentioning Sections 307, 394 and 197 of the Indian Penal Code the learned Judicial Magistrate has tried to grab the jurisdiction over the case and on this ground also the impugned order is bad. In this connection a reference may be made to Sections 322 and 323 of the Code. These sections deal with the procedure in cases when the Magistrate finds that he can not dispose of the case or when after the commencement of the enquiry

or trial the Magistrate finds that the case should be committed to the court of session. Section 323 of the Code provides that if at any stage of the proceedings before signing of the judgment the Magistrate finds that the case is one which ought to be tried by the court of session he shall commit it to that court under the provisions herein before contained and thereafter the provisions of Chapter XVIII shall apply to the commitment so made. In view of this provision of law it has been pointed out to me that even if the trial is started in the court of the Judicial Magistrate and if in course of the trial the learned Judicial Magistrate finds that the case ought to be tried by the court of session Section 323 of the Code provides the procedure to be followed in such a situation. I am mentioning these facts to show that even if the trial starts in the court of the Magistrate there is no bar for him to commit the case to the court of session if he finds that the case is one which ought to be tried by the court of session. Hence I do not find any force in this submission of the learned Counsel for the petitioner.

11. In view of what has been stated above I do not find any merit in this application. It is, accordingly, rejected.