

(2010) 10 PAT CK 0037

In the Patna High Court

Case No : Criminal Miscellaneous No. 11731 of 2007

Sipahi Rai

APPELLANT

Vs

The State of Bihar and Jawahar Rai

RESPONDENT

Date of Decision : 27-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 228(1), 482
Penal Code, 1860 (IPC) — Section 147, 148, 149, 323, 324

Citation : (2010) 10 PAT CK 0037

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

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 quashing of an order dated 18.1.2007 passed by Fast Track Court No. IV, Vaishali at Hajipur in Sessions Trial No. 347 of 2004 arising out of Deshari P.S. Case No. 30 of 2004. By the said order, learned trial Judge has rejected the petition filed on behalf of the petitioner u/s 228(1) of the Code of Criminal Procedure.

2. Short fact of the case is that initially an F.I.R. was registered on the basis of fardebayan of one Jawahar Rai vide Deshari P.S. Case No. 30 of 2004 against 11 (eleven) accused persons including the petitioner for the offences u/s 147,148,149,448, 341, 323,324, 379, 436 and 504 of the Indian Penal Code. After registering the case, the police investigated the same and initially chargesheet was submitted vide Chargesheet No. 43 of 2004 against two accused persons including the petitioner for offences under Sections 147,148,149, 448,341, 323, 324, 379, 436 and 504 of the Indian Penal Code. After submission of the chargesheet, cognizance order was passed under the same Sections. Subsequently, since the case was triable by the court of Session, the case was committed to the court of Session and at stage of charge , a petition u/s 228(1) Code of Criminal Procedure was filed on behalf of the petitioner on the ground that in the facts and circumstances of the case, offence u/s 436 of the Indian Penal Code was not made out and, accordingly, it was

prayed to remit back the case to the court of Chief Judicial Magistrate for its trial. After hearing the parties, learned Addl. Sessions Judge-cum- F.T.C. No. IV rejected the petition filed by the petitioner on 18.1.2007.

3. Aggrieved with the order of rejection of petition filed u/s 228(1) Code of Criminal Procedure , the petitioner approached this Court by filing the present petition. On 1.10.2008, the case was admitted for hearing. While admitting, it was directed that in the meanwhile further proceedings in the court below shall remain stayed. The order of stay is still continuing.

4. Sri Surendra Kishore Thakur, learned Counsel appearing on behalf of the petitioner, while challenging the impugned order, submits that on the basis of materials available on record, no case u/s 436 of the Indian Penal Code is made out. Still the learned Sessions Judge has rejected the petition of the petitioner. It was submitted that the case was triable by the court of learned Magistrate, since no offence u/s 436 of the Indian Penal Code is made out. Learned Counsel for the petitioner, while assailing the impugned order, has argued that in the present case, initially chargesheet was submitted against two accused person including the petitioner for the offence u/s 436 and other allied Sections of the Indian Penal Code. At subsequent stage, supplementary chargesheet was submitted against remaining accused persons. However, on the submission of the supplementary chargesheet, the Investigating Officer had made a prayer to delete Section 436 of the Indian Penal Code from the earlier chargesheet i.e. Chargesheet No. 43 of 2004. It has been submitted that for one occurrence, separate case cannot be allowed to proceed. It has been submitted that so far as the petitioner and one another accused are concerned, for the same occurrence the case was committed to the court of session, but in respect of other accused persons of the same occurrence, the case was left for being tried by the court of Magistrate. During the course of hearing, Sri Thakur, learned Counsel for the petitioner has submitted that during the pendency of the present petition, both the parties had come to a compromise. However, in absence of any material on record, such submission is required to be notice only for its rejection. On the aforesaid grounds, it has been prayed to set aside the impugned order.

5. Sri Binod Kumar, learned Addl. Public Prosecutor appearing on behalf of the State has vehemently opposed the prayer of the petitioner. It has been submitted that the learned trial Judge, while rejecting the petition filed on behalf of the petitioner, in its order dated 18.1.2007 has given detailed reason for rejection of the petition. It has been submitted that during the investigation, number of witnesses had categorically stated that dwelling house was put on fire. The Investigating Officer had also found the roof of the house in burnt condition at the place of occurrence. Accordingly, it has been submitted that the learned trial Judge, while rejecting the petition, has committed no mistake.

6. Besides hearing learned Counsel for the parties, I have also perused the materials available on record including the impugned order. On perusal of the impugned order, the Court is satisfied that the learned Addl. Sessions Judge has

given a detailed reason for rejection of the petition filed on behalf of the petitioner. Learned Addl. Sessions Judge has categorically mentioned that number of witnesses had corroborated the allegation of setting the dwelling house on fire. Learned trial Judge has recorded that the Investigating Officer had found the roof of dwelling house in burnt condition. So far as the ground taken by learned Counsel for the petitioner that for the same occurrence, one proceeding before the court of Session and another before the court of Magistrate may not be allowed is concerned, I am of the view that so far as petitioner is concerned, there were sufficient materials for its committal to the court of Session. Moreover, after cognizance, the case was committed to the court of Session. It may be substance in the argument of learned Counsel for the petitioner regarding pendency of cases before the court of Magistrate and the court of learned Sessions Judge, but in the facts and circumstances of the case as indicated above, the Court is of the opinion that the learned Sessions Judge has rightly passed the impugned order. In the present case, chargesheet was submitted u/s 436 and other allied Sections of the Indian Penal Code, which was triable by the court of Session. There after order of cognizance was passed and after completion of supply of police paper, the case was committed to the court of Session. When the case came to the stage of framing of charge, the present petition was filed by the petitioner. It appears that the present petition was filed solely with an object to delay the commencement of the trial. On the basis of materials available on record, I am of the opinion that it is not a fit case for exercising inherent jurisdiction in favour of the petitioner.

Accordingly, the petition stands rejected.

In view of rejection of the present petition, interim order of stay stands automatically vacated.

Let a copy of this order be sent to the court below forthwith.