
(2011) 01 PAT CK 0110

In the Patna High Court

Case No : Criminal Miscellaneous No. 22311 of 1998

Sitaram Gond

APPELLANT

Vs

The State of Bihar and Chandrika Gond

RESPONDENT

Date of Decision : 13-01-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 203, 482

Citation : (2011) 59 BLJR 2204

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

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 27.7.1998 passed by the learned Addl. Sessions Judge IV, Gopalganj in Cr. Revision No. 127 of 1998/49 of 1998 . By the said order, the learned Addl. Sessions Judge has quashed the order dated 11.3.1998 passed by Sri R.K. Yadav, Judicial Magistrate, Gopalganj in Complaint Case No. 228 of 1998, Tr. No. 729 of 1998. By order dated 11.3.1998 , the learned Judicial Magistrate had rejected the complaint petition u/s 203 of the Code of Criminal Procedure keeping in view the fact that the learned Magistrate was of the opinion that the dispute was purely civil in nature.

2. Short fact of the case is that Opp. Party No. 2 had filed a complaint in the court of learned Chief Judicial Magistrate, Gopalganj , which was numbered as Complaint Case No. 228 of 1998, alleging therein that the petitioner, his brother and two other accused had committed offences under Sections 120B, 419, 420, 467, 468, 471 of the Indian Penal Code. It was alleged in the complaint petition that accused persons had virtually got a sale deed executed. As per the complaint, the occurrence had taken place on 10.3.1981 and 2.8.1985. The complaint petition describes that one Gulaichi Devi and Gulabi Devi , both daughters of Shiv Chan Gond, i.e. father of the petitioner , got executed and

registered a sale deed with respect to properties of Late Deba Gond to one Gagandeo Rai on 13.3.1981 describing themselves to be daughters of late Deba Gond. The sale deed was identified by accused Bishundeo Tiwary. Further case of the complainant is that accused Gagandeo Rai sold the lands on 2.8.1985 covered by sale deed dated 10.3.1981 to Shiv Chan Gond (father of the petitioner), which was in the knowledge of the petitioner and his brother Thakur Gond. On the aforesaid allegation, the complaint petition was filed , which was transferred by the learned Chief Judicial Magistrate to the learned Magistrate for enquiry u/s 192(1) of the Code of Criminal Procedure. After conducting enquiry, Sri R.K.Yadav, learned Judicial Magistrate, Gopalganj came to the conclusion that it was a case of purely civil nature and, accordingly, he dismissed the complaint petition u/s 203 of the Code of Criminal Procedure.

3. Aggrieved with the order of rejection of the complaint petition, Opp. Party No. 2/ complainant filed a revision petition vide Cr. Revision No. 127 of 1998/ 49 of 1998 and the learned Addl. Sessions Judge-IV , Gopalganj by the impugned order dated 27.7.1998 has set aside the order dated 11.3.1998 passed by Sri R.K. Yadav , Judicial Magistrate, Gopalganj and directed the learned Magistrate to proceed with the trial in accordance with law.

4. Aggrieved with the order dated 27.7.1998 passed by the learned Addl. Sessions Judge-IV, Gopalganj in Cr. Revision No. 127 of 1998/49 of 1998, the Petitioner approached this Court by filing the present petition. On 8.12.1998 notice was directed to be issued to Opp. Party No. 2. However, Opp. Party No. 2 did not appear and accordingly on 31.3.1999 the present case was admitted for hearing. While admitting, this Court directed that till disposal of the case, further proceedings in Complaint Case No. C 228/98 in the court below as regards the Petitioner shall remain stayed. Despite valid service of notice, Opp. Party No. 2 preferred not to appear. The case was finally heard in absence of Opp. Party No. 2. However, the learned Addl. Public Prosecutor, Sri Shailendra Kumar had appeared on behalf of the State and opposed the petition.

5. While challenging the impugned order passed by the learned Addl. Sessions Judge IV, Gopalganj, Sri Aminuddin Ahmad Khan learned Counsel appearing on behalf of the Petitioner had raised several grounds. It was submitted by Sri Khan, learned Counsel for the Petitioner that by putting imposter , the present case was falsely got filed against the Petitioner and other accused persons. Learned Counsel for the Petitioner has also argued that the learned Addl. Sessions Judge has committed serious error in usurping the jurisdiction of the learned Magistrate. It was submitted that in a case taking cognizance is the discretion of the Magistrate . The learned Magistrate after examining entire materials available on record had rightly come to the conclusion that it was a dispute of civil in nature and rightly rejected the complaint petition.

6. Sri Shailendra Kumar, learned Addl. Public Prosecutor for the State has supported the impugned order . It was submitted that the learned Addl. Sessions Judge has examined the materials on record and thereafter, he has rightly

quashed the order rejecting the complaint petition u/s 203 of the Code of Criminal Procedure by the learned Magistrate.

7. After going through the impugned order, the Court is of the opinion that the learned Addl. Sessions Judge has committed a patent error. Learned Addl. Sessions Judge has recorded his finding that prima facie case against accused persons was made out and thereafter allowed the revision petition and directed the Magistrate to proceed further in the trial. Meaning thereby that the learned Addl. Sessions Judge has virtually taken cognizance of the offence. Had there been any error in the order of rejecting the complaint petition by the learned Magistrate, the learned Addl. Sessions Judge after setting aside the said order was required to remit back the case to the learned Magistrate to further examine the matter and thereafter proceed with the case. Virtually, the learned Addl. Sessions Judge by the impugned order has taken cognizance of offences and the learned Magistrate was left with no option, but to proceed further after the stage of cognizance. I am of the opinion that the order dated 27.7.1998 passed by the learned Addl. Sessions Judge -IV, Gopalganj in Cr. Revision No. 127 of 1998/ 49 of 1998 is not sustainable in the eye of law and, accordingly, the same is set aside.

8. It was submitted by Sri Aminuddin Ahmad Khan, learned Counsel for the Petitioner that after the order passed by the learned Addl. Sessions Judge, the learned Magistrate had further proceeded with the case and, accordingly, it was prayed to quash the entire proceeding arising out of Complaint Case No. 228 of 1998. After quashing of the order passed by the learned Addl. Sessions Judge-IV, Gopalganj, there is no point as to how complaint proceeding in the Complaint Case No.228 of 1998 can proceed. However, to repeal any doubt in the mind, the entire proceeding in Complaint Case No.228 of 1998 along with the order dated 27.7.1998 passed in Cr. Revision No.127 of 1998/49 of 2008 are hereby set aside and the petition stands allowed.