

(2010) 10 PAT CK 0039

In the Patna High Court

Case No : Criminal Miscellaneous No. 18402 of 2007

Smt. Kanchan Devi

APPELLANT

Vs

The State of Bihar and Nirmala Sah

RESPONDENT

Date of Decision : 29-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120B, 406, 420

Citation : (2010) 10 PAT CK 0039

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 9.10.2004 passed by the Chief Judicial Magistrate, First Class, Patna in complaint case No. 1900 (C) of 2004. By the said order, learned Chief Judicial Magistrate has taken cognizance of offence under Sections 406, 420 and 120B of the Indian Penal Code.

2. Short fact of the case is that the opposite party No. 2 filed a complaint in the Court of Chief Judicial Magistrate, Patna, which was numbered as complaint case 1900 (C) of 2004 alleging therein that she had invested in share business with the accused No. 1 Raj Kishore, who is husband of this Petitioner. It has been alleged that the husband of the Petitioner has misappropriated the entire amount. It has further been stated in the complaint petition that this Petitioner has also conspired with accused No. 1 i.e her husband. On aforesaid allegation, complaint was filed and after conducting enquiry, the learned Chief Judicial Magistrate, by the impugned order dated 9.10.2004, has taken cognizance of the offence.

3. Aggrieved with the order of cognizance, the Petitioner approached this Court by filing a present petition. On 23.8.2007, while issuing notice to opposite party

No. 2, this Court directed that during the pendency of this application, no coercive action shall be taken so far as this Petitioner is concerned. Despite valid service of notice, opposite Party No. 2 has not preferred to appear before this Court.

4. Shri Kumar Manish, learned Counsel appearing on behalf of the Petitioner, while placing the complaint petition, submits that save and except that the Petitioner is the wife of accused No. 1 Raj Kishore, no assertion has been made in the complaint petition. However, in the complaint petition, it has been asserted that the Petitioner had also conspired. It was submitted that only by way of describing the word "conspiracy", it cannot be said that the Petitioner was also involved in the case. Accordingly, it has been prayed to set aside the order of cognizance.

5. Smt. Indu Bala Panday, learned Additional public prosecutor appears on behalf of the state.

6. Besides hearing learned Counsel for the parties, I have also perused the contents of the complaint petition and the impugned order. After going through the complaint petition, the court is satisfied that there were no sufficient materials indicating the involvement of the Petitioner in the crime alleged by the complainant.

7. In absence of the materials, the court is of the view that allowing the prosecution on such complaint, will amount to allowing the abuse process of the Court. The order of cognizance dated 9.10.2004 in complaint case No. 1900(C) of 2004 passed by the learned Chief Judicial Magistrate First Class Patna, so far as the Petitioner is concerned, is hereby set aside.

8. Accordingly, the petition is allowed.