

(2006) 11 PAT CK 0139

In the Patna High Court

Case No : Criminal Miscellaneous No. 5103 of 2005

Smt. Rita Singh

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 10-11-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 239, 362, 468, 482
Penal Code, 1860 (IPC) — Section 120B, 341, 381, 384, 440

Citation : (2007) 2 PLJR 183

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Advocate : B.K. Kanth and Ratnesh Kumar Singh, for the Appellant; Manoj Goel, Shuvodeep Roy and Jitendra Singh for O.P. No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Mridula Mishra, J.—This application has been filed by the petitioner Rita Singh for quashing the order dated 17.12.2004 passed by the Judicial Magistrate, 1st Class, Patna rejecting the prayer of the petitioner for discharge in S.K. Puri P.S. Case No. 1 of 1996 G.R. No. 81 of 1996. Petitioner is an accused in S.K. Puri P.S. Case No. 1 of 1996 instituted for offence under sections 448, 341, 384 and 120B of the Indian Penal Code. The informant of this case is Smt. Prem Lata Singh who is mother-in-law of the petitioner. The informant has alleged that she is Mistress of the house situated at Boring Road near Water Tower, Patna. She is residing at London with her husband Satrugan Prasad Singh and son Rajesh Kumar Singh. One T.N. Dubey was appointed as care-taker of the house. On 13.12.1994 she was telephonically informed by the care-taker that Smt. Rita Singh. Premlata Singh, ex-daughter-in-law has forcibly and unauthorisedly occupied first floor of the said house. She was accompanied by her uncle Purushotam Kumar Singh and brother-in-law Vivek Singh. T.N. Dubey lodged an F.I.R. regarding this matter with S.K. Puri P.S. When Premlata Singh received the copy of the F.I.R. lodged by Dubey to the Officer-in-charge, S.K. Puri Police Station she found that statement has not correctly been mentioned in the F.I.R.

It seems that due to threat and financial allurements T.N. Dubey had connived with the trespassers. Rita Singh trespassed her property along with others being fully aware at the time of trespass that she was no longer informant's daughter-in-law. There was no consent of the informant given to Rita Singh for entering into the house. In the facts and circumstances a request was made in the affidavit letter that the S.K. Puri police station be ordered to remove the alleged trespassers forthwith from her property, institute a criminal case against them and the house in question be sealed. Mrs. Prem Lata Singh had sent this letter to the Director General of Police along with sale deed relating to the property, marriage certificate, divorce certificate, F.I.R. instituted by T.N. Dubey and her own affidavit sworn on 30.1.1995. This letter was treated as F.I.R. and on that basis S.K. Puri P.S. Case No. 1 of 1996 was instituted against the petitioner and others for offence under sections 448, 341, 381 and 120B of the Indian Penal Code.

2. Earlier petitioner had moved before this Court for quashing of the order taking cognizance in Cr. Misc. No. 2711 of 2000. Several points were raised by the petitioner for quashing the order taking cognizance. One of the grounds was that cognizance is barred by limitation u/s 468 Cr.P.C. The prayer of the petitioner was rejected with a finding that without going into the question as to whether or not the allegation or the materials collected in course of investigation also prima facie proved commission of offence under sections 384, 341 and also u/s 120B of the Indian Penal Code it could be concluded that it is not possible to hold at this stage that cognizance was hit by limitation as u/s 468 of the Code in view of the allegations and the materials on record. The application was dismissed without going into the merit of the case and taking into the materials brought in the case diary. Subsequently the petitioner filed an application for discharge which has been rejected by the impugned order and against that order the present application has been filed.

3. Counsel for the petitioner submits that the evidence which has been collected by the Investigating Agency in course of investigation does not indicate that a prima facie case under sections 448, 341 and 120B of the Code is not made out against the petitioner in view of the fact that the petitioner is daughter-in-law of the informant Smt. Prem Lata Singh. Though in the F.I.R. it has been stated that on the basis of ex parte divorce decree granted by the Watford county court this petitioner is no more her daughter-in-law. But so far the ex parte decree of divorce passed by foreign court is concerned it is not enforceable and can be collaterally impeached by this Court. It has also been stated that the son of the informant has not executed the said foreign decree in India as such on the basis of this divorce decree it cannot be alleged that the petitioner has committed an offence of trespass by entering into or residing in her matrimonial house. It has also been stated that in the F.I.R. as well as in the statement of the informant her husband, daughter and son (husband of the petitioner) recorded u/s 161 Cr.P.C. there is no allegation of annoyance, insult to Mr. T.N. Dubey or the informant. Only request of the informant for restoration of possession of the

house in question which was occupied by the petitioner. Apparently the informant wanted that her civil rights be enforced. On the basis of such allegations no case of trespass is prima facie made out. It has also been stated that the petitioner was living in the house under the bona fide belief that being the daughter-in-law and the house being her matrimonial house she has right to live in that house. Considering the bona fide belief of the petitioner every trespass is not an offence. Even well founded entry upon land or house made under bona fide claim of right does not become crime. In order to substantiate her claim of bona fide it has been stated that the petitioner has filed title suit no. 1 of 1997 for declaration that she has right to reside in the house in question. The maintainability of the suit was challenged by the informant who is defendant in the suit. Question of maintainability of suit raised by defendant was dismissed by the Subordinate Judge, Patna and this order has been affirmed by the High Court and the Supreme Court. In the suit status quo has been granted in favour of the plaintiff petitioner-so far occupation of the house is concerned, till the hearing of the injunction petition and the status quo order is continuing in favour of the petitioner. The possession or occupation of the house, under the valid orders of the court, cannot be considered a trespass.

4. Counsel appearing for opposite party informant has challenged the maintainability of this petition filed by the petitioner u/s 482 Cr.P.C. stating that it is second petition preferred on the same material urging same ground and at the same stage. Earlier petition being Cr. Misc. No. 2711 of 2000 was dismissed by this Court as such second quashing petition clearly amounts to an attempt of the petitioner to have the judgment dated 29.11.2001 reviewed which is not permissible in criminal law and against the express mandate of Section 362 Cr.P.C. It has been stated that the present petition is not maintainable and it should be dismissed.

5. In reply to this submission counsel for the petitioner has stated that Cr. Misc. No. 2711 of 2000 was filed against the order taking cognizance and the present application has been filed against the order by which the prayer of the petitioner for discharge has been rejected. It is not a fact that against the same order same material, same ground and at the same stage present application has been filed. So far the question of res judicata is concerned it is not available in a criminal proceeding. The order dated 29.11.2001, passed in Cr. Misc. No. 2711 of 2000 does not speak out the evidence in detail. It has only been said by the Hon'ble Judge that at the stage of cognizance the evidence should not be looked into. So far the stage of discharge is concerned, the learned Magistrate should have considered the F.I.R. and the material in the case diary, only after considering the material the impugned order should have been passed. Earlier petition was rejected on the ground that at the stage of cognizance these materials cannot be looked into. Since, at the stage of discharge, jurisdictional error has been committed by the Magistrate, petitioner has statutory right to file an application u/s 482 Cr.P.C., for quashing such order.

6. So far to question of stage is concerned earlier application and present application have been filed at two different stages. Discharge petition was filed by the petitioner which has been rejected according to the petitioner without looking into the materials in the case diary, under the Cr.P.C. the accused has statutory right to raise plea of discharge at the time of framing of charge and to move before the High Court against the order by which the prayer of discharge is rejected. I find that the questions which were raised by the petitioner in the earlier petition although discussed by the single Judge in his order dated 27.11.2001, but the finding recorded is that all these materials are not being considered on merit as this is not the stage at which the petitioner should raise all these points. Cr.P.C. do not prevent the accused to raise his defence before the court concerned at different stages. At the stage of framing of charge u/s 239, there is statutory provision for filing application for discharge. Petitioner accordingly filed his application for discharge which has been rejected by the impugned order. Against the impugned order petitioner has a right to move before the superior court if he feels aggrieved by such order.

7. In this view of the matter the objection raised by opposite party regarding maintainability of the application is not tenable. This application is maintainable u/s 482 Cr.P.C.

8. The contention of the petitioner that the ingredients of offence of criminal trespass are not present in the case and also that she entered into the house under the bona fide believe that she has right to reside in the house which is a joint family property, can be considered only when the parties are given liberty to lead their evidence on this point. There is a divorce decree passed by a foreign court which was known to the petitioner. Impact of the ex parte divorce decree can be decided only by a competent court. The pendency of civil suit between the parties for deciding their right, title and interest and its impact for making out an offence under sections 341, 384 and 440 of the Indian Penal Code cannot be decided at this stage unless parties are given opportunity to lead their evidence on this point. I am of the view that it is not a fit case for discharge. The question which has been raised by the petitioner in the present application can be finally decided by the trial court. The prayer for quashing the impugned order is rejected.

9. F.I.R. of this case was instituted in the year 1995. More than ten years have passed and the case has not progressed satisfactorily. The court below is directed to proceed in the matter expeditiously and decide and conclude it so that the issues may be settled in between the parties. Accordingly this application is dismissed.