
(2010) 09 PAT CK 0021
In the Patna High Court

Sudarshan Jha

APPELLANT

Vs

The State of Bihar and Ramprit Yadav

RESPONDENT

Date of Decision : 09-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 482
Penal Code, 1860 (IPC) — Section 409

Citation : (2010) 09 PAT CK 0021

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 31.8.2000 passed by Additional Chief Judicial Magistrate, Jhanjharpur in G.R. No. 138 of 1994/Tr. No. 1126 of 2000.

2. Short fact of the case is that the opposite party No. 2 filed a complaint in the court of Additional Chief Judicial Magistrate, Jhanjharpur, which was numbered as Complaint Case No. 39 of 1994 against the petitioner on an allegation that petitioner had committed offence u/s 409 of the Indian Penal code. It was alleged that the petitioner, at the relevant time, was Manager-cum-Secretary of Imadpatti PACKS. The complainant had claimed himself as Chairman of the said society. It was alleged that the petitioner had collected sale proceed for an amount of Rs. 31,600/-, but said amount was never deposited in the account of society and as such it was alleged that the petitioner had committed an offence u/s 409 of the Indian Penal Code. The said complaint was referred to the police u/s 156(3) of the Code of Criminal Procedure for its registration and investigation and thereafter, an F.I.R. vide Jhanjharpur P.s. Case No. 18 of 1994 was registered in the month of February, 1994. After investigation, police submitted charge sheet and thereafter, at a belated stage, on 31.8.2000, the learned Additional Chief Judicial Magistrate took cognizance of offence u/s 409 of the

Indian Penal Code and directed for issuance of summon against the petitioner.

3. Aggrieved with the order of cognizance, the petitioner approached this Court by filing the present petition. On 11.9.2001, while issuing notice to opposite party No. 2, this Court directed that in the meantime, further proceeding in G.R. No. 138 of 1994 now pending in the court of Chief Judicial Magistrate, Jhanjharpur shall remain stayed. Subsequently, on 5.11.2001, the case was admitted for hearing and it was directed that during the pendency of the application, the interim order passed on 11.9.2001 shall remain operative. The order of stay is still continuing.

4. Shri Murari Narain Chaudhary, learned Counsel for the petitioner, while challenging the order of cognizance and initiation of proceeding against the petitioner, submits that the complaint, which was referred to the police, was filed by the complainant with a view to save his own skin from the allegation of defalcation of the amount of the society. It was submitted that complaint was filed on 20.1.1994 whereas the society in question was already superseded by the Government on 31.12.1993. Learned Counsel for the petitioner has also submitted that after supercession of the society, a certificate proceeding was initiated against the complainant as well as petitioner vide Certificate Case No. 723 of 1994-95. Learned Counsel for the petitioner, while referring to Annexure-2 to the supplementary affidavit, submits that the Certificate Officer, after concluding the certificate case, has held the complainant responsible for the loss suffered to the society and it was held that the certificate amount was recoverable from the complainant, namely, Ramprit Yadav, the then Chairman. It has further been submitted that since it was a Co-operative Society as per provision contained in Section 47(3) of the Bihar & Orrissa Co-operative Societies Act, 1935, without prior sanction of the Registrar, the learned Magistrate was not required to take cognizance of the offence. It has alternatively been argued that in the event, the matter had remained pending for a long time. In the case, alleged occurrence had taken place in between 8.12.1993 and 9.2.1994 and to the reasons best known to the prosecution, the matter remained pending for more than six years on the point of cognizance and thereafter, on 31.8.2000, cognizance order was passed by the learned Additional Chief judicial Magistrate. It has further been submitted that the petitioner has superannuated from the service long back in the year 1998. On the aforesaid grounds, it has been prayed to quash the order of cognizance.

5. Shri A.M.P. Mehta, learned Additional Public Prosecutor appearing on behalf of the State, has opposed the prayer of the petitioner. It was submitted that whatever argument has been advanced before this Court can well be addressed to the concerned court where the matter is pending.

6. Despite opposite party No. 2 had entered his appearance through his advocate at the time of hearing, none has appeared on his behalf.

7. Besides hearing learned Counsel for the petitioner and the State, I have also

perused the materials available on record particularly order passed by the Certificate Officer, which has been annexed as Annexure-2 to the supplementary affidavit. It is not in dispute that the allegation against the petitioner was in relation to commission of criminal breach of trust with a registered society and once such allegation was made, it was required for the complainant to obtain sanction from the Registrar Cooperative Societies as per Section 47(3) of the Act. Besides this, on the date of filing of the complaint, the complainant was not at all Chairman of the PACKS even then he had described him as Chairman of the Society in the complaint petition. In the present case, on perusal of the order passed by the Certificate Officer, it is also evident that the Certificate Officer has held the complainant responsible for the loss suffered to the society.

8. In view of the facts and circumstances particularly on the ground that matter remained pending for a long period since in the case, occurrence had lastly taken place on 9.2.1994, in the year 2010, it would not be appropriate to direct the petitioner to participate in the proceeding. The court is satisfied that it is a fit case for exercising inherent jurisdiction in favour of the petitioner.

9. Accordingly, order of cognizance dated 31.8.2000 passed by Additional Chief Judicial Magistrate, Jhanjharpur in G.R. No. 138 of 1994/Tr. No. 1126 of 2000 is hereby set aside and petition stands allowed.