

(2006) 06 PAT CK 0047

In the Patna High Court

Case No : Criminal Miscellaneous No. 28829 of 2003

Sudhir Prasad Singh

APPELLANT

Vs

The State of Bihar and Rajendra Pandey

RESPONDENT

Date of Decision : 22-06-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144, 245, 482
Penal Code, 1860 (IPC) — Section 365

Citation : (2006) 3 PLJR 307

Hon'ble Judges : Rekha Kumari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rekha Kumari, J.—This is an application filed u/s 482 of the Code of Criminal Procedure, 1973 for quashing the order dated 18.2.2003 passed by Sri Murlidhar, J.M. 1st Class, Nawadah in Trial No. 458 of 2002 by which he has rejected the prayer of the petitioner to discharge him.

2. Heard learned Counsel for the petitioner, the Opposite Party and the learned A.P.P. for the State.

3. It appears that a complaint was filed by Rajendra Pandey, Opposite Party No. 2 against the petitioner alleging therein that the son of the complainant was taken away by the accused persons including the petitioner and thereafter he did not return. The complaint was sent to the police station for investigation on the basis of which a first information report being Nawadah (Mufassil) P.S. Case No. 83/1998 was registered. The police investigated into the case and found the case to be false. Thereafter the case proceeded as a complaint case and after enquiry cognizance was taken. The petitioner as against the said order filed Criminal Misc. No. 24286 of 2000 in this Court for quashing the order taking cognizance on the plea that the present a se was a malicious prosecution. The said Criminal Misc. application was dismissed with the observation that the applicant may raise their defence before the trial court either at the time of cross examining the

witnesses before the charge or at the time when the parties are being heard on the question of framing of charge.

4. A petition thereafter was filed by the petitioner u/s 245 of the Code before the Judicial Magistrate for discharging him. The learned Magistrate rejected the prayer giving reasons that the witnesses examined before the charge have supported the case of abduction and the points raised by the defence cannot be examined meticulously at this initial stage of the case. He found a prima facie case u/s 365 of the Indian Penal Code for framing of charge against the accused persons of the case.

5. Learned Counsel for the petitioner submitted that the learned Judicial Magistrate has failed to appreciate that the instant prosecution was a malicious prosecution. He failed to appreciate that a case was filed by the petitioner as against the alleged victim boy of this case and others regarding kidnapping of the minor girl of the petitioner and the present case was a counter blast to the said case. He also submitted that the said victim boy was arrested by the police in the case filed by the petitioner and was remanded to custody. Under these circumstances, the police submitted final report in this case. Hence, continuation of this case is a sheer abuse of the process of the Court and the petitioner was fit to be discharged and the impugned order is fit to be quashed.

6. Learned Counsel for the Opposite Party defended the order.

7. It is well settled that at the time of framing of charge, the Magistrate is required only to see whether on the evidence adduced by the prosecution u/s 144 Cr.P.C., any prima facie case is made out against the accused. The impugned order also shows that the three witnesses examined have supported the allegation of abduction of the victim. So, there is a prima facie case against the petitioner and the learned Magistrate was justified in rejecting the prayer of the petitioner.

8. I, thus, do not find any merit in this application and the same is accordingly dismissed.