
(2012) 01 PAT CK 0112

In the Patna High Court

Case No : Criminal Miscellaneous No. 28263 of 2009

Tuntun Singh and Others

APPELLANT

Vs

The State of Bihar and Baccha Singh

RESPONDENT

Date of Decision : 25-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 192, 200, 202, 202(2)
Penal Code, 1860 (IPC) — Section 147, 148, 323, 420, 427

Citation : (2013) 1 PLJR 194

Hon'ble Judges : Hemant Kumar Srivastava, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hono"ble Mr. Justice Hemant Kumar Srivastava

1. Petitioners, while invoking the extra-ordinary jurisdiction of this court vested under Section-482 of the Cr.P.C. challenged the impugned order dated 20-06-2009 passed by Additional Sessions Judge-IX, Chapra in Cr. Revision No. 148 of 2007 by which and whereunder, he dismissed the aforesaid revision petition on the ground of maintainability and the petitioners have also challenged the order dated 03-04-2007 passed by learned Chief Judicial Magistrate, Chapra in Complaint Case No. 847 of 2007 by which and whereunder, learned Chief Judicial Magistrate, Chapra having found prima facie case under Sections-147, 148, 323, 420, 427, 436 of the Indian Penal Code against petitioners and others ordered to issue process against them to procure their attendance for trial.

2. The brief facts to file this quashing petition is that the opposite party No. 2 namely, Bachcha Singh filed complaint case No. 847 of 2007 in the court of Chief Judicial Magistrate, Chapra, Saran against petitioners and others alleging therein that on 30-03-2007 at about 11.00 a.m. accused, Prayag Singh alongwith police constables came at the Bathan of the opposite party No. 2 and asked him to vacate the aforesaid Bathan as the S.D.M. had already declared possession of family members of petitioner No. 2 on the above-stated Bathan and also

threatened the opposite party No. 2 to face the consequences if he failed to vacate the possession of above-said land and when the opposite party No. 2 made protest, petitioners assaulted him with fist and slaps and also set his Baithaka on fire as a result of which, all the belongings of the said Baithaka burnt to ashes causing damage to the opposite party No. 2.

3. The aforesaid complaint case was filed in the court of learned Chief Judicial Magistrate, Chapra on 02-04-2007 and the learned Chief Judicial Magistrate, Chapra kept the aforesaid complaint case in his file after recording the statement of opposite party No. 2 on solemn affirmation and on the same day, he closed the inquiry and after that, on 03-04-2007, he passed the impugned order in the manner as stated above.

4. Against the impugned order dated 03-04-2007, petitioner No. 1 preferred Cr. Revision No. 148 of 2007 which was dismissed by learned Additional Sessions Judge-IX, Chapra vide impugned order dated 20-06-2009 holding that the quashing petition of the petitioners preferred against impugned order dated 03-04-2007 had already been dismissed by this court and since the revision petition had been filed against an interlocutory order, the revision petition is not maintainable.

5. Petitioners challenged both the above-said impugned orders i.e. impugned order dated 03-04-2007 passed by learned Chief Judicial Magistrate, Chapra by which he finding prima facie case, ordered to issue processes against the petitioners and other accused as well as impugned order dated 20-06-2009 passed by learned Additional Sessions Judge-IX, Chapra by which he dismissed the Cr. Rev. No. 148 of 2007 on the basis of above-said two grounds.

6. Learned counsel appearing for petitioners submitted that petitioners had never filed any Cr. Misc. Case against impugned order dated 03-04-2007 but in spite of that learned Additional Sessions Judge-IX, Chapra dismissed the revision petition of the petitioners on the above-said grounds.

7. It is further contended by him that the learned Chief Judicial Magistrate, Chapra without recording the statements of witnesses of opposite party No. 2 passed the impugned order dated 03-04-2007 in very haste manner, particularly, in the circumstances, when Section-436 of the Indian Penal Code is an offence exclusively triable by the court of sessions and there is mandate of section-202(2) of the Cr.P.C. that if the offence complained of, is triable by the court of sessions, the inquiring Magistrate is duty bound to call upon the complainant to produce all his witnesses and examined them on oath but in the present case, admittedly, learned Chief Judicial Magistrate has passed the impugned order only on the statement of complainant and did not ask the complainant to produce his witnesses cited in the complaint petition and, therefore, learned Chief Judicial Magistrate, committed an error in passing the impugned order. It is further contended by him that very face of the complaint petition discloses that the complaint bearing Complaint Case No. 847 of 2007 has

been filed by opposite party No. 2 on account of land dispute. So, even if the contents of complaint petition assumed to be true, then also, it is obvious that the aforesaid complaint case has been filed by the opposite party No. 2 with mala fide intention on account of civil dispute.

8. On the other hand, learned counsel appearing for the opposite party No. 2 supported the impugned orders arguing that earlier co-accused, Prayag Singh had filed Cr. Misc. No. 28236 of 2007 challenging the validity of impugned order dated 03-04-2007 passed in Complaint Case No. 847 of 2007 but the aforesaid Criminal Miscellaneous case was dismissed with a liberty to the aforesaid co-accused to raise his points before the trial court or at the time of framing of charge but again, the petitioners challenged the impugned order dated 03-04-2007 before learned Additional Sessions Judge-IX, Chapra by filing Cr. Revision No. 148 of 2007 and, therefore, learned Additional Sessions Judge has rightly observed that the Cr. Misc. case which had been filed against the impugned order dated 03-04-2007 had already been dismissed.

9. It is further contended by him that so far as Section-202(2) Cr. P.C. is concerned, the same is not mandatory in nature as held by the Apex Court of this country in PLJR 2010 (3) SC 134 and, therefore, it was not mandatory for learned Chief Judicial Magistrate, Chapra to call upon all the witnesses of the opposite party No. 2 before passing the impugned order.

10. Having heard the contention of the parties, I have gone through the record.

11. Admittedly, the opposite party No. 2 filed above-said Complaint Case No. 847 of 2007 on 02-04-2007 and on the same day, learned Chief Judicial Magistrate, Saran at Chapra recorded the statement of opposite party No. 2 on solemn affirmation and kept the record in his own file closing the inquiry and on the very next day, i.e. on 03-04-2007, he passed the impugned order by which he ordered to issue process against the petitioners and other co-accused having found prima facie case for the offence under Sections-147, 148, 323, 420, 427 & 436 of the Indian Penal Code.

12. The word cognizance has not been defined in Criminal Procedure Code rather Section-190 of the Cr.P.C. describes the circumstance under which a Magistrate may take cognizance of any offence. Section-190 of the Cr.P.C. says that the Magistrate may take cognizance of any offence upon receiving a complaint of facts, which constitutes such offence, upon police report of such facts, and upon information received from any person other than a police officer or upon his own knowledge that such offence has been committed.

13. Section 192 of the Cr.P.C. says that any Chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to any competent Magistrate subordinate to him.

14. Section-200 of the Cr.P.C. says that a Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses

present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate. Therefore, it is abundantly clear from the aforesaid provisions that cognizance of the offence is taken when the complaint is filed before the Chief Judicial Magistrate and the cognizance of the offence is taken under Section-190 Cr.P.C. Section-200 of the Cr.P.C. prescribes the procedure as to how the complaint petition would be dealt with when it is filed before a court. Section-200 Cr.P.C. comes into play after taking of the cognizance and it is only meant for, to inquire into the act complained of. Section-202 of the Cr.P.C. says that any Magistrate, on receipt of a complaint of an offence may postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. Therefore, Section-202 of the Cr.P.C. is not mandatory in nature and it cannot be stated that in all the complaint cases, the court is duty bound to proceed under Section-202 of the Cr.P.C. and it can easily be said that if the court taking cognizance is satisfied even after recording the statement of complainant on solemn affirmation that there is sufficient ground for proceeding, the court may order for issuance of processes against the accused.

15. In the present case, no doubt, on the very next day of filing of the complaint petition, the learned Chief Judicial Magistrate after recording the statement of opposite party No. 2 on solemn affirmation, came to conclusion that a prima facie case under Sections-147, 148, 323, 420, 427 & 436 of the Indian Penal Code is made out against the petitioners and other accused and he did not proceed for further inquiry but only on the ground that the learned Chief Judicial Magistrate did not proceed to inquire into the matter under Section-202 of the Cr.P.C. it cannot be said that the learned Chief Judicial Magistrate, Saran, Chapra committed an error in passing the impugned order dated 03-04-2007.

16. So far as non-examination of all the witnesses of the complainant under Section-202(2) of the Cr.P.C. is concerned, I am of the opinion that when learned Chief Judicial Magistrate did not proceed to record the statement of complainant witnesses under Section-202 Cr.P.C., there was no necessity to record the statement of all the witnesses of the opposite party No. 2. Moreover, as held by the Apex Court of this country in Sheojee Singh Vs. Nagendra Singh reported in 2010(3) PLJR SC 134 that Section-202(2) of the Cr.P.C. is directory in nature and therefore, I am of the opinion that the impugned order dated 03-04-2007 passed by learned Chief Judicial Magistrate, Saran, Chapra cannot be disturbed on the basis of non-examination of witnesses of the opposite party No. 2 in course of inquiry.

17. Admittedly, petitioners had not preferred any Cr. Misc. case against the order dated 03-04-2007 passed by learned Chief Judicial Magistrate, Saran at Chapra in Complaint Case No. 847 of 2007 but in spite of that, learned Additional Sessions Judge-IX, Chapra dismissed the Revision Petition No. 148 of 2007 on

this ground that petitioners had preferred quashing petition against the above-said impugned order. In my view, learned Additional Sessions Judge-IX, Chapra committed an error in taking the aforesaid ground for dismissal of the Cr. Revision filed on behalf of the petitioners. Furthermore, I am of the opinion that learned Additional Sessions Judge-IX, Chapra committed an error in holding this fact that the Cr. Rev. No. 148 of 2007 is not maintainable because the same has been filed against interlocutory order. Now it is no longer res integra that the order for issuance of process is a revisable order and in catena of decisions of this court as well as Apex Court of this country, this has already been set at rest that order passed under Section-204 of the Cr.P.C. is a revisable order. Although, the learned Additional Sessions Judge, Chapra committed an error in holding that Cr. Rev. No. 148 of 2007 is not maintainable against the order dated 03-04-2007 passed by learned Chief Judicial Magistrate in Complaint Case No. 847 of 2007 but as I have already stated that there is no illegality in impugned order dated 03-04-2007 passed by learned Chief Judicial Magistrate, Saran, Chapra in Complaint Case No. 847 of 2007 and, therefore, even if learned Additional Sessions Judge-IX, Chapra committed an error in passing the impugned order dated 30-06-2009 passed in Cr. Rev. No. 148 of 2007, then also, this quashing petition does not have any merit because in Cr. Rev. No. 148 of 2007, the impugned order dated 03-04-2007 passed in Complaint Case No. 847 of 2007 had been questioned by the petitioners and this court did not find any illegality in order dated 03-04-2007 passed in Complaint Case No. 847 of 2007.

18. On the basis of aforesaid discussions, I am of the opinion that this quashing petition is devoid of merit and must be dismissed and, accordingly, this quashing petition is dismissed.

19. Let this order be communicated to the court of learned Chief Judicial Magistrate, Chapra in connection with Complaint Case No. 847 of 2007 as well as to the court of learned Additional Sessions Judge-IX, Chapra in connection with Cr. Rev. No. 148 of 2007.