
(2010) 05 PAT CK 0038
In the Patna High Court

Vidya Bhushan Singh

APPELLANT

Vs

The State of Bihar and Akhtar Bano

RESPONDENT

Date of Decision : 12-05-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 406, 420, 466

Citation : (2010) 58 BLJR 705

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar, J.—The sole petitioner, while invoking inherent jurisdiction of this Court, has prayed for quashing of order dated 15.9.1998 passed by Sri A.K. Srivastava, Judicial Magistrate, Ist Class, Patna in Complaint Case No. 839(C) of 1998. By the said order, the learned Magistrate has taken cognizance of offence under Sections 420 and 466 of the Indian Penal Code.

2. Short fact of the case is that the opposite party No. 2 filed a complaint vide Complaint Case No. 839(C) of 1998 disclosing therein that with a view to purchase a piece of land from a Co-operative Society, namely, Siwan Sahkari Girih Nirman Samiti Ltd., she made payment to the petitioner, who was Secretary of the Society in question. It has been disclosed that a total amount of Rs. 20,525/- was paid to the petitioner, but the petitioner never allotted any piece of land to the complainant. It was alleged that the complainant repeatedly contacted the petitioner for allotting the plot. However, on one pretext or the other, he delayed the matter. After coming to know that petitioner was made accused in number of cases of similar allegation, the complainant understood that she was cheated by the petitioner and thereafter, the present complaint was filed. After filing of the complaint petition, the complainant was examined on S.A. and in support of complaint, several documents were produced before the learned Magistrate and by the impugned order i.e. order dated 15.9.1998, the learned Magistrate took cognizance of the offence under Sections 420 and 466 of

the Indian Penal Code and directed for issuance of process for securing attendance of the accused/petitioner.

3. Aggrieved with the order of cognizance dated 15.9.1998, the petitioner approached this Court by filing the present petition. The present petition was admitted on 16.2.2000. While admitting the case, this Court had directed that pending disposal of this application, further proceedings in Complaint Case No. 839(C) of 1998 pending in the court of Judicial Magistrate, Ist Class, Patna shall remain stayed. In this case, lower court record was also called for, which has been received and lying with the record of the present case.

4. Shri Brij Bihari Tiwary, learned Counsel appearing on behalf of the petitioner, while challenging the order dated 15.9.1998, submits that the perusal of the complaint petition and materials available on record indicates that it is a dispute, which is purely civil in nature and for such allegation, criminal court may not be allowed to proceed with the present case. He has further submitted that on the perusal of the complaint petition itself, it is evident that the amount by the complainant was paid to the petitioner-Society long back in the year 1988 and after expiry of more than ten years, the present petition was filed and as such the learned Magistrate instead of rejecting the petition on the ground of delay has erroneously taken cognizance of the offence. Accordingly, Shri Tiwary, learned Counsel for the petitioner, has prayed for quashing of the impugned order.

5. Smt. Indu Bala Pandey, learned Additional Public Prosecutor appearing on behalf of the State, has opposed the prayer of the petitioner. She submits that the complaint petition itself disclosed commission of offences as alleged by the complainant and while passing the impugned order, the learned Magistrate has committed no error nor any illegality has been committed by the learned Magistrate. She further submits that the case was at the stage of cognizance itself, but the petitioner approached this Court and thereafter, matter has been kept pending before this Court for about ten years. She further submits that even in a case where civil remedy is available, but the contents disclose the commission of criminal offences, then in that event simultaneously criminal as well as civil proceeding can be initiated. On the ground of delay in filing complaint petition, she submits that it is true that payment was made by the complainant to the petitioner in the year 1988, but from the contents of the complaint petition, it is evident that time without number assurance was given to the complainant that piece of land will be allotted to her and only when the complainant noticed that this petitioner was made accused in number of cases of similar allegation, she believed that the petitioner has also cheated her. Only thereafter, she filed the present complaint petition. She submits that the period of limitation will be counted from the date of knowledge not from the date of exact date of payment. Accordingly, she has prayed for rejection of the present petition.

6. Besides hearing, learned Counsel for the parties, I have also examined the complaint petition as well as the impugned order dated 19.9.1998 as well as

lower court record, which was received in this case. On perusal of the lower court record, it transpires that while passing order on 19.9.1998 whereby cognizance order was passed, the learned Magistrate had committed an error in recording the offence as u/s 466 I.P.C. instead of 406 I.P.C. From the record, it appears that after noticing the typing error in the impugned order, a petition was filed on behalf of the complainant for making correction in the order and thereafter, the learned Magistrate, by order dated 8.4.1999, removed the said defect and ordered that in place of Section 466 of the Indian Penal Code, it may be read as Section 406 of the Indian Penal Code.

7. On examination of the impugned order as well as complaint petition, I find that the learned Magistrate has legally and rightly passed the said order and there is no defect in the order dated 19.9.1998. So far as question of delay is concerned, it would not be appropriate to record a definite finding at this stage since this matter is to be examined at the appropriate stage before the court below.

8. Accordingly, I do not find any merit in the present petition and petition stands rejected.

9. In view of rejection of the present petition, order of stay dated 16.2.2000 stands automatically vacated.

10. Office is directed to remit back the lower court record along with a copy of this order to the court below forthwith.