
(2005) 12 PAT CK 0023

In the Patna High Court

Case No : Criminal Miscellaneous No. 30265 of 2003

Vijay Kumar @ Bijay Kumar and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 01-12-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 205
Penal Code, 1860 (IPC) — Section 120B, 406, 420, 467, 468

Citation : (2006) 1 PLJR 434

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Judgement

Navin Sinha, J.—Heard learned counsel for the petitioners, the State and the learned counsel appearing on behalf of the opposite party No. 2. in both the applications. Learned counsel for the petitioners in Cr. Misc. No. 29917 of 2003 prays for leave to withdraw this application. The same is accordingly dismissed as withdrawn.

2. This order shall dispose-off Cr. Misc. No. 30265 of 2003. The same would have been preferred against the order dated 26.9.2003 by which the court below would have rejected the application of the petitioners u/s 205 of the Cr.P.C.

3. The complaint preferred by opposite party No. 2 would allege that accused No. 1 would be the Manager of the complainant. The other accused would be owners of the lands in question. The opposite party No. 2 would have established a brick kiln on the leased lands which would be operated and managed by the petitioner No. 1. Some differences between the complainant and petitioner No. 1 would have arisen leading to institution of Title Suit No. 11 of 2003 before the Sub-Judge-1 Danapur. An order of injunction would have been granted in favour of opposite party No. 2. During the course of injunction proceeding certain documents would have been produced by petitioner No. 1 with regard to the leased lands in question granted by other petitioners in favour of the Manager i.e. petitioner No. 1 in Cr. Misc. No. 30265 of 2003. The opposite party No. 2

would then have noticed that the lease documents in favour of petitioner No. 1 would have been forged and fabricated on retrospective dates, covering the period during which the opposite party No. 2 would have been holding a valid lease, from the remaining petitioners.

4. On these allegations cognizance came to be taken on 7.7.2003 under sections 467, 468, 471, 420, 406 and 120B of the Penal Code against the petitioners. The petitioners would then have preferred an application u/s 205 Cr.P.C. seeking exemption from personal appearance which came to be rejected on 26.9.2003.

5. Learned counsel for the petitioners submits that the court below would have erred in rejecting the application u/s 205 of the Cr.P.C. by misdirecting itself and wrongly applying the law in this regard. The submission is that the court was required to consider whether the presence of the petitioner was absolute imperative in absence of which the trial would be held up and whether the personal presence of the petitioners would expedite the trial and if the petitioners would have set out sufficient reason in their application in support thereof. The court below would have equated the allegation against the petitioner with grievous and heinous allegations involving serious allegations of moral turpitude. There would be allegations or materials for this assumption by the court below in its impugned order.

6. Learned counsel for opposite party No. 2 would submit that the cognizance would have been taken in law u/s 467 of the Penal Code in which the punishment was either by life imprisonment or sentence up to a period of ten years inclusive of fine.

8. This Court would have considered the submissions of the parties and noticed the nature of the dispute and allegations made. This Court is satisfied that the submission made on behalf of the petitioners that there would be no consideration of the reason urged by the petitioners of the grounds seeking relief u/s 205 of the Cr.P.C. The court below would have seriously misdirected itself by ignoring the principle on which an application u/s 205 Cr.P.C. was required to be considered.

9. This Court is satisfied that the present would be a case where the personal presence of the petitioners on each date fixed was not an imperative, in absence of which the progress of the trial would be hindered. This would be the crucial aspect to be considered in accordance with the law laid down by the Supreme Court.

10. This Court would quote appropriately from S.V. Muzumdar and Others Vs. Gujarat State Fertilizer Co. Ltd. and Another, as under: "It has to be borne in mind that while dealing with an application in terms of Section 205 of the Code, the court has to consider whether any useful purpose would be served by requiring the personal attendance of the accused or whether progress of the trial is likely to be hampered on account of his absence. We make it clear that if at any stage the trial court comes to the conclusion that the accused persons are

trying to delay in completion of trial, it shall be free to refuse the prayer of dispensing with personal attendance."

11. In the result Cr. Misc. No. 30265 of 2003 has to be allowed. This Court however will require the petitioners to be present in accordance with law on the date/dates fixed in the prosecution to the satisfaction of the court below. Should the progress of the trial be hindered for the reason of the relief granted to the petitioners by present order, it shall remain open for opposite party No. 2 and the court below shall not be divested with the power to proceed in accordance with law so that the progress of the trial be not hindered.