
(2010) 10 PAT CK 0066

In the Patna High Court

Case No : Criminal Miscellaneous No. 1555 of 2007

Vijay Kumar Rai @ Vijay Rai

APPELLANT

Vs

The State of Bihar and Kapildeo Kunwar

RESPONDENT

Date of Decision : 27-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 482
Penal Code, 1860 (IPC) — Section 120(B), 363, 364, 364(A)

Citation : (2010) 10 PAT CK 0066

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 22.05.2006 passed by the learned Sub-Divisional Judicial Magistrate, Samastipur in C.R No. 1275 of 2005. By the said order learned Sub-Divisional Judicial Magistrate has taken cognizance of the offence u/s 363 of the Indian Penal Code and summoned the Petitioner to face the trail.

2. Short fact of the case is that opposite party No. 2 on 19.09.2001 filed a complaint in the court of Chief Judicial Magistrate, Samastipur which was numbered as Complaint Case No. 964 of 2001. Subsequently, the complaint petition was referred to the police u/s 156(3) of the Code of Criminal Procedure for its registration and investigation. Thereafter, F.I.R. vide Patory P.S. Case No. 58 of 2004 was registered on 20.05.2004 u/s 364 of the Indian Penal Code against the sole Petitioner. It was alleged in the complaint petition by opposite party No. 2 that on 13.09.2001 the Petitioner had persuaded the son of the complainant to go along with him to Patna and thereafter complainant son did not return. On enquiry being made by the complainant he came to know that the Petitioner had kidnapped the son of the complainant. After registering F.I.R police investigated the same. During investigation it was found that the son of the

complainant (opposite party No. 2) was one of the main accused in respect of kidnapping of the Petitioner vide Mahnar P.S. Case No. 117 of 2001. The police after conducting investigation in Patori P.S. Case No. 58 of 2004 submitted final report on 28.02.2005. Before submission of final report, the opposite party No. 2 had filed a protest petition on 20.07.2004. The protest petition which was filed by opposite party No. 2 was treated as complaint petition and registered as Complaint Case No. 1275 of 2005. After conducting enquiry the learned Magistrate by the impugned order dated 22.05.2006 has taken cognizance of offence u/s 363 of the Indian Penal Code against the Petitioner.

3. Aggrieved with the order of cognizance the sole Petitioner approached this Court by filing the present petition. On 18.01.2007 while issuing notice to opposite party No. 2 it was directed that till next date further proceeding in C.R. No. 1275 of 2005 pending before Sub-Divisional Magistrate, Samastipur, shall remain stayed. Subsequently, on 25.04.2007 the petition was admitted for hearing and it was directed that during pendency of this application the interim stay order passed on 18.01.2007 shall continue. The order of stay is still continuing.

4. Mr. Amitabh Bhardwaj, learned Counsel appearing on behalf of the Petitioner, while challenging the order of cognizance and entire prosecution of the Petitioner in Complaint Case No. 1275 of 2005, at the very outset has argued that present complaint was filed by opposite party No. 2 only and only with a view to create a defence in favour of his son, who was shown as victim in the present case. It has been submitted that fact is contrary to the allegation made in the complaint petition. It has been argued that this Petitioner was himself kidnapped by the son of the complainant, who is victim in the present case, conspiring with other accused persons. After kidnapping while the accused persons were carrying the Petitioner on boat in river Ganga, there was an accident and subsequently, this Petitioner was rescued by some of the fishermen. The Petitioner was rescued on 17.01.2001 and accordingly on 17.09.2001 itself as per the written report submitted by the Petitioner an F.I.R. vide Mahnar P.S. Case No. 117 of 2001 was registered for the offence u/s 364A of the Indian Penal Code against the Petitioner and other five unknown accused person. Learned Counsel for the Petitioner has referred to annexure 4 to the petition, which is a photo copy of certified copy of F.I.R. in Mahnar P.S. Case No. 117 of 2001, which was registered on 18.09.2001. Learned Counsel for the Petitioner has further referred to annexure 5 to the petition which is a copy of final report/charge sheet submitted in Mahnar P.S. Case No. 117 of 2001. On perusal of the charge sheet it appears that the son of the complainant, who was shown as victim. In the present complaint case, was shown as one of the accused person along with others. He was charge sheeted u/s 364A and 120B of the Indian Penal code. Accordingly it has been submitted that subsequent complaint was filed by opposite party No. 2 only with an object to create a defence in favour of his son. Accordingly it has been prayed to set aside the order of cognizance.

5. Sri A.M.P. Mehta, learned Additional Public Prosecutor appears on behalf of the State.

6. Besides hearing learned Counsel for the Petitioner, I have also perused the materials available on record. In ordinary course it was not required to examine, the document enclosed with this petition but since the Petitioner had brought on record, photo copy of certified copy of F.I.R. and charge sheet of Mahnar P.S. Case No. 117 of 200, in the facts and circumstances of the case, this Court had examined the same. After going through the materials on record the Court is of the opinion that even initial complaint which was filed by opposite party No. 2 was filed with an oblique motive. The sole object of opposite party No. 2 was to create a defence in favour of his son who was shown as victim in the present case. The son of the complainant was made accused by the Petitioner prior to filing of the complaint by father of the victim of the present case. Subsequently the FIR which was lodged as per the instance of the Petitioner was found true during investigation and victim of the present case has been subsequently charge sheeted for the offence u/s 364A and 120B of the Indian Penal Code. It was not only son of the complainant but other accused persons, who had conspired, were also charge sheeted.

7. In view of the facts and circumstances of the present case, the Court is of the opinion that the prosecution of the Petitioner on the basis of allegation made in Complaint Case No. 1275 of 2005 was malicious. Since the Court is satisfied that Petitioner has been maliciously made accused by the complainant, the Court is of the opinion that it is a fit case for interfering with the order of cognizance.

8. Accordingly, the order of cognizance dated 22.05.2006 passed by Sub-Divisional Judicial Magistrate, Samastipur in Complaint Case No. 1275 of 2005 is hereby set aside and the petition stands allowed.