
(2010) 08 PAT CK 0078

In the Patna High Court

Case No : Criminal Miscellaneous No. 35775 of 2002

Vishambhar Nath Prasad Sah

APPELLANT

Vs

The State of Bihar and Prakash Kumar Chaudhary

RESPONDENT

Date of Decision : 27-08-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 34, 341, 504

Citation : (2010) 08 PAT CK 0078

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—On call, none appeared either on behalf of the petitioner or on behalf of Opp. Party No. 2. However, Smt. Veena Rani Prasad, learned Addl. Public Prosecutor appearing on behalf of the State is present.

2. In absence of learned Counsel for the petitioner, I have perused the materials available on record, particularly the order dated 22.3.1999 passed by Sri R.N. Prasad, Judicial Magistrate, 2nd Class, Motihari in Tr. No. 825 of 2002, arising out of Motihari Town P.S. Case No. 67 of 1998 and order dated 13th June, 2002 passed by 4th Addl. Sessions Judge, East Champaran at Motihari in Cr. Revision No. 127/6 of 1999/2002.

3. In the present case, an F.I.R. was lodged against the petitioner and his two sons. On the basis of a written report submitted by Opp. Party No. 2 an F.I.R. vide Motihari Town P.S. Case No. 67 of 1998 was registered for offences under Sections 341, 323, 504/34 of the Indian Penal Code. However, after investigation, the police found the case true only u/s 323 of the Indian Penal Code and, as such, final report was submitted. After submission of final form, learned Magistrate took cognizance of offence u/s 323 of the Indian Penal Code. At the stage of explaining substance on accusation, a discharge petition was filed on behalf of the petitioner. However, by order dated 22.3.1999 the learned

Magistrate rejected the discharge petition and directed the petitioner to remain present for explaining the accusation.

4. Aggrieved with the order dated 22.3.1999, the petitioner preferred a revision vide Cr. Revision No. 127/6 of 1999/2002 before the learned Sessions court and the revision petition was also rejected on 13.6.2002.

5. Aggrieved with the order of rejection of revision petition, whereby the order of rejection of discharge petition was approved by the learned 4th Addl. Sessions Judge, the petitioner approached this Court by filing the present petition. On 29.8.2003 while issuing notice to Opp. Party No. 2, it was directed by this Court that in the meantime, further proceeding pending in the court of the learned 4th Addl. Sessions Judge, East Champaran at Motihari in Cr. Revision No. 127/6 of 1999/2000 shall remain stayed. Subsequently, on 24.2.2004, the petition was admitted for hearing and it was directed that the interim order dated 29.8.2003 shall remain stayed till the disposal of the case. The order of stay is still continuing.

6. Without going into the merit of the case, the Court is inclined to interfere with the matter only on the ground that in this case cognizance was taken for offence u/s 323 of the Indian Penal Code long back. In this case, final report was submitted on 31.7.1998 for offence u/s 323 of the Indian Penal Code as non-cognizable case and date of occurrence as per the F.I.R. in the case is 15.4.1994. In this case allegation was made that two sons of the petitioner had earlier assaulted the informant at Railway Crossing. Thereafter the informant returned back to his house and he explained regarding the occurrence to his father. Subsequently, the informant and his father came to the house of the petitioner. On query made by the father of the informant, the petitioner directed his son to bring the gun and thereafter the petitioner's son took out gun from his house and pointed on the father of the informant. Thereafter, several persons arrived there and any how gun from the hand of the petitioner's son was snatched by the informant and said gun was produced by the informant before the Police Officer in the Police Station.

7. Considering the nature of allegation as well as pendency of case since long as also no interest shown by the petitioner, the Court is inclined to interfere with the matter and, as such, order dated 22.3.1999 passed by Sri R.N. Prasad, Judicial Magistrate, 2nd Class, Motihari in Tr. No. 825 of 2002 arising out of Motihari Town P.S. Case No. 67 of 1998 is hereby set aside.

8. In view of setting aside of the order dated 22.3.1999 there is no requirement to pass any specific order in respect of the order passed by the Revisional Court.

9. Accordingly, the petition stands allowed.