

Sanjay Kumar Vs. the State of Bihar

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Court : Patna

Decided On : Apr-24-2014

Judge : Rakesh Kumar

Appeal No. : Criminal Miscellaneous No. 15473 of 2008

Appellant : Sanjay Kumar

Respondent : The State of Bihar

Judgement :

1. Heard Sri D.N.Tiwary, learned counsel for the petitioner and Dr. Mayanand Jha, learned Addl. Public Prosecutor.
2. The sole petitioner, invoking inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, has prayed for quashing of an order dated 10.08.2007 passed by the learned Chief Judicial Magistrate, Katihar in Manihari P.S. Case No.18 of 2006. By the said order, the learned Chief Judicial Magistrate, Katihar has taken cognizance of offence under Sections 467, 468, 469, 471, 420, 494, 171(C), 171(F), 120(B)/34 of the Indian Penal Code.
3. Short fact of the case is that on the self-statement, Sub-Inspector of Police, namely, Sri Sunil Kumar Singh, Officer Incharge of Manihari Police Station drew an F.I.R. vide Manihari P.S. Case No.18 of 2006 disclosing therein that one most wanted criminal, who was absconding since long, namely, Ramnivash Yadav @ Pagla Yadav, during life time of his wife had forcibly married with minor daughter

of one Thakur Yadav, namely, Anjali Kumari. It has been alleged that accused Ramnivash Yadav @Pagla Yadav had conspired with the petitioner, who was at the relevant time Block Development Officer, Manihari and in the said conspiracy, he got the name of his wife entered in the voter list. Besides the aforesaid allegation against the present petitioner, other allegations have been levelled against co-accused. After lodging the F.I.R., the case was investigated and chargesheet was submitted. Thereafter, the learned Chief Judicial Magistrate by its order dated 10.08.2007 took cognizance of the offence, as indicated above, which has been assailed in the present petition.

4. Sri D.N.Tiwary, learned counsel for the petitioner submits that the Officer Incharge has maliciously without any reason included the name of the petitioner as one of the conspirators in the F.I.R, whereas during investigation save and except a bald allegation made in the F.I.R., nothing has come to support the allegation showing involvement of the petitioner in respect of commission of offence of conspiracy. The police submitted chargesheet. Thereafter, the learned Chief Judicial Magistrate in a mechanical manner without examining the case diary has passed order of cognizance. He further submits that on perusal of the F.I.R. itself, it is evident that whatever allegation, though denied, has been levelled, was pertaining to discharge of his official duty, even without prosecution sanction under Section 197 Cr.P.C., chargesheet was submitted and the learned Magistrate ignoring the fact that on record there was no prosecution sanction passed order of cognizance. It was submitted that neither there is any material in the case diary nor technically order of cognizance is sustainable and, as such, order of cognizance is liable to be set aside. It has been emphasized that the petitioner was Class-II Officer, who was removable by the State and in absence of prosecution sanction, order of cognizance is liable to be set aside.

5. Dr. Mayanand Jha, learned Addl. Public Prosecutor after examining the case diary has fairly submitted that though in the F.I.R., allegation was made regarding conspiracy with co-accused in respect of entering the name of wife of co-accused in the voter list, in the case diary, there is nothing to corroborate the allegation.

6. Besides hearing learned counsel for the parties, I have also perused the materials available on record. Of course, in the F.I.R. the petitioner was shown as one of the conspirators for entering the name of wife of the co-accused in the voter list, who is also an accused in the F.I.R., there is no cogent material on record to show involvement of the petitioner. On the submission made by Sri D.N.Tiwary, learned counsel for the petitioner, the Court is of the opinion even if the allegation is treated as true, the allegation relates to discharge of official duty and, as such, before passing order of cognizance, the learned court below was required to examine as to whether prosecution sanction by the competent authority was available or not. Moreover, learned Addl. Public Prosecutor has made submission that save and except in the F.I.R. and re-statement , there is no other material.

7. Keeping in view the facts and circumstances and the materials available on record, the order impugned i.e. order dated 10th August, 2007 passed in Manihari P.S. Case No.18 of 2006 in respect of the petitioner is hereby set aside and the petition stands allowed.

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