

Ajay Kumar Roy Vs. the State of Bihar

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Court : Patna

Decided On : Apr-10-2014

Judge : Rakesh Kumar

Appeal No. : Criminal Miscellaneous No. 30411 of 2001

Appellant : Ajay Kumar Roy

Respondent : The State of Bihar

Advocate for Pet/Ap. : Sri. Uday Bhanu Roy

Judgement :

Heard.

The present petition was filed under Section 482 of the Code of Criminal Procedure, 1973 (in short ‘Cr.P.C.’) with a prayer to quash an order dated 24-05-2000 passed by the learned Chief Judicial Magistrate, Araria (hereinafter referred to as ‘Magistrate’) in Case No. CC 19/1997. By the said order, learned Magistrate had taken cognizance of offence under Sections 211 and 182 of the Indian Penal Code (in short ‘IPC’) and summoned the petitioner. Further, the petitioner has also prayed for quashing of order dated 24th May, 2001 passed by the learned 6th Additional Sessions Judge, Purnia (hereinafter referred to as ‘Addl. Sessions Judge’), whereby, Cr. Revision No. 349 of 2000/Tr. No. 32 of 2000 was rejected, which was preferred against the order of cognizance.

Short fact of the case is that initially, on the basis of written report filed by the petitioner, an F.I.R., vide Araria P.S. Case No. 244 of 1996, was registered for the offence under Sections 379 and 511 of the IPC. In the F.I.R., it was disclosed by the petitioner that from the pond of the petitioner, stealthily fishing was done and lock of the house of the petitioner was tampered. In the F.I.R., the petitioner had not disclosed name of any of the persons. Accordingly, F.I.R. was lodged against unknown. After investigation, police found the case as false and as such, while submitting final report, police filed a prosecution report dated 28-07-1996, which was received in the court of learned Chief Judicial Magistrate on 22-01-1997. Thereafter, since it was a prosecution report submitted by the public servant, the learned Magistrate, on perusal of the prosecution report by order dated 24-05-2000, took cognizance of offence under Sections 182/211 of the IPC and directed for issuance of process.

Sri Uday Bhanu Roy, learned counsel for the petitioner has assailed the order on two grounds. Firstly, it was submitted that offence under Section 211 of the IPC is not at all made out, in view of the fact that the petitioner had not tried to implicate any person and F.I.R. was lodged against unknown. According to learned counsel for the petitioner, in absence of allegation of falsely implicating anyone, one may not be prosecuted under Section 211 of the IPC. He further submits that order of cognizance is also liable to be set aside simply on the ground that it was passed after expiry of period of limitation, as prescribed under Section 468 of the Cr.P.C. He submits that only accusation, which is disputed, is in relation to an offence under Section 182 of the IPC, for which, maximum sentence of imprisonment prescribed is six months. Accordingly, for such offence, order of cognizance was to be passed within a period of one year from the date of occurrence, whereas, in the present case, prosecution report was prepared on 28-07-1996, whereas order of cognizance was passed on 24-05-2000. Learned counsel for the petitioner further submits that though, order of cognizance was liable to be set aside, the learned Addl. Sessions Judge, without appreciating the provision, has rejected the revision preferred by the petition in a mechanical manner. Accordingly, it has been prayed to set aside both the orders i.e. order of cognizance as well as order of revisional court.

Sri Parmeshwar Mehta, learned Addl. Public Prosecutor has vehemently opposed the prayer of the petitioner.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. Fact remains that F.I.R. was lodged against unknown. Meaning thereby that at the time of lodging information before the police, it was apparent that there was no intention on the part of the petitioner to falsely implicate anyone. Accordingly, F.I.R. was lodged against unknown. Since, there was no allegation of falsely implicating anyone, the Court is of the opinion that the learned Magistrate was not justified in taking cognizance in respect of offence under Section 211 of the IPC. At this juncture, it would be appropriate to quote section 211 of the IPC, which is quoted here-in-below:-

œ211. False charge of offence made with intent to injure. “ Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

and if such criminal proceeding be instituted on a false charge of an offence punishable with death, [imprisonment for life], or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.?

On perusal of the aforesaid provisions, it is evident that one can be prosecuted for offence under Section 211 of the IPC if there is material to show that anyone was tried to be falsely implicated. F.I.R. shows that it was lodged against unknown. Accordingly, the order of cognizance in respect of offence under Section 211 of the IPC is not sustainable. So far as cognizance order in respect of offence under Section 182 of the IPC is concerned, it is evident that it was passed after more than three years from the date of receipt of the prosecution report in the court of learned Chief Judicial Magistrate. Panel provision i.e. under Section 182 provides maximum imprisonment for six months. Meaning thereby that for such offence,

order of cognizance was required to be passed within a period of one year, as prescribed under Section 468 (2) (b) of the Cr.P.C. Moreover, from the order impugned, it is clear that the learned Magistrate, while passing the order of cognizance, had not recorded anything regarding delay in passing the order of cognizance or condoning the delay. In that view of the matter, the order of cognizance was statutorily barred under Section 468 of the Cr.P.C. Since the order of cognizance i.e. order dated 24-05-2000 passed by learned Chief Judicial Magistrate, Araria in Case No. CC 19/1997 itself was not in consonance with law, same is hereby set aside. Consequently, the order of revisional court is also set aside.

The petition stands allowed.

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