

Mohd. Sami Vs. State of Bihar

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Court : Patna

Decided On : May-09-1995

Judge : P.K. Deb, J.

Appeal No. : Crl. Misc. No. 797 of 1988 (R)

Appellant : Mohd. Sami

Respondent : State of Bihar

Prior history : P.K. Deb, J. 1. The order dated 9.9.1987 passed by Shri A.K. Sinha, Sub-Divisional Judicial Magistrate, Chatra in Chatra P.S. Case No. 59 of 1987 corresponding to G.R, Case No. 237/87 has been sought for quashing under Section 482 Cr.P.C. 2. By the impugned order, the report submitted by the police has been accepted and on the basis of the recommendations made by the Investigating Agency, cognizance has been taken by the Magistrate concerned to prosecute the petitioner under Section 182/211 IP

Judgement :

P.K. Deb, J.

1. The order dated 9.9.1987 passed by Shri A.K. Sinha, Sub-Divisional Judicial Magistrate, Chatra in Chatra P.S. Case No. 59 of 1987 corresponding to G.R, Case No. 237/87 has been sought for quashing under Section 482 Cr.P.C.

2. By the impugned order, the report submitted by the police has been accepted and on the basis of the recommendations made by the Investigating Agency, cognizance has been taken by the Magistrate concerned to prosecute the petitioner under Section 182/211 IPC in non F.I.R. No. 3/87 and notices were issued to the petitioner to stand trial for the same.

3. The facts are very simple. In the month of May, 1987 the petitioner was working as Range Officer in Chatra Division of the Forest Department and in course of his duty, he came to know at about 1.00 A.M. in the night between 28th and 29th May, 1987 from an employee of the Forest Department that some unknown persons had set fire to the Kendu leaves assembled there in the jungle and in that connection he went there to enquire about the same and he came to know that 15 unknown persons had set fire. On the basis of that information, an F.I.R. was lodged by the petitioner to police on 29.5.1987, and a case was registered against unknown persons under Section 147/435 IPC. After completion of investigation, police submitted a final report on 1.8.1987 under Section 173 of the Code of Criminal Procedure stating that the case in question was a false one and recommendation was made in the report itself that the informant i.e. the petitioner may be prosecuted under Section 182/211 IPC. ON receipt of such report under ' Section 173 Cr.P.C., the Magistrate concerned, by the impugned order then and there accepted the same and also took cognizance of offence under Section 182/211 IPC against the petitioner on the recommendation of the police personnel (Investigating Agency) and issued notices to the petitioner to stand trial.

4. It is known an established principles of law that a charge sheet filed under Section 173 Cr.P.C. in the final form, cannot be accepted by the Magistrate concerned without giving notice to the informant. The informant has got the right of being heard before the Magistrate decided not to take cognizance of the offence alleged by him or to drop the proceedings. The principle has been enunciated by the Apex Court as reported in A.I.R. 1988 S.C. 1285.

5. Under Section 195(1a)(i) and 195(1b)(i), the courts are debarred from taking cognizance of the offences mentioned therein, if the complaint is not filed by the court where such offences have been committed. The offence under Section 182

comes under Section 195(1b)(i) and offence under Section 211 comes under Section 195(1b)(i). The procedure is that when such offences are committed in a proceeding pending before the court and when the same has been noticed by the court or it has been brought into notice of the Court by the adverse party, then the court should proceed with an enquiry under Section 340 Cr.P.C. and then if a prima facie case is found the court should file a complaint.

6. Here the whole procedure adopted by the learned Magistrate is not only erroneous but without jurisdiction. In normal cases, after setting aside such orders being passed without jurisdiction, the matters are being sent back to the court below for proceeding according to the law. But, here it is found that the petty offences were reported in the year 1987 that too against unknown persons and by this time, long 8 years have been passed, and in such circumstances I do not find it fit to send the matter back to the court below for proceeding afresh; according to the law. Simply, the impugned order dated 9.9.1987 is hereby quashed.

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