

Naraln Sah @ Naraln Prasad Sah and anr. Vs. State of Bihar and anr.

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Court : Patna

Decided On : Jan-29-2008

Judge : Rekha Kumari, J.

Appellant : Naraln Sah @ Naraln Prasad Sah and anr.

Respondent : State of Bihar and anr.

Disposition : Application dismissed

Prior history : Rekha Kumari, J. 1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 8.3.2006 passed by the learned Additional Sessions Judge-cum-Fast Track Court No. III, Begusarai in Criminal Revision No. 456 of 2003 whereby he has set aside the order dated 18.7.2003 of Sri S.P. Shukla, J.M. 2nd Class, Begusarai in Complaint Case No. 255-C of 2003 dismissing the complaint filed by Opposite Party No. 2 Birendra Prasad Sah under Section 203 of

Judgement :

Rekha Kumari, J.

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 8.3.2006 passed by the learned Additional Sessions Judge-cum-Fast Track Court No. III, Begusarai in Criminal Revision No. 456 of 2003 whereby he has set aside the order dated 18.7.2003 of Sri S.P.

Shukla, J.M. 2nd Class, Begusarai in Complaint Case No. 255-C of 2003 dismissing the complaint filed by Opposite Party No. 2 Birendra Prasad Sah under Section 203 of the Code of Criminal Procedure, 1973.

Heard both sides.

2. It appears that Opposite Party No. 2 had filed a complaint against the petitioners stating therein that they had filed an informatory petition before the Chief Judicial Magistrate, Begusarai which contained defamatory statements and had been filed only with a view to defame him and other members of his family. It is also alleged that when he came to know of it and talked about it before the others, the petitioners came to his house and abused and threatened him. The complainant prayed in the complaint petition for taking action against the petitioners under Sections 500, 504 and 506 of the Indian Penal Code.

3. It further appears that the complainant was examined on solemn affirmation. He also examined some witnesses in enquiry under Section 202 Cr.P.C. The learned Magistrate after considering the statements of the complainant and the witnesses, by his order dated 18.7.2003 held that no offence is made out against the petitioners on the allegations made. He accordingly dismissed the complaint under Section 203 of the Code. The complainant filed revision application. The learned Additional Sessions Judge after hearing the parties held that though the learned Magistrate was required to consider only as to whether... there was a prima facie case against the petitioners, he has acted just like a trial court in coming to his conclusions. He accordingly by the impugned order set aside the order of the learned Magistrate and remanded the case for further enquiry and pass fresh orders in accordance with law.

4. It is well settled that at the time of taking cognizance and issuing processes, the Magistrate is required only to see whether the complaint petition discloses an offence and there is prima facie evidence to proceed against the accused.

5. At this stage he cannot meticulously weigh the evidence. The standard of ascertaining sufficient ground for proceeding against the accused is lower than one at the stage of framing charge in a warrant case triable by a Magistrate. The

test is not whether there will be conviction but whether a prima facie case is made out.

6. In this case from the order of the learned Magistrate it appears that in coming to the conclusion he has delved deep into the evidence and other materials and has thus over stepped his limit. The impugned order of the learned Additional Sessions Judge, hence, does not call for any interference by this Court.

This application is thus dismissed.

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