

Balbindar Singh Vs. State of Bihar and ors.

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Court : Patna

Decided On : Apr-27-1994

Judge : Nagendra Rai, J.

Appeal No. : Criminal Misc. No. 974 of 1994

Appellant : Balbindar Singh

Respondent : State of Bihar and ors.

Disposition : Application Dismissed

Prior history : Nagendra Rai, J. 1. The petitioner has filed the present application for quashing his prosecution for the offence under Sections 426, 323, 324, 341 and 326 of the Indian Penal Code. 2. Opposite party No. 2 Bhagwant Singh @ Bhagwati Singh, resident of Gurdawara Road, P.S. Shikarpur, Distt. West Champaran, lodged a written report before Shikarpur police Station on 18.6.1993 at 8.45 P.M. alleging that while his servant Shiv Prasad was returning back to Narkatiaganj on a Motor Cycle at about 8 P.M

Judgement :

Nagendra Rai, J.

1. The petitioner has filed the present application for quashing his prosecution for the offence under Sections 426, 323, 324, 341 and 326 of the Indian Penal Code.

2. Opposite party No. 2 Bhagwant Singh @ Bhagwati Singh, resident of Gurdawara Road, P.S. Shikarpur, Distt. West Champaran, lodged a written report before Shikarpur police Station on 18.6.1993 at 8.45 P.M. alleging that while his servant Shiv Prasad was returning back to Narkatiaganj on a Motor Cycle at about 8 P.M. the petitioner Balbindar Singh and his associates stopped the Motor Cycle and assaulted Shiv Prasad with lathi and Chhura. Anyhow, Shiv Prasad managed to save himself and informed about the incident to the informant.

3. That motive for the occurrence was that a proceeding Under Section 107 Cr.P.C. was going on between the informant and the petitioner Balbindar Singh. The police after Investigation submitted final form on 30.8.1993. The people also submitted on 18.6.1993 a prosecution report for prosecution of the information (Opp. Party No.2) for the offence under Section 182 and 211 of the Indian Penal Code. Before receipt of the final form, Opposite Party No.2 filed a protest cum-complaint petition on 29.6.1993 (Annexure-4). On 5.11.1993 the Chief Judicial Magistrate, Bettiah, accepted the final form and discharged the accused persons. He stayed the prosecution of Opp. Party No.2, the informant, for the offence under Sections 182 and 211 of the Indian Penal Code on the ground that he has already filed a protest petition and till the disposal of the protest-cum-complaint petition, prosecution for the aforesaid offence has to be stayed. By the same order he directed the complainant-Opp. Party No.2 to appear on 1.12.1993 for his statement on solemn affirmation.

4. On 3.1.1994 two petitions were filed by the petitioner Dalbindar Singh, one for vacating the order of stay by which the prosecution of Opp. party No.2 under Sections 182 and 211 I.P.C. was stayed and the other to reject the protest petition on the ground that once the final report has been accepted, taking of cognizance on the basis of the protest-cum-complaint petition would amount to sit over the earlier-judicial order. Both the prayer were rejected by the Chief Judicial Magistrate and he transferred the case to Shri R.N. Prasad, Judicial Magistrate, 1st. Class, Bettiah, by order dated 3.1.1994 and further directed the complainant to appear for his examination on solemn affirmation. The complainant was examined on solemn affirmation and he also produced these witnesses during enquiry under Section 202 of the Code of Criminal Procedure and thereafter, by

order dated 6.1.1994 the transferee Magistrate, having found prima facie case, ordered for issuance of process against the petitioner for the aforesaid offences. In this case, Opposite Party No.2, who is complainant, and Opposite party No. 3 Shiv Kumar Gupta who is the injured, have appeared through their advocates. The parties were heard and this application is disposed of at this stage with their consent.

5. learned Counsel for the petitioner raised two points. Firstly, he submitted that the injured himself has filed a petition before the court below stating that no occurrence, as alleged by the complainant, has taken place and he received injury due to accident. Secondly, he contended that in this case without taking cognizance the matter has been transferred to the transferee court under Section 192(1) Cr.P.C, which is not permissible in law.

6. So far as first point is concerned, the complainant and there witnesses have supported the allegation against the petitioner and the other accused persons. The injured has also made a statement under Section 164 Cr.P.C. and from the counter-affidavit it appears that he has also filed a petition stating that the occurrence, as alleged by the complainant, has taken place. According to the petitioner, the aforesaid injured witness has also alleged to have filed certain petition denying the occurrence. At this sage this Court has only to see as to whether a prima facie case is made out or not for summoning the accused. The lower court after going through the record found that and prima facie case is made out. In my vies, only on the basis of certain petitions, alleged to have been filed by Opposite party No.3, denying the occurrence, the prosecution of the petitioner cannot be quashed, EN this case, whether, as a matter of fact, the petitions were filed voluntarily, as alleged by the accused, or the same were filed due to threat given by the accused persons, are the questions that have to be considered at the stage of trial. this Court, in exercise of inherent power, cannot reappraise the contents of the petitioner and give finding on the said point, which requires evidence. Coming to the second point, the question is to whether in this case the cognizance has been taken or not before transferring the case by the Chief Judicial Magistrate under Section 192(1) Cr.P.C. Now, it is well settled that formal action is necessary in order to take cognizance. The cognizance is taken of the

offence as soon as the court applies its mind to the offence with the intention to initiate a judicial proceeding against the offenders in respect of the offence. In a complaint case when the court applies its mind to the complaint petition for the purpose of proceeding under Chapter XV of the Code of Criminal Procedure, then it is treated to have taken cognizance of the offence on complaint. Taking the cognizance is purely a mental act and as to whether the cognizance has been taken in a particular case or not, it depends on the facts and circumstances of each case. In the present case from the order dated 5.11.1993 it is clear that the court has directed the complainant to appear for his statement on solemn affirmation. Section 200 Cr.P.C. provides, inter alia, that a Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any. In this case, as the court has ordered the complainant to be present for his examination on solemn affirmation; the Magistrate has taken cognizance of the offence prior to issuing the aforesaid direction. The subsequent order, by which he has transferred the case by his order dated 3.1.1994 is valid in law, as the Magistrate has taken cognizance and after taking cognizance he can transfer the case under Section 192(1) Cr.P.C. to another Magistrate for inquiry and trial. The Chief Judicial Magistrate himself has not examined the complainant on solemn affirmation and in that view of the matter the transferee court was competent to examine the complainant on solemn affirmation in view of the proviso to Section 200 Cr.P.C. Thus, in view of this case, the Chief Judicial Magistrate has taken cognizance before transferring the case 'under Section 192 Cr.P.C. and, accordingly, the submission advanced on behalf of the petitioner is without any force.

7. In the result, there is no merit in this application and the same is dismissed.