

Kailash Rai, Vs. the State of Bihar and Sanjay Ram Son of Late Kailash Ram

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Court : Patna

Decided On : Jul-17-2009

Reported in : 2009(57)BLJR2999

Judge : Abhijit Sinha, J.

Acts : Indian Penal Code (IPC) - Sections 323, 379, 427, 448 and 504;
;Scheduled Casts and The Scheduled Tribes (Prevention of Atrocities) Act -
Section 3 and 3(1); ;Code of Criminal Procedure (CrPC) - Section 468 and 468(2)

Appeal No. : Cr. Misc. No. 24141 of 2005

Appellant : Kailash Rai, ;bimlesh Rai, ;mukul Rai and Awadhesh Rai, All Sons of
Ram Pati Rai

Respondent : The State of Bihar and Sanjay Ram Son of Late Kailash Ram

Advocate for Def. : Jharkhandi Upadhaya, A.P.P.

Advocate for Pet/Ap. : Sujit Kumar Singh, Adv.

Disposition : Application dismissed

Judgement :

ORDER

Abhijit Sinha, J.

1. The four petitioners who have been impleaded as accused in Harijan P.S. Case No. 38 of 1996, Tr. No. 88 of 2005, have prayed for quashing of order dated 9.5.2005 passed therein by the Learned Special Judge (under the S.C./S.T. Act) Samastipur, whereby he has rejected the petition of the petitioners for dropping the proceedings and/or discharging them.

2. The prosecution case is based on the written report dated 26.4.1996 submitted by one Kailash Ram, impleaded herein as opposite party No. 2, who subsequently on his death was substituted by his son Sanjay Ram vide order dated 3.7.2007 of this Court. According to the informant, he has been living at Samastipur with his family for the last 40 years and runs a toddy shop as the only means of his livelihood. It is said that his house is situated at the back of the toddy shop over lands belonging to Rampati Rai and Tirupati Rai. It is alleged that the family members of Rampati Rai and Tirupati Rai were threatening him to vacate the house as he had filed a petition before the Survey Officer to record his name over the said lands. It is further alleged that in the morning of 26.4.1996 at about 9 A.M. the F.I.R. named accused came to his shop and smashed the earthen pots (Lavani) containing toddy, glasses and also abused him. It is also alleged that accused Mukul Rai took away a box containing ornaments of his wife.

3. On the basis of the said written report, the police case under Sections 448, 504, 379 and 427 I.P.C. and Section 3(1)(x) of the S.C./S.T. Act (Prevention of Atrocities) Act (hereinafter referred to as the S.C./S.T. Act) was registered against the four F.I.R. named accused. It appears that the police after due investigation submitted a charge sheet under Sections 448, 323, 504/427 I.P.C. as also Section 3(1)(x) of the S.C./S.T. Act and cognizance thereunder was taken by the learned C.J.M., Samastipur by order dated 4.7.2003 after a lapse of almost seven years.

4. Assailing the impugned order, it has been submitted by the learned Counsel for the petitioners that the maximum punishment under Section 3(1)(x) of the S.C./S.T. Act is three years and the punishment under Sections of the Penal Code whereunder cognizance has been taken is less than three years with or without fine, and as such, the very taking of the cognizance was barred under Section 468 Cr.P.C. since cognizance was taken much beyond the period of limitation

prescribed under the provisions of Section 468 Cr. P. C. and in these circumstances it was obligatory on the part of the learned Special Judge to have discharged the petitioners and/or dropped the case. It was also submitted that if the cognizance of the offence taken is barred by limitation, then the continuation of the proceeding against the accused persons is an abuse of the process of the court and the accused were not barred from raising the question of limitation after they entered appearance or even during trial before the trial court. It was also submitted that if the period of limitation has expired, the court is required to see whether there are sufficient grounds for condonation of delay or for extension of the period of limitation. But no petition at all had been filed by the prosecution to condone the delay or for extension of the period of limitation nor did the charge sheet explain the delay or grounds for extension of the period of limitation and the court could not take cognizance and thereafter determine the question of limitation.

5. Clause (c) of Sub-section (2) of Section 468 Cr.P.C. reads as follows:

Three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

6. Under Section 3 S.C./S.T. Act punishment for offences of atrocities enshrining Clauses (i) to (xv) of Sub-section (1) provides imprisonment for a term which shall not be less than six months but which may extend to five years and with fine. Therefore, it would be apparent that if the maximum imprisonment exceeds three years, there is no limitation period and the provisions of Section 468 Cr.P.C. would not be applicable.

7. It is not the case of the petitioners that the charge sheet was submitted beyond the period of limitation nor is there indication as to when the charge sheet was submitted. The law on this issue is well settled inasmuch that when the charge sheet is submitted within the period of limitation, the fact that cognizance was taken by Magistrate beyond the period of limitation does not invalidate the trial.

8. Having given my anxious consideration to the issues raised, I am of the opinion that for the reasons recorded in the foregoing paragraphs, I find no merit in this

application, which is accordingly dismissed.

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