

Surendra Kumar SinhA. Vs. the State of Bihar, and ors.

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Court : Patna

Decided On : Jun-24-2010

Judge : Rakesh Kumar, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 482, 156(3), 164, 216, 313;
Indian Penal Code (IPC) - Sections 368, 420, 385,364, 385, 363, 386

Appeal No. : Criminal Miscellaneous No.33349 OF 1999

Appellant : Surendra Kumar SinhA.

Respondent : The State of Bihar, and ors.

Advocate for Def. : Smt. Indu Bala Pandey, Adv.

Advocate for Pet/Ap. : S/Sri Sanjay Kumar Ghosarvey; Devendra Prasad; Raj Kishore Pandit, Advs.

Judgement :

1. Rakesh Kumar, J. The sole petitioner, while invoking inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, has prayed for quashing of the order dated 10.9.1999 passed in Cr.Rev.No.115 of 1998 by the learned Addl.Sessions Judge VII, Patna in Bihta P.S. Case No. 48 of 1993(G.R.No.346 of 1993). By the impugned order, the learned Addl.Sessions Judge VII, while allowing Cr.Revision No.115 of 1998 has set aside the order dated 12.2.1998 passed by the learned Magistrate in Bihta P.S. Case No.48 of 1993. By the order dated 12.2.1998, the learned Magistrate had allowed the petition filed on

behalf of the petitioner, who was the Complainant/informant in Bihta P.S. Case No.48 of 1993. The said petition was filed for adding further charge for offences under Section 368, 420 and 385 in addition to the charges, which was already framed under Sections 365 and 384 of the Indian Penal Code.

2. Short fact of the case is that the petitioner initially filed a complaint case in the Court of the learned Addl. Chief Judicial Magistrate, Danapur alleging therein that on 4.12.1992, Opp.Party nos. 3 and 4, i.e. accused Ram Nath Verma and Arun Kumar respectively called the father-in-law of the complainant/ informant from his house and took him away on the pretext that another accused, namely, Nand Kumar Prasad (Opp.Party no.2), who was brother of Opp.Party no.3, had called him for his treatment at Patna and thereafter, the informant did not receive any communication. He tried to search his father-in-law, but he could not be traced out and thereafter an information (Sanha) regarding the said fact was given to the Bihta Police on 21.1.1993. Subsequently, the informant came to know that accused Ram Nath Verma and Nand Kumar Prasad had fraudulently got the land of his father-in-law transferred in their favour, whereas the father-in-law of the informant had already executed a Will of his entire land in favour of the informant. It was alleged that the father-in-law of the informant was threatened by the accused persons. The said complaint petition was referred to the police for its registration and investigation under Section 156(3) of the Code of Criminal Procedure and, accordingly, a case vide Bihta P.S. Case No.48 of 1993 was registered on 18.3.1993 against five accused persons (Opp.Parties) for the offences under Sections 363,365,368,368,420, 385 and 386 of the Indian Penal Code. During the initial period of investigation, the police could not trace the father-in-law (Kuldip Mahto) of the informant. However, subsequently, the father-in-law of the informant appeared before the Police on 21.5.1993 and on the basis of requisition filed by the police, statement of Kuldip Mahto (father-in-law of the informant) under Section 164 of the Code of Criminal Procedure was recorded by Sri A.K. Jaiswal, learned Magistrate. In his statement, the father-in-law of the informant disclosed that accused persons, which includes his nephew, took his L.T.I. forcibly and got the entire land executed in their names. However, after investigating the case, the police submitted chargesheet against five accused persons, i.e.Opp.Party no.2 to 6 for the offences under Sections 368,365, 420, 385

and 386 of the Indian Penal Code and accordingly under the same offence the learned Magistrate took cognizance on 2.12.1993.

3. In this case, though cognizance was taken under Sections 368,365,420 and 385 and 386 of the Indian Penal Code, charges were framed only under Sections 365 and 384 of the Indian Penal Code. However, as stated by the learned counsel for the petitioner, on 16.8.1994 a petition was filed on behalf of the prosecution for altering the charge, which was kept on record on the ground that the same will be considered when fresh material is brought on record. It was further argued that on 26.11.1996 a petition was filed by the petitioner (the informant) with a prayer to add Sections 363,365,368,420,385 and 386 of the Indian Penal Code. However, the learned Magistrate ordered that decision on the said petition shall be taken after closure of the evidence and at the time of argument. It has further been submitted on behalf of the petitioner that on 2.8.1997 again the petitioner (informant) filed a petition to frame charges under Sections 420,368, 365 and 386 of the Indian Penal Code in addition to the charges for the offences under Sections 365 and 384 of the Indian Penal Code, which was framed earlier.

4. The accused persons, aggrieved with the order dated 12.2.1998 filed a revision vide Cr.Rev.No.115 of 1998, before the Court of learned Addl.Sessions Judge VII and the learned Addl. Sessions Judge vide its order dated 10.9.1999 allowed the petition filed by the accused persons .The learned Addl.Sessions Judge VII set aside the order dated 12.2.1998 passed by the learned Magistrate and remitted back the case to the court below to proceed in accordance with law.

5. Aggrieved with the said order, the petitioner, who was the complainant/informant, has approached this Court by filing the present petition, which was filed on 23.12.1999 after lapse of more than one year from the date of impugned order. At the time of the filing of the present petition, though the accused persons were necessary party, they were not initially impleaded as Opp.Parties. However, a petition was filed on behalf of Nand Kumar Prasad, who was made accused in the case, for being impleaded as Opp.Party no.2 in the case and by order dated 22.9.2000, this Court directed the petitioner to implead all the accused as party and only thereafter the accused persons were impleaded as

Opp.Party nos. 2 to 6 and this Court directed for issuance of notice to Opp.Party nos.2 to 6 and this Court directed that further proceeding of G.R. Case No.346 of 1993 so pending in the Court of Judicial Magistrate, 1st Class, Danapur shall remain in abeyance till further orders and this case was admitted for hearing. The order of stay is still continuing.

6. Learned counsel for the petitioner, while challenging the revisional order, submits that the learned Addl.Sessions Judge has not appreciated the provision, contained in Section 216 of the Code of Criminal Procedure in its right perspective. Learned counsel for the petitioner has argued that in view of Section 216 of the Code of Criminal Procedure, the trial court is always entitled to amend or alter charge at any stage till the signing of the Judgment. It was argued that F.I.R. was registered for the offences under Sections 363,365,368, 420,385 and 386 of the Indian Penal Code and after investigation, chargesheet was submitted for the same offences and the learned Magistrate had also taken cognizance of the same offences. However, due to inadvertence at the stage of charge, it was framed only under Sections 365 and 384 of the Indian Penal Code. Immediately after noticing the defect, the prosecution had filed a petition for amending the charge and the learned Magistrate had kept the petition on record by its order dated 16.8.1994 and the prosecution was directed to bring witnesses on the next date. He further submits that at subsequent stage i.e. on 26.11.1996 the petitioner, who was the informant of the case, had also filed a petition for amending the charge , which was also kept on record and subsequently when the case reached at the stage of argument, a petition was filed on 2.8.1997 by this petition for adding the charge and the learned Magistrate after examining the evidences , which were already brought on record, had passed the order for adding the charges for the offences under Sections 468, 420 and 385 in addition to Sections 365 and 384 of the Indian Penal Code and the learned Magistrate directed the accused persons to remain present for framing of the amending charges.

7. While submitting that the learned Magistrate had committed no error in directing the accused persons to remain present for framing of charge of additional offences, learned counsel for the petitioner has relied upon a Judgment of this Court reported in 2007 (4) PLJT 636; Ram Briksh Singh v. State of Bihar & Ors.,

which says that charges can be framed at any stage before the delivery of Judgment. Similarly, the learned counsel for the petitioner has relied upon a Judgment of Hon'ble Supreme Court reported in 2004(2) PLJR(SC) 20 ; State of Maharashtra v. Salman Salim Khan . In sum and substance, the learned counsel for the petitioner has argued that it was only and only the Magistrate, who was trying the case, competent to add charges on the basis of material/ evidence available on record. Learned counsel for the petitioner has further submitted that the learned Magistrate, while allowing the petition of the petitioner (informant) has deeply examined the evidences brought on record and, thereafter, he has rightly passed the impugned order. There was no scope for the learned Addl.Sessions Judge to interfere with the order of the learned Magistrate and the learned Addl.Sessions Judge exceeding its jurisdiction has set aside the order dated 12.2.1998 passed by the learned Magistrate. Accordingly, he has prayed that the order of learned Addl.Sessions Judge be set aside.

8. In this case, at the time of hearing, none has come forward on behalf of Opp.Party nos. 2 to 6. However, Smt. Indu Bala Pandely, learned Addl.Public Prosecutor has appeared on behalf of the State. In this case, though at the time of hearing none has appeared on behalf of Opp.Party nos. 2 to 6, but from the record it is evident that a detailed counter affidavit was filed on behalf of Opp.Party nos.2 to 6 on 30.11.2000. It was the stand taken by Opp.Party nos. 2 to 6 in its counter affidavit that only with a view to unnecessary harass the Opp.Parties , the present petition was filed and the impugned order was legally and rightly passed by the learned Addl.Sessions Judge. It has been contended in the counter affidavit that the entire story of F.I.R. was concocted and a conspiracy was hatched by the son-in-law of the so called victim Kuldip Mahto, who is the petitioner before this Court and the informant of the case, to harass and defame the Opp.Parties. The Opp.Parties have also questioned the locus of the petitioner. In paragraph 7 of the counter affidavit, it has been stated that though it was a case of kidnapping, no application was filed before the learned Addl.Chief Judicial Magistrate for issuance of search warrant either by the Investigating Officer or by the informant. After taking bail in the said case, a petition to this effect was filed on behalf of the accused persons on 7.4.1993, which was forwarded by the trial court to the Investigating Officer through the Superintendent of Police,Patna, but even after it

no action was taken by the Investigating Officer in this regard. It has further been stated in the counter affidavit that the case is of civil nature, which is based on two registered sale deeds ,executed in favour of Nand Kumar Prasad and Ram Nath Verma, i.e. Opp.Party nos. 2 and 3 by victim Kuldip Manto (father-in-law of the informant) on 7.12.1992 and 20.1.1993 respectively , which have been declared valid in the eye of law by the competent Civil Court by passing an order dated 7.12.1998 passed in T.S. No.105 of 1993, which was filed by the victim Kuldip Mahto . It has been stated that Title Suit No.105 of 1993 was dismissed with cost.

9. Besides hearing learned counsel for the parties, I have also examined the materials available on record. In this case, from the F.I.R. i.e. Annexure-1 to the present petition, it is evident that the F.I.R. was lodged as per order of the Court on a complaint petition, which was filed by the petitioner. Perusal of the F.I.R. makes it clear that accused Ram Nath Verma was nephew and accused Arun Kumar was grand-son of the victim Kuldip Mahto . It further appears that the accused persons got sale deed executed on 20.1.1993. In the F.I.R, allegation of kidnapping was also made. In this case, charges were framed for the offences under Sections 365 and 384 of the Indian Penal Code and thereafter on behalf of the prosecution, immediately a petition was filed, but no order was passed on the petition and the petition was kept on record. From the record, it is evident that subsequently on 26.11.1996 while evidence was going on, a petition was filed by the petitioner, who was the informant of the case, for adding the charges. However, the learned Magistrate in its order dated 26.11.1996 observed that after closure of the evidence and at the time of argument, the said petition can be considered and again on 2.8.1997 a similar petition was filed by the petitioner (informant) and, thereafter, the learned Magistrate allowed the petition and directed to add charges under Sections 420, 468 and 385 of the Indian Penal Code in addition to charge under Sections 365 and 384 of the Indian Penal Code.

10. The order dated 12.2.1998 passed by the learned Magistrate was challenged by the accused persons by filing a revision vide Cr.Rev.No.115 of 1998. The learned 7th Addl.Sessions Judge keeping in view the fact that the petition of informant for adding the charges was entertained as well as the fact that the victim Kuldip Mahto, who had filed a suit, i.e. T.S.No.105 of 1993, challenging the validity

of the aforesaid registered sale deeds was dismissed, has set aside the order passed by the learned Magistrate for amending the charge.

11. So far as the power of a Court under Section 216 of the Code of Criminal Procedure is concerned, there is no dispute that at any stage before the delivery of the Judgment, the trial court can amend the charges, but this power is to be exercised, not as a matter of course but in special circumstances. There is no dispute in respect of case laws, which have been cited by the learned counsel for the petitioner, but at the same time in peculiar facts and circumstances of the present case, this Court is of the opinion that the amendment of charge by the learned Magistrate on the petition filed by the petitioner, who was informant of the case, was not warranted. The alleged occurrence had taken place in the month of January, 1993 and in the case, as it appears from the records, altogether eight witnesses were examined on behalf of the prosecution and two witnesses were examined as Court witnesses and thereafter statements of accused persons were already recorded under Sections 313 of the Code of Criminal Procedure and the case was fixed for final argument. At this stage, successive petition was filed by the petitioner, who was none else, but the informant of the case, for adding the charges. From the record, it is not clear as to whether the petitioner had ever requested the Conducting Public Prosecutor to move the petition. Of course, on the ground of locus of the informant, the said petition was not required to be rejected, but at the same time, the learned Magistrate was required to examine as to whether the said petition was purposely filed with a view to delay the conclusion of trial or not and only thereafter the learned Magistrate was required to pass appropriate order. However, in the case without endeavouring to examine on such point in a mechanical manner, the learned Magistrate has passed the order directing the accused persons to remain present for framing of additional charge, which certainly amounts to further delay the conclusion of the trial. Time without number, it has been held that right of speedy trial is an important and integral right of an accused person. In the present case, the impugned order was passed by the learned Sessions Judge on 10.9.1999 and the petitioner, who was the informant, waited for about one year to question the said order and, thereafter for the first time, he filed the present petition on 23.11.1999, i.e. after more than one year from the impugned order. Again while filing this petition to the reasons best known to

the petitioner, he did not implead accused persons as Opp.Parties . Subsequently, one of the accused, namely, Nand Kumar Prasad approached this Court for being impleaded as Opp.Parties and only thereafter by order dated 22.9.2000, this Court directed the learned counsel for the petitioner to implead the accused persons as Opp.Parties and thereafter, they were impleaded as Opp.Party nos.2 to 6 and this case was admitted on 22.9.2000 and while admitting, the order of stay of further proceeding was passed and proceeding remained pending for almost about 10 years and thereafter the case was taken up for final hearing. Keeping in view the fact that the alleged occurrence had taken place in the month of January, 1993 in the year 2010 it would not be appropriate to approve the order dated 12.2.1998, whereby the learned Magistrate had directed to frame additional charges against accused persons, i.e. Opp.Party nos. 2 to 6.

12. Without recording any finding on the merit of the case, keeping in view the fact that the matter has remained pending for such a long time, it is appropriate not to interfere with the impugned order, i.e. the order dated 10.9.1999 passed by the learned 7th Addl.Sessions Judge,Patna . However, it would be necessary to direct the trial Court to finally conclude the case within a period of three months from the date of receipt of a copy of this order on the basis of charges, which were earlier framed under Sections 365 and 384 of the Indian Penal Code.

13. With the above observation and direction, the petition stands rejected.

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