

Pawan Kumar JhA. Vs. the State of Bihar.

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Court : Patna

Decided On : Jul-08-2010

Judge : Rakesh Kumar, J.

Acts : Code of Criminal Procedure (CrPC) - Section 482, 195, 197; Indian Penal Code (IPC) - sections 211 read with 34, 323, 342, 308, 379 read with 34; Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act - section 3(x)

Appeal No. : Criminal Miscellaneous No.11988 OF 2000

Appellant : Pawan Kumar JhA.

Respondent : The State of Bihar.

Advocate for Def. : Mr.Hirday Prasad Singh, Adv.

Advocate for Pet/Ap. : Mr. Bhavesh Kumar, Adv.

Judgement :

1. Rakesh Kumar,J. Three petitioners, while invoking inherent jurisdiction of this court under section 482 of the Code of Criminal Procedure, have prayed for quashing of an order dated 17.12.1999 passed by Sub. Divisional Judicial Magistrate, Dalsingsarai at Samastipur. By the said order the Sub. Divisional Judicial Magistrate has taken cognizance of the offences under sections 195, 197 and 211/34 of the Indian Penal Code and summoned the petitioners.

2. Short fact of the case is that a complaint vide Complaint Case No.33 of 1996 was filed by one Lakhan Sada in the court of Special Judge, Samastipur, alleging therein that the accused, namely, Bhagirath Jha, Gangadhar Jha and Pramod Jha had committed offence under sections 323, 342, 308, 379/34 of the Indian Penal Code and section 3(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act. The said complaint was referred to the police for its investigation and, accordingly, a first information report vide Samastipur P.S. Case No.52 of 1996 was registered and the police started investigation. However, during investigation the investigating officer collected materials to show that out of malice against Bhagirath Jha, Gangadhar Jha and Pramod Jha, who were made accused in Samastipur P.S. Case No.52 of 1996, the petitioners instigated Lakhan Sada for filing a complaint in the court of Special Judge, Samastipur. During investigation it was also found that the petitioners got prepared forged medical certificate in connivance with a doctor and, thereafter, a complaint petition was got filed. On the aforesaid materials the investigating officer vide Samastipur P.S. Case No.52 of 1996 submitted the prosecution report in the court of Sub. Divisional Judicial Magistrate, Dalsingsarai, Samastipur for prosecuting the three petitioners and one doctor for the offences under sections 195, 197 and 211/34 of the Indian Penal Code. On the basis of the report submitted by the police, the learned Sub. Divisional Judicial Magistrate by its order dated 17.12.1999 took cognizance of the offences as mentioned above and summoned the accused persons including the petitioners.

3. Aggrieved with the order of cognizance dated 17.12.1999; the petitioners approached this court by filing the present petition which was admitted on 30.3.2001. While admitting the case lower court records was also called for and it was directed that till further order is passed, further proceeding in G.O. No.169 of 1998/Tr. No.769 of 2000 pending in the court of Sub.Divisional Judicial Magistrate, Dalsingsarai at Samstipur shall remain stayed. The stay order is still operative.

4. Mr.Bhavesh Kumar, learned counsel appearing on behalf of the petitioners, while pressing the present petition, at the very outset has raised a pure question of law that learned Sub. Divisional Judicial Magistrate was not authorized to take cognizance of the offences as mentioned above since no offence was committed

in a proceeding before the Sub. Divisional Judicial Magistrate. Learned counsel in view of section 195 of the Code of Criminal Procedure has argued that without sanction or permission of the concerned court, the learned Sub. Divisional Judicial Magistrate was not authorized to take cognizance of the offence. He submits that even for the time being if it is assumed, that offence, as alleged, was committed by these petitioners that was committed in the complaint case which was filed before Special Judge, Samastipur. In the present case no permission or sanction or authorization was obtained from the court of Special Judge, Samastipur and in that view of the matter it was submitted that order of cognizance is liable to be quashed. Besides this, learned counsel for the petitioners has argued that the person, who had filed the complaint petition, was not made accused by the investigating officer. The investigating officer vide Samastipur P.S. Case No.52 of 1996 has filed the said report and the learned Sub. Divisional Judicial Magistrate in a mechanical manner has passed the impugned order of cognizance. Accordingly, learned counsel has prayed to quash the order of cognizance.

5. Mr. Hirday Prasad Singh, learned Additional Public Prosecutor appearing on behalf of the State, has fairly not disputed the provision of law. However, on the facts, he submits that the investigating officer had collected materials to show that the petitioners were the main instigators for filing such a complaint petition.

6. Besides hearing learned counsel for the petitioners, I have also examined the materials available on the record. I am of the view that the order of cognizance without any sanction or permission by the competent court was not permissible. Accordingly, the order of cognizance is hereby set aside and the petition stands allowed.