

Chandra Kishore Singh, and ors. Vs. State of Bihar, and anr.

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Court : Patna

Decided On : Jul-23-2010

Judge : Rakesh Kumar, J.

Acts : Code of Criminal Procedure (CrPC) - Section 482, 399(2), 401(2)(3)(4)(5);
Indian Penal Code (IPC) - Sections 323, 354, 420, 498A, 376

Appeal No. : CRIMINAL MISCELLANEOUS No.21625 OF 2000

Appellant : Chandra Kishore Singh, and ors.

Respondent : State of Bihar, and anr.

Advocate for Def. : Sri Lala Kailash Bihari Prasad, Adv.

Advocate for Pet/Ap. : Mr. Nazmul Hoda, Adv.

Judgement :

1. Learned counsel for the petitioners files supplementary affidavit. Let it be kept on record.

2. 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 20.6.2000 passed by the learned 6th Additional Sessions Judge, Purnea in Cr.Revision No.213 of 1999 / Tr.No.19 of 1999. By the said order, the learned 6th Addl.Sessions Judge has set aside the order dated 29.5.1999 passed by Shri A.K.Modi, Judicial Magistrate, 1st Class, Kishanganj in Complaint Case No.323 of

1998 and the learned 6th Addl.Sessions Judge has directed the learned Magistrate to make further enquiry in the complaint filed by Opp.Party no.2 and proceed in accordance with law. By the order dated 29.5.1999 after conducting enquiry, the learned Judicial Magistrate, 1st Class, namely, Sri A.K.Modi had taken cognizance of offences under Sections 323 and 354 of the Indian Penal Code , though the complaint was filed for offences under Sections 376, 420 and 498A of the Indian Penal Code.

3. Short fact of the case is that Opp.Party no.2 had filed a complaint, which was registered as Complaint Case No.323 of 1998 with an allegation that forcibly petitioner no.1, who is full brother of petitioner nos.2 and 3, had committed rape with her. When the complainant wanted to make complaint, an assurance was given by accused Chandra Kishore Singh that he will marry her and on that assurance, she did not file any complaint before any authority. However, she intimated this fact to her mother and after persuasion, petitioner no.1 solemnized marriage with the complainant in a temple. It was further alleged that when she went to her in-laws place, accused persons assaulted her and ousted her from the house and on the aforesaid allegations, the complaint petition was filed by the complainant.

4. After filing of the complainant, the complaint was inquired by the learned Magistrate and the learned Magistrate in view of the materials brought on record passed order of cognizance on 29.5.1999. The learned Magistrate on the basis of materials available on record was satisfied that the offence under Sections 323 and 354 of the Indian Penal Code was only made out and directed for summoning the accused persons.

5. Aggrieved with the order of cognizance, whereby the learned Magistrate refused to take cognizance of offence under Section 376 of the Indian Penal Code , as was alleged in the complaint petition, the complainant filed a revision petition vide Cr.Rev.No.213 of 1999/ Tr.No.19 of 1999 and the learned 6th Addl. Sessions Judge vide its order dated 20.6.2000 allowed the revision petition and set aside the order of cognizance. The learned 6th Addl.Sessions Judge directed the learned Magistrate to make further enquiry in the complaint and proceed in

accordance with law.

6. Aggrieved with the order dated 20th June, 2000 passed by the learned 6th Addl.Sessions Judge, Purnea, petitioners approached this Court by filing the present petition. On 30.8.2001, while issuing notice to Opp.Party no.2, this Court had directed that in the meantime further proceeding in connection with Complaint Case No.323C of 1998 pending in the court of Shri A.K.Modi, J.M. 1st Class, Kishanganj shall remain stayed and subsequently this petition was admitted for hearing on 14.2.2002 and it was directed that pending hearing of this application, interim order dated 30.8.2001 shall remain operative.

7. Mr. N.Hoda, learned counsel appearing on behalf of the petitioners has questioned the revisional order on a limited point and without going into the merit of the case, learned counsel for the petitioners has argued that the order of the learned 6th Addl.Sessions Judge is liable to be set aside on the ground that it was in contravention of provision contained in Section 399 of the Code of Criminal Procedure. It was submitted by learned counsel for the petitioners that while hearing revision petition, the learned 6th Addl. Sessions Judge did not pass any order for issuance of notice to the petitioners, who were necessary party in the case and without giving any opportunity to the petitioners, the learned 6th Addl.Sessions Judge has finally allowed the revision petition. He has submitted that even the order itself indicates that the learned 6th Addl.Sessions Judge, while passing the order, had heard only counsel for the petitioners and the State. It has been mentioned in paragraph-2 of the revisional order. It was submitted by Sri N.Hoda, learned counsel appearing on behalf of the petitioners that in view of Section 399 (2), read with Section 401 (2) of the Code of Criminal Procedure, it was mandatory on the part of the revisional court to afford opportunity to the petitioners, while he was finally allowing the revision petition. On this ground alone, it was submitted that besides violation of principles of natural justice, the learned 6th Addl.Sessions Judge has violated the statutory provisions, contained in Sections 399 and 401 of the Code of Criminal Procedure and on this ground alone, the order of the revisional court is liable to be set aside.

8. Sri F.R. Mallick , learned counsel appearing on behalf of Opp.Party no.2 has vehemently opposed the prayer of the petitioners. However, Sri Lala Kailash Bihari Prasad, learned Senior Counsel appearing on behalf of the State has not disputed the question of law, which was raised by the learned counsel for the petitioners.

9. Besides hearing learned counsel for the parties, I have also examined the materials available on record. It is true that in the complaint petition, the complainant had alleged commission of offences under Sections 376,420, 498A of the Indian Penal Code. However, the learned Magistrate after conducting enquiry was of the view that offence under Sections 323 and 354 was only made out and, accordingly, had passed the order. The revisional court, as per statements made by the learned counsel for the petitioners as well as on the basis of impugned order, did not bother to give opportunity to the petitioners and without affording any opportunity of hearing to the petitioners had passed an order, which is adverse to the petitioner. The Court is of the view that in a judicial proceeding applying the principles of natural justice is sine qua non. When the statutory provision itself prescribes to give an opportunity, then in that event in any case, no court can pass order contrary to such statutory provision and if such order is passed, certainly it is liable to be set aside. Besides this, the learned Magistrate , who had passed the impugned order was also not divested with the power to notice at subsequent stage of enquiry or trial as to whether the offence, as alleged by the complainant, was made out or not and if the court at subsequent stage comes to the conclusion that an offence was also committed, which was not triable by such Magistrate, under the provisions contained in Section 323 of the Code of Criminal Procedure , the concerned Magistrate was entitled to pass an order for committing the case to the court of Session. Accordingly, the Court is of the opinion that the learned 6th Addl.Sessions Judge has passed the impugned order contrary to the statutory provisions, contained in Sections 399 and 401 of the Code of Criminal Procedure. It would be appropriate for this Court to quote both the provisions, which are as follows:

"399. Sessions Judge's powers of revision(1) In the case of any proceeding the record of which has been called for by himself , the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under sub-

section (1) of Sec.401. (2) Where any proceeding by way of revision is commenced before a Sessions Judge under sub-section(1), the provision of sub-sections(2), (3),(4) and (5) of Sec.401 shall so far as may be, apply to such proceeding and references in the said sub-sections to the High Court shall be construed as references to the Sessions Judge. (3) Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court." "401. High Court's powers of revision---(1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion exercise any of the powers conferred on a Court of Appeal by Sec.386,389,390 and 391 or on a Court of Session by Sec.307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by Sec.392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence. (3) Nothing in this section shall be deemed to authorize a High Court to convict a finding of acquittal in to one of conviction. (4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly."

10. In view of the aforesaid statutory provisions, this Court is left with no option but to quash the order of the learned 6th Addl.Sessions Judge dated 20th June, 2000 passed in Cr.Revision No. 213 of 1999/ Tr.No.19 of 1999. So far as the question of application of commission of offence under Section 376 and other Sections of the

Indian Penal Code are concerned, the learned Magistrate is well competent to examine those things at appropriate stage and if at subsequent stage, the learned Magistrate comes to the conclusion that it was actually a case of commission of offence under Section 376 of the Indian Penal Code, then in that event , the learned Magistrate will be at liberty to pass an order in accordance with law keeping in view the provision contained in Section 323 of the Code of Criminal Procedure.

11. In view of the facts and circumstances of the case, as indicated above, the order dated 20th June, 2000 passed in Cr.Revision No.213 of 1999/ Tr.No.19 of 1999 by the learned 6th Addl.Sessions Judge, Purnea, is hereby set aside and the petition stands allowed.

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