

Shama Devi, and anr. Vs. State of Bihar.

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Court : Patna

Decided On : Aug-09-2010

Judge : Rakesh Kumar, J.

Acts : Code of Criminal Procedure (CrPC) - Section 482; Indian Penal Code (IPC) - Sections 448, 341, 323, 324, 380, 504 read with 34, 448, 380

Appeal No. : CRIMINAL MISCELLANEOUS No.3258 OF 2001

Appellant : Shama Devi, and anr.

Respondent : State of Bihar.

Advocate for Def. : Sri A.M.P.Mehta, Adv.

Advocate for Pet/Ap. : S/Sri Rajendra Prasad; Pramod Kumar, Adv.

Judgement :

Two female 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 5.1.2001 passed by the learned Chief Judicial Magistrate, Nalanda at Biharsharif in Manpur P.S. Case No. 46 of 2000, G.R. No.1916 of 2000, Tr.No.125 of 2001. By the said order, the learned Chief Judicial Magistrate has taken cognizance of offences under Sections 341, 323, 324, 325, 307, 504/34 of the Indian Penal Code.

2. In the case, on the basis of fardbeyan of one Raj Kumar Yadav, an F.I.R. was lodged against seven named accused persons for offences under Sections 448, 341, 323, 324, 380, 504/34 of the Indian Penal Code, which was numbered as Manpur P.S. Case No.46 of 2000. After registering the F.I.R., police investigated the same. However, during the investigation, no sufficient material was collected and the Investigating Officer, while submitting chargesheet against five accused persons to face trial, exonerated both the petitioners showing them to be innocent persons. However, the learned Magistrate vide its impugned order dated 5.1.2001 has taken cognizance of offence even against both the petitioners, who were not sent up for trial.

3. Sri Rejendra Prasad learned Senior Counsel appearing on behalf of the petitioners, while pressing the present petition, has firstly argued that the learned Magistrate has passed the order of cognizance in a mechanical manner. It is submitted that once the petitioners were exonerated by the police, learned Magistrate, while differing with the police report, was required to assign a detailed reason, but the learned Magistrate without assigning any reason and discussing anything has passed order of cognizance in a mechanical manner. Sri Prasad, learned Senior Counsel appearing on behalf of the petitioner has further submitted that it was a counter blast to a case, i.e. an F.I.R. of Manpur P.S. Case No.45 of 2000, which was earlier registered on the basis of fardbeyan of one of the accused of the present case. The said F.I.R. i.e. Manpur P.S. Case No.45 of 2000 was registered against the informant and others. It was submitted that the case was registered by one of the accused earlier to the filing of the present case against the petitioners and others. It was further submitted that during the investigation nothing was collected indicating involvement of the petitioners and, as such, the police had rightly not recommended prosecution against the petitioners and chargesheet was submitted against only five accused persons exonerating these petitioners. Sri Prasad, learned Senior Counsel for the petitioners, while arguing the case, has produced a certified copy of the Judgment of acquittal dated 18.8.2004 passed in Tr.No.295 of 2004/ G.R. No.1916 of 2000(arising out of Manpur P.S. Case No.46 of 2000). Let it be kept on record. It was submitted by Sri Prasad, learned Senior Counsel for the petitioners that even those accused persons, who were forwarded for trial by the police, were put on trial and they have

been finally acquitted by the learned Chief Judicial Magistrate, Nalanda at Biharsharif vide its Judgment and order dated 18.8.2004. On the aforesaid grounds, it has been prayed to quash the order of cognizance and entire proceeding.

4. Sri A.M.P.Mehta, learned Addl.Public Prosecutor appearing on behalf of the State has opposed the prayer of the petitioners. It was submitted by the learned Addl. Public Prosecutor that at the time of cognizance, there was no requirement to assign any reason and, as such, while passing the impugned order, the learned Magistrate has committed no error. It has been prayed on behalf the State to reject the present petition.

5. Besides hearing learned Senior Counsel for the petitioners and learned Addl. Public Prosecution appearing on behalf of the State ,I have also perused the materials available on record , particularly Annexure-4 to the petition, which is photo copy of the final form(Chargesheet) submitted by the police on 26.11.2000. On perusal of the chargesheet , it is evident that the petitioners were not forwarded by the police to face trial. During the course of hearing, learned Addl.Public Prosecutor, on the basis of case diary, has also indicated that the police had not forwarded the petitioners to face trial.

6. It is true that at the time of taking cognizance, there is no requirement to assign any reason, but same principle is not applicable where cognizance order is being passed while differing with the police report. In the present case, the police had not forwarded the petitioners to face trial. Accordingly, in this case, while differing with the police report, it was necessary for the learned Magistrate to indicate some reasons/grounds for differing with the police report. The order impugned indicates that without application of mind, the order of cognizance was passed so far as petitioners are concerned. Besides this, in the present case accused persons, who were forwarded by the police to face trial, have already been acquitted by the learned Chief Judicial Magistrate after conducting trial and, as such, it would not be appropriate for directing the petitioners to participate in the proceeding, which remained pending before this Court for considerable long period.

7. Accordingly, the Court is of the view that this is a fit case for exercising inherent jurisdiction in favour of the petitioners and, as such, order of cognizance dated 5.1.2001 passed in Manpur P.S. Case No.46 of 2000, G.R. No.1916 of 2000, Tr.No.125/2001 passed by the learned Chief Judicial Magistrate, Nalanda at Biharsharif is hereby set aside and petition stands allowed.

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