

Arun Kumar. Vs. State of Bihar, and anr.

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Court : Patna

Decided On : Aug-10-2010

Judge : Rakesh Kumar, J.

Acts : Code of Criminal Procedure (CrPC) - Section 482; Indian Penal Code (IPC) - Sections 420, 406, 323, 379, 384, 426, 500, 120B

Appeal No. : CRIMINAL MISCELLANEOUS No.5866 OF 2001

Appellant : Arun Kumar.

Respondent : State of Bihar, and anr.

Advocate for Def. : ri Surendra Prasad Singh, Adv.

Advocate for Pet/Ap. : Sri Ramesh Kumar Sinha, Adv.

Judgement :

1. The sole petitioner, while invoking inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, has prayed for quashing of entire proceeding in Complaint Case No.1060(C) of 2000, which was pending in the court of Sri Dinesh Kumar Singh, learned Judicial Magistrate, 1st Class, Patna.
2. Short fact of the case is that Opp.Party no.2 filed a complaint, which was registered as Complaint Case No.1060(C) of 2000 arraying the petitioner as accused no.2 in the complaint case. In a nutshell, allegation was made that accused no.1, who is not before this Court, had entered with an agreement to sell

his land to the complainant on a total consideration amount of Rs.1, 50,000/- . Before execution of the final sale deed, the complainant made total payment of Rs.1, 26,000/-. Despite persuasion made by the complainant, accused no.1, namely, Yogendra Mahto did not take any step to execute absolute sale deed either in favour of the wife of complainant or in favour of the complainant. In complaint petition, it was alleged that subsequently complainant came to know that accused no.1, namely, Yogendra Mahto in conspiracy with this petitioner and one another accused had filed a false case, which was registered as Complaint Case No.85 of 1997 for the offences under Sections 420,406, 323,379,384, 426 and 500 of the Indian Penal Code. It was disclosed in the complaint petition that the complainant along with other accused persons were put on trial in Complaint Case No.85 of 1997 and finally, they were acquitted by the court of the Magistrate. On the aforesaid ground, complaint petition was filed.

3. Heard Sri Ramesh Kumar Sinha, learned counsel appearing on behalf of the petitioner and Sri Surendra Prasad Singh, learned Addl.Public Prosecutor appearing on behalf of the State. In this case, despite the fact that Opp.Party no.2 had entered his appearance through his counsel, at the time of hearing none has come forward to oppose the prayer of the petitioner.

4. It appears from the order dated 3.8.2000 passed by Sri Dinesh Kumar Singh, learned Judicial Magistrate, 1st Class, Patna that after filing of the complaint petition, the complainant had not produced any witness at the stage of enquiry, save and except filing of certain documents and the learned Magistrate on the basis of documents as well as complaint petition and statement of the complainant recorded on S.A. took cognizance of offence under Sections 420 and 120B of the Indian Penal Code. It is surprising that though there was no material on record to proceed against the petitioner, the learned Magistrate in a mechanical manner has passed the impugned order. On record, there is nothing to suggest that the petitioner was directly or indirectly involved in respect of offence of cheating with the complainant. In absence of any material suggesting commission of any of the offences by the petitioner, the learned Magistrate was not required to proceed against the petitioner.

5. Keeping in view the facts and circumstances of the case, the Court is of the view that it is a fit case for exercising inherent jurisdiction in favour of the petitioner.

6. Accordingly, the entire proceeding in Complaint Case No.1060(C) of 2000 pending in the court of the learned Judicial Magistrate, 1st Class, Patna so far as it relates to the petitioner is hereby set aside and the petition stands allowed.

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