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Court : Patna

Decided On : Aug-11-2010

Judge : Rakesh Kumar, J.

Acts : Indian Penal Code (IPC) - Sections 182, 211, 167, 466, 467, 477; Code of Criminal Procedure (CrPC) - Section 156(3)

Appeal No. : CRIMINAL MISCELLANEOUS No.4758 OF 2000; Cr.Misc. No.9895 of 2000

Appellant : Md. Samad.

Respondent : State of Bihar, and ors.

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

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

Judgement :

1. In both the cases, order dated 25.1.2000 passed by the learned District & Sessions Judge, Munger in Cr.Revision No.278 of 1999 , whereby the learned Sessions Judge has upheld the order dated 20.9.1999 passed by the learned Chief Judicial Magistrate, Munger, is under challenged and , as such, both the petitions are being disposed of by this common Judgment.

2. In Cr.Misc.No.4758 of 2000, a prayer has been made to quash that part of the order dated 25.1.1999 passed by the learned District & Sessions Judge, Munger in

Cr.Revision No.278 of 1999, whereby he has upheld order taking cognizance dated 20.9.1999 against the petitioner under Sections 182 and 211 of the Indian Penal Code by the learned Chief Judicial Magistrate, Munger.

3. In Cr.Misc.No.9895 of 2000, a prayer has been made to quash part of the order dated 25.1.1999 passed by the learned District & Sessions Judge, Munger in Cr.Revision No.278 of 1999, whereby he has upheld order dated 20.9.1999 passed by the learned Chief Judicial Magistrate, Munger, by which he has accepted the final form in spite of protest petition.

4. Short fact of the case is that the petitioner had earlier filed a complaint, which was registered as Complaint Case No.51 C of 1997. The said complaint was referred to the police for its registration and investigation under Section 156(3) of the Code of Criminal Procedure and, accordingly, an F.I.R. vide Mufassil P.S. Case No.254 of 1997 was registered on 5.10.1997 for the offence under Sections 167,466,467 , 477 of the Indian Penal Code. After investigating the case, the police came to the conclusion that the case was lodged falsely. The police, accordingly, submitted final form on 16.1.1999 and while submitting final form, police recommended for prosecuting the petitioner (informant) for the offence under Sections 182 and 211 of the Indian Penal Code. After submission of the final report, the learned Chief Judicial Magistrate, Munger accepted the final report and also took cognizance of offence under Sections 182 and 211 of the Indian Penal Code against the petitioner (informant).

5. Aggrieved with the order of cognizance as well as acceptance of final form, the petitioner preferred a revision, which was numbered as Cr.Revision No.278 of 1999. The learned Sessions Judge, Munger vide its order dated 25.1.2000 rejected the revision petition at the stage of admission itself.

6. Aggrieved with the order of rejection of Revision petition as well as against the order of cognizance and acceptance of final form, the petitioner preferred the aforesaid two petitions before this Court under Section 482 of the Code of Criminal Procedure.

7. In Cr.Misc.No.9895 of 2000, on 18.9.2000 while issuing notice to Opp.Party nos.2 to 5, this Court directed that the operation of the order with regard to the direction so given initiating proceeding against the petitioner under Sections 182 & 211 of the Indian Penal Code shall remain in abeyance till returnable date. After repeated orders, on 24.11.2000 service of notice issued on Opp.Party nos.2 to 5 was treated as valid service and thereafter on 11.2.2002, the petition was admitted for hearing.

8. In Cr.Misc.No.4758 of 2000, on 10.11.2000 it was ordered to list this case along with Cr.Misc.No.9895 of 2000 and on 11.2.2002, the petition was admitted for hearing. It was further directed that operation of the order dated 20.9.1999 passed by the Chief Judicial Magistrate, Munger in Mufassil P.S. Case No.254 of 1997 by which he had taken cognizance of the offence under Sections 182/211 of the Indian Penal Code was stayed.

9. The petitioner's complaint was filed against Opp.Party nos.2 to 5. It was alleged by the complainant that Opp.Party no.4 , Md. Shahangir had got a forged death certificate of father of the petitioner issued showing the date of death of his father as 15.1.1996, whereas fact was that the father of the petitioner died on 15.9.1995. It was alleged that after the death of father of the petitioner, Opp.Party no.4 got a deed of gift executed by a fictitious person, which was shown to be executed by the father of the petitioner. The said deed of gift was got executed on 16.10.1995. It was disclosed by the petitioner in his complaint that after the death of his father on 15.9.1995, the petitioner got death certificates of his father vide Certificate No.543445, Registration No.5. After coming to know that the petitioner had received death certificate of his father indicating the date of death as 15.9.1995, Opp.Party no.4 got prepared a false death certificate in connivance with remaining accused persons and said certificate was numbered as 543446, Registration 6. In the said Certificate, the date of death of the father of the petitioner was mentioned as 15.1.1996. It was alleged that only with a view to illegally usurp the property mentioned in the so called deed of gift , accused no. 4 in connivance with other accused persons got prepared a false death certificate of the father of the petitioner. It was further alleged that subsequently, accused persons got the death certificate cancelled, which was issued to the petitioner showing death of father of

the petitioner as 15.9.1995. After registering the case by way of enclosing complaint petition, the police started investigation. During investigation, police found that even after the date of death of father of the petitioner, an application of father of the petitioner was entertaining by the Bank, wherein on 5.10.1995 the father of petitioner, who was account-holder in the State Bank of India, bearing no.5/77, had requested to close his account. The said application for closure of the account contained L.T.I. of father of the petitioner Sheikh Chhedi with L.T.I. of witnesses including the petitioner (informant) and thereafter the account was closed and balance amount of Rs.939/- was withdrawn. On this fact, police came to the conclusion that the petitioner had actually prepared false death certificate with a view to take possession over the properties, which were gifted by his father to Opp.Party no.4 and accordingly the investigating agency concluded the case as false case and recommended for prosecution of the petitioner under Sections 182 and 211 of the Indian Penal Code. In the present case, the petitioner/ complainant apprehending that the police may not do justice with the investigation, had filed a protest petition. After submission of the report, mainly on the basis of fact relating to the closure of the Bank Account of father of the petitioner, the learned Magistrate was satisfied that the case was falsely instituted and the learned Magistrate vide its order dated 20.9.1999 firstly accepted the final report, took cognizance of the offence under Section 182 and 211 of the Indian Penal Code and also rejected the protest petition, which was filed by the informant.

10. Aggrieved with the order dated 20.9.1999 passed by the learned Chief Judicial Magistrate, Munger in Mufassil P.S. Case No.254 of 1997, the petitioner filed a revision petition vide Cr.Revision No.278 of 1999, which too was rejected on the same ground.

11. Sri Rakesh Kumar Sinha, learned counsel appearing on behalf of the petitioner, while challenging the order of acceptance of the final form and order taking cognizance of offence has submitted that the learned Magistrate has completely erred in taking cognizance and accepting the final report. It was submitted that the death certificate, which was issued in favour of Opp.Party no.4 was unauthorisedly and illegally issued due to the reason that the petitioner being the son of Sheikh Chhedi was competent to apply for death certificate and

Opp.Party no.4, who was not having any direct relation with the father of petitioner, was not authorized to apply for death certificate of father of the petitioner. It was further submitted that the learned Magistrate, while accepting the final form and passing the order of cognizance had heavily relied on averment made in paragraph-37 of the case diary. In paragraph-37 of the case diary, the police had concluded that after the date of death of father of the petitioner shown in the death certificate obtained by the petitioner, an application with L.T.I of father of the petitioner was entertained by the Bank and accepted by the Bank only. It was submitted that the police had not even bothered to get the L.T.I. of father of the petitioner on application for closure of the account examined by the Examiner of Questioned Document i.e. expert. Only on oral material, the police had come to the conclusion that the application, which was entertained by the Bank, was issued subsequent to the date of death of father of the petitioner, which was mentioned in the death certificate obtained by this petitioner. It was submitted that there is possibility that with a view to get the amount deposited in the Bank Account of father of the petitioner, he might have suppressed the fact regarding the death and a forged application was filed before the Bank and thereafter money was withdrawn, however, this allegation has got no relevance with the allegation of obtaining death certificate by the petitioner. Fact remains that death of father of the petitioner had occurred on the date, which was shown in the death certificate received by this petitioner. On such material there was no possibility to accept the final form and also take cognizance of offence against the petitioner. It was further submitted that on an allegation of getting forged deed of gift prepared in the name of father of Opp.Party no.4, which was shown to be executed by the father of petitioner after the death of father of the petitioner a complaint was earlier filed by the brother of the petitioner, which was referred to the police and thereafter a case vide Kotwali P.S. Case No.495 of 1996 was registered. In the said case, the police after investigation submitted chargesheet against Opp.Party nos.2 to 5 in the present case and the learned Magistrate vide Annexure-4 had also taken cognizance of offence against Opp.Party nos.2 to 5 in Kotwali P.S. Case No.495 of 1996. It was submitted that the same Investigating Agency once on an allegation of preparing a forged deed of gift by a fictitious person executed in the name of father of the petitioner had come to the conclusion that the allegation was

true against Opp.Party nos.2 to 5 and at the same time the same Investigating Agency had concluded that the petitioner had obtained a false death certificate of his father. On the aforesaid grounds it has been submitted that neither the learned Magistrate was required to accept final form in such case nor there was any material to proceed with the case against the petitioner for offence under Sections 182 and 211 of the Indian Penal Code.

12. In this case despite valid service of notice, Opp.Party nos.2 to 5 has not preferred to appear at the time of hears either personally or through their counsel. However, I have heard Smt. Indu Bala Pandey, taught Addl.Public Prosecutor appearing on behalf of the State, who has prayed for rejection of the present petition.

13. Besides hearing learned counsel for the petitioner and the State, I have also perused the materials available on record. The Court is satisfied that the learned Magistrate has committed an error while taking cognizance of offence on a report of the police, which was submitted only on an inference that the Bank Account was closed by the father of the petitioner after the date of death shown in the death certificate , which was obtained by the petitioner. The Court has also taken notice of the fact that Opp.Party no.2, who was neither full brother of the petitioner nor he was having any direct relation with either of petitioner or of his father, had unauthorisedly applied for death certificate of father of the petitioner. In view of the aforesaid facts and circumstances, the Court is satisfied that it was not a fit case for taking cognizance of the offence.

14. Accordingly, the order of cognizance dated 20.9.1999 passed by the learned Chief Judicial Magistrate, Munger as well as order dated 25.1.2000 passed in Cr.Revision No.278 of 1999 are hereby set aside. So far as acceptance of final form is concerned, since the occurrence alleged in the complaint petition / F.I.R. was alleged to have taken in the year 1995-96 at this stage it would not be appropriate to direct the learned Magistrate to proceed with the criminal case.

15. Accordingly, Cr.Misc. No.4758 of 2000 is hereby allowed, which was in relation to order of cognizance. However, in Cr.Misc.No.9895 of 2000, there is no need to pass any favourable order and accordingly the same stands rejected.

