

Sunil Paswan. Vs.State of Bihar.

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Court : Patna

Decided On : Sep-03-2010

Judge : Rakesh Kumar, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 482, 210; Indian Penal Code (IPC) - Sections 220, 395

Appeal No. : CRIMINAL MISCELLANEOUS No.28379 OF 2000

Appellant : Sunil Paswan.

Respondent : State of Bihar.

Advocate for Def. : Mr. Indeshwari Prasad Mandal, Adv.

Advocate for Pet/Ap. : Mr. Rakesh Kumar Samrendra, Adv.

Judgement :

1. The sole petitioner, who was complainant in Complaint Case No.352C of 2000, has approached this Court, while invoking its inherent jurisdiction under Section 482 of the Code of Criminal Procedure for the following reliefs:

"(i) For directing the Court below to take cognizance of offences against the police officials who are accused no.1 and 2 in the complaint case no.352(C)/2000 pending in the court of Sri B.B.Singh, Judicial Magistrate, 1st class, Patna.

(ii) For directing the court below to take cognizance of offences against the police officials (accused nos 1 and 2) in the complaint case no.352(c)/2000 as aforesaid under sections 191,192,193,194,195,196,330,348 of I.P.C. and under sections 3/4 of Scheduled Caste and Schedule Tribes (Prevention of Atrocities) Act 1989.

(iii) For issuance of a direction to the Court below for taking cognizance of offences against the accused nos 3,4 and 5 in complaint case no.352(c)/2000 as aforesaid.

(iv) For issuance of such other direction/orders which may deem fit and proper in the peculiar facts and circumstances of the case."

2. Short fact of the case is that the petitioner filed a complaint in the court of Chief Judicial Magistrate, Patna alleging therein that brother of the complainant namely Amar Paswan was illegally arrested by opposite party nos.2 and 3, who were police officials of the Kankarbagh Police Station. It was alleged that on 25th February,2000 in the night without any search warrant the police had conducted raid and arrested the brother of the complainant. Thereafter, the petitioner wanted to verify the position. However, on 27.2.2000, he came to know that his brother was made accused in a case relating to dacoity as well as case relating to Arms Act and Explosive Substance Act. The petitioner learnt that the brother of the petitioner was made accused in two cases. It was alleged in the complaint petition that while in the night, raid was conducted, the family members as well as complainant were abused by the police officials. On the aforesaid allegation after filing of the complaint petition, the complainant was examined on S.A. and witnesses were examined in support of the complaint case and thereafter, the learned Magistrate, by its order dated 2.6.2000, though satisfied with the prima facie case, refused to take cognizance of offence in absence of prosecution sanction. The petitioner thereafter, approached this Court, by filing a criminal writ petition, which was numbered as Cr.W.J.C. No.446 of 2000. Subsequently, criminal writ petition was converted to a quashing application under Section 482 of the Code of Criminal Procedure and it was numbered as Cr. Misc. No.28379 of 2000, which is the present case. In the present petition, the petitioner has not at all challenged the order of refusing to take cognizance passed by the learned

Magistrate. In some and substance, prayer has been made to direct the learned Magistrate to take cognizance of the offences. In the present case, the other part of story is that in between 7-8 P.M. on 25.2.2000 in a house in Kankarbagh, a dacoity was being committed. In the meanwhile, police got information and rushed to the place of occurrence and at the place of occurrence, two accused persons were arrested, amongst them, one was brother of the petitioner namely Amar Kumar Paswan. However, other accused persons fled away from the place of occurrence. On search, arms and ammunitions were recovered from the possession of the petitioner with some looted articles. Accordingly, an F.I.R. vides Kadamkuan (Kankarbagh) P.S. Case No.121 of 2000 and Kadamkuan (Kankarbagh) P.S. Case No.122 of 2000 were registered. The brother of the petitioner was identified by number of the witness of the case and thereafter, instead of producing the brother of the petitioner immediately, some delay had occurred and on 27.2.2000, he was produced before the learned Magistrate. In this case, earlier Lower Court Record was called for and same is lying with the record of the present case.

3. I have perused the Lower Court Record also. It appears from the Lower Court Record that on 27.2.2000, the brother of the complainant was produced before the learned Magistrate. It also appears from the order sheet that no complaint was made by the brother of the complainant before the Magistrate regarding ill treatment by police that was noticed in the order passed by the learned Magistrate, while the brother of the petitioner was produced before the learned Magistrate and thereafter, the brother of the petitioner, namely, Amar Kumar Paswan was remanded to custody.

4. Shri Rakesh Kumar Samrendra, learned counsel appearing on behalf of the petitioner, submits that since during the enquiry, after filing the complaint petition, number of witnesses had supported the complainant's case. The learned Magistrate was prima facie satisfied that offence under Section 220 of the Indian Penal Code was made out at least against opposite party nos.2 and 3, but due to want of sanction for prosecution, the learned Magistrate had not taken cognizance of the offence. It was submitted that once, the learned Magistrate was fully satisfied with the offence, the learned Magistrate was required to take cognizance

and proceed with the case and question of sanction was required to be examined during the trial. On the ground of absence of sanction for prosecution, the learned Magistrate was not required to refuse to take cognizance of the offence. Accordingly, it has been prayed that the learned Magistrate may be directed to take cognizance of the offence.

5. I have also heard Mr. Indeshwari Prasad Mandal, learned A.C. to G.A.8, who appears on behalf of the State. He has vehemently opposed the prayer of the petitioner. It was submitted by learned counsel appearing on behalf of the State that in the present case, proper course for the learned Magistrate was to keep the complaint proceeding in abeyance as provided under Section 210 of the Code of Criminal Procedure till the completion of the investigation in Kadamkuan (Kankarbagh) P.S. Case Nos.121 and 122 of 2000, which were registered for offence under Section 395 and other allied sections of the Indian Penal Code and under the provisions of the Arms Act and Explosive Substance Act.

6. Besides hearing learned counsel for the parties, I have also perused the materials available on record particularly lower Court Record. On perusal of the Lower Court Record, the court is satisfied that when Amar Kumar Paswan, brother of the complainant was produced by the learned Magistrate in connection with Kadamkuan (Kankarbagh) P.S. Case Nos.121 and 122 of 2000, the learned Magistrate had recorded in its order sheet that no complaint was made by the accused. Moreover, the court is not inclined to pass any positive order in favour of the petitioner due to the reason that the prayer, which has been specifically made in the present petition, cannot be granted by this Court. The petitioner, in some and substance, had prayed for directing the Magistrate to take cognizance of the offence. I am of the opinion that this Court cannot pass a direction to the Magistrate to take cognizance of the offence.

7. Accordingly, in view of the facts and circumstances of the present case as well as two cases, which were registered against brother of the petitioner in which he was arrested at the spot, while committing dacoity, this Court is not inclined to exercise inherent jurisdiction in favour of the petitioner and, accordingly, the petition stands rejected.

