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Court : Patna

Decided On : Sep-22-2010

Judge : Rakesh Kumar, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 482, 468(1)(c); Indian Penal Code (IPC) - Sections 500, 504, 342, 499, 427

Appeal No. : CRIMINAL MISCELLANEOUS No.8882 OF 2001

Appellant : Ranjeet Datta, and anr.

Respondent : State of Bihar, and anr.

Advocate for Def. : Sri Raj Ballabh Singh, Adv.

Advocate for Pet/Ap. : S/Sri Ram Suresh Rai; Bidhanesh Mishra; Sri Upendra Kumar Singh, Advs.

Judgement :

1. Two petitioners, who were posted as General Manager and Deputy Manager respectively in the Indian Tourism and Development Corporation (hereinafter referred to as "the ITDC") and posted in the ITDC "Hotel Patliputra Ashok", Patna, have approached this Court, while invoking its inherent jurisdiction under Section 482 Code of Criminal Procedure for quashing of an order dated 08.08.2000 passed by Sri N.B. Singh, Judicial Magistrate, Patna in complainant case No.236(C) of 1997. By the said order, learned Magistrate has taken cognizance of offences under Sections 500 and 504 of the Indian Penal Code.

2. Short fact of the case is that Opposite Party No.2 claiming to be an authorized person of one M/s Trishul Shakti Travel and Tours filed a complaint in the court of Chief Judicial magistrate, Patna, which was numbered as complaint case No.236(C) of 1997 against one Dy.Superintendent of Police, four unknown constables and both the petitioners on an allegation of commission of offences under Sections 342, 499, 500 and 427 read with 120B of the Indian Penal Code. It was alleged in the complaint petition that on the date of occurrence i.e. on 27.02.1997 in the day time, he telephonically instructed the Management of Hotel Patliputra Ashok to provide lunch to seven foreigner tourist passengers and thereafter the complainant left for his residence. After 20-30 minutes, he received telephonic message from his foreigner tourists that Hotel Patliputra Ashok was not providing lunch. Immediately thereafter, the complainant rushed to Hotel Patliputra Ashok and carried the tourists to Hotel Chanakaya and thereafter he returned to Patliputra Ashok Hotel. It was disclosed that in the hotel, he found both the petitioners and he inquired from the petitioners as to why they did not provide lunch. However, the petitioners did not give a proper reply. Immediately thereafter, the complainant was asked by two police constables to come to Kotwali Police Station since the Dy.Superintendent of Police had directed the constable to do that. The complainant was thereafter carried to Kotwali Police Station. The complainant had made several allegations against the Dy.Superintendent of Police regarding misbehaviour with the complainant. On that allegation, a complaint was filed. After conducting enquiry, the learned Magistrate took cognizance of offences against the petitioners, as stated above.

3. Aggrieved with the order of cognizance, both the petitioners approached this Court by filing the present petition, which was admitted on 7.5.2002. On 28.6.2001. While issuing notice to Opp.Party no.2, this Court had directed that no coercive steps may be taken against the petitioners and subsequently by an order dated 12.05.2003 this Court directed that further proceeding in the court of Judicial Magistrate,Patna in Complaint Case No.236(C) of 1997 shall remain stayed during the pendency of this application. The order of stay is still continuing.

4. In this case, Sri Upendra Kumar Singh, learned counsel has appeared on behalf of Opp.Party no.2.

5. Sri Ram Suresh Rai, learned Senior Counsel appearing on behalf of both the petitioners at the very outset has submitted that after perusal of the entire complaint petition as well as statement of the complainant recorded on S.A. , no offence is made out so far as both the petitioners are concerned. It has been submitted that whatever allegation was made by the complainant was made mainly against the Dy.Superintendent of Police, who was posted at the relevant time in Kotwali Police Station. Learned Senior Counsel for the petitioner, while referring to the impugned order submits that the accused, against which there was some substance, has already been exonerated by the learned Magistrate at the time of taking cognizance. However, without any material showing commission of any offence by the petitioners, the learned Magistrate has mechanically taken cognizance of offences against both the petitioners. It has further been submitted by Sri Rai, taught Senior Counsel that in this case order of cognizance was passed on 8.8.2000, whereas occurrence, as alleged, had taken place on 27.2.1997. It has been argued that under Section 500 and 504 of the Indian Penal Code maximum punishment prescribed is three years of imprisonment. Admittedly, according to Sri Rai, learned Senior Counsel for the petitioners, in the present case, order of cognizance was passed after three years five months, whereas the period of limitation as prescribed under Section 468 (1)(c) of the Code of Criminal Procedure is three years. According to the learned Senior Counsel for the petitioners, after five months from the date of expiry of limitation, order of cognizance was passed and, as such, on this score alone, the order of cognizance is liable to be set aside.

6. Learned counsel appearing on behalf Opp.Party no.2 has vehemently opposed the prayer of the petitioners. Learned counsel for Opp.Party no.2 has specifically referred to Section 499 of the Indian Penal Code, which defines defamation. On the basis of averment made in the complaint petition, it was argued by the learned counsel appearing on behalf of Opp.Party no.2 that it was a clear-cut case of commission of offence of defamation and the learned Magistrate has rightly passed the order of cognizance. On the point of limitation, it has been submitted by learned counsel appearing on behalf of Opp.Party no.2 that delay in taking cognizance had occurred due to the reasons, which were beyond the control of the complainant. It has been submitted that for some time, the court was also vacant

and even accused no.1, who was the Dy. Superintendent of Police at the relevant time was very influential. According to the learned counsel for Opp.Party no.2, this was also one of the reasons for the delay in taking cognizance.

7. I have also heard Sri Raj Ballabh Singh, learned Addl.Public Prosecutor appearing on behalf of the State.

8. Besides hearing learned counsel for the parties, I have also perused the materials available on record. So far as the ground of limitation, which has been taken by the learned Senior Counsel for the petitioners, is concerned, the Court is of the opinion that this ground is not sustainable in the eye of law. In the present case, after the occurrence the complainant had immediately filed the complaint before the competent court and, as such, there was no laches on the part of the complainant. Whatever delay had occurred that was beyond the control of the complainant. On this very point, it has already been held by the Hon'ble Supreme Court in a case, reported in AIR 2007 SCW 4998 (Japani Sahoo Vs.Chandra Sekhar Mohanty), that if the complaint or F.I.R. is filed within time and thereafter cognizance order is passed after expiry of the period of limitation, it would not be a ground for quashing of order of cognizance.

9. So far as the first point, which was raised by Sri Rai, learned Senior Counsel for the petitioners that even on perusal of the complaint petition and statement of the complainant on S.A. no offence is made out, is concerned, the Court is in agreement with the submission of the learned Senior Counsel for the petitioners. I have perused the averment made in the complaint petition as well as statement of the complainant recorded on S.A. So far as two petitioners are concerned, the Court is of the view that there was no such material indicating commission of either of the offence by both the petitioners. Besides, non-availability of any material on record, the Court is also of the view that after lapse of such a long period (i.e. Occurrence had taken place in the year 1997 in this case), it would not be appropriate to direct the petitioners to participate in the proceeding. On perusal of complaint petition, it appears that the allegation for commission of offence was specifically made against other accused person, i.e. the Dy. Superintendent of Police, against whom the proceeding has already been dropped since the learned

Magistrate had not taken cognizance of offence in respect of accused Dy.Superintendent of Police.

10. Keeping in view the fact that there is no specific averment indicating commission of any offence as alleged by the complainant against both the petitioners, the Court is of the opinion that it is a fit case for exercising inherent jurisdiction in favour of the petitioners and, as such, the order of cognizance dated 8.8.2000 passed by Sri N.B.Singh, J.M., Patna in Complaint Case No.236C of 1997 so far petitioners are concerned is hereby set aside and the petition stands allowed.

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