

Shyam Kumar. Vs. State of Bihar, and ors.

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Court : Patna

Decided On : Oct-27-2010

Judge : Rakesh Kumar, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 482, 156(3)

Appeal No. : CRIMINAL MISCELLANEOUS No.7840 OF 2002

Appellant : Shyam Kumar.

Respondent : State of Bihar, and ors.

Advocate for Def. : Mr. Sanjay Kumar, Adv.

Advocate for Pet/Ap. : Mr. Shyam Sundar Sinha Shyam, 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 two orders i.e. order dated 13.3.2000 passed by Sub Divisional Judicial Magistrate, West Muzaffarpur as well as order dated 5.2.2002 passed by Sub Divisional Judicial Magistrate, West Muzaffarpur in Saraiya P.S. Case No.11 of 1997. By both the orders, prayer of petitioner for being substituted as complainant was rejected.

2. Short fact of the case is that in the year 1996, a complaint was filed by one Urmila Devi, which was numbered as Complaint Case No.1166 of 1996.

Subsequently, the learned Magistrate, under Section 156(3) of the Code of Criminal Procedure, referred the complaint to the police for its institution and investigation. Thereafter, an F.I.R. vide Saraiya P.S. Case No.11 of 1997 was registered. In the meanwhile, a protest petition was filed on behalf of Urmila Devi. After investigation, police submitted final report. Again, while the protest petition was pending as per intervention of Senior Police Officers, the investigation in respect of Saraiya P.S. Case No.11 of 1997 was re-opened and matter was thoroughly investigated and again it was found that allegation in the F.I.R. was untrue and as such, at subsequent stage also, final report was submitted. During the pendency of the protest petition, the complainant Urmila Devi died. After the death of complainant, on 6.3.2000, a petition was filed by the petitioner, who is son of Late Urmila Devi with a prayer to substitute him as complainant. After hearing the parties at length, the learned Sub Divisional Judicial Magistrate, (West) Muzaffarpur rejected the petition for substitution. Subsequently, again with the same prayer, a separate petition was filed by the petitioner on 15.1.2002, which too stood rejected by the learned Sub Divisional Magistrate on 5.2.2002.

3. Aggrieved with the rejection of petition for substitution, the petitioner approached this Court by filing the present petition with a prayer to quash both the orders i.e. order dated 13.3.2000 and 5.2.2002.

4. Shri Shyam Sundar Sinha Shyam, learned counsel appearing on behalf of the petitioner, submits that it is true that there is no provision for substitution of complainant after her death, but it was submitted that the prayer was made to allow the petitioner to proceed with the complaint case and for the ends of justice, it was desirable for the court below to allow the petitioner to pursue the complaint case due to the reason that the petitioner was also one of the injured and eye witness to the occurrence.

5. Shri Sanjay Kumar, learned counsel appearing on behalf of opposite party nos.2 to 12 has vehemently opposed the prayer of the petitioner.

6. Besides hearing learned counsel for the parties, I have also perused the materials available on record. Without going into the merit of the case, the court is of the opinion that the present petition is fit to be rejected on the ground that the

initial complaint was filed in the year 1996 and after registration of the F.I.R, on the complaint petition, it was thoroughly investigated and thereafter, by a statutory investigating agency, the allegation was found as un-true. At subsequent stage, the case was re-investigated which resulted in the same manner. The court is of the opinion that allowing the petitioner to pursue the complaint case, which was already found during investigation as un-true for an occurrence, which had taken place in the year 1996 will amount to allowing the abuse of the process of the court.

7. Accordingly, I do not find any merit in the present petition and petition stands rejected.

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