

Roma MitrA. Vs. State of Bihar.

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Court : Patna

Decided On : Feb-19-2011

Judge : Rakesh Kumar, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 482, 468(2)(C); Copy Right Act, 1957 - Sections 63, 67, 68; Indian Penal Code (IPC) - Section 120B, 419, 420, 467, 468, 469, 471

Appeal No. : CRIMINAL MISCELLANEOUS NO. 31757 OF 2000

Appellant : Roma MitrA.

Respondent : State of Bihar.

Advocate for Def. : MRS. INDU BALA PANDELY; MR. ANIL SINGH; MR. SUBHASH CHANDRA JHA, Advs.

Advocate for Pet/Ap. : MR. SANJAY KUMAR VERMA; MR. SANJAY KUMAR, Advs.

Judgement :

1. The sole petitioner, invoking inherent jurisdiction of this court under Section 482 of the Code of Criminal Procedure has prayed for quashing of an order dated 30.9.2000 passed by the Judicial Magistrate, Ist Class, Bhagalpur in Complaint Case No. 454 of 2000. By the said order, learned Magistrate has taken cognizance of offence under Sections 63, 67 & 68 of the Copy Right Act, 1957 and Section 120B of the Indian Penal Code.

2. Short fact of the case is that, the Opposite Party No. 2 filed a complaint in the court of learned Chief Judicial Magistrate, Bhagalpur vide Complaint Case No. 454 of 2000 making an allegation against the petitioner for commission of offence under Sections 120B, 419, 420, 467, 468, 469 & 471 of the Indian Penal Code and Sections 67 & 68 of the Copy Right Act. The complainant disclosed that she had registered herself for Ph.D. research in Bhagalpur University and her subject was "POLITICAL MOBILISATION AND CASTE- CONFLICT IN BIHAR SINCE 1967 TO 1980 - A SURVEY". For the said subject the petitioner was her guide and under the guidance of the petitioner the opposite party prepared a thesis, based on which, she conducted research in between 1983 and 1988. The complainant did her work over the subject and she remained in contact with the petitioner for preparing her research work, which was submitted after its completion in the month of March 1988. In the said thesis, the petitioner had also given certificate, that the thesis was a record of work done by the complainant herself to the best of her knowledge and the contents of the thesis did not form a basis of award of any degree to anyone else and petitioner also recommended the complainant as fit and proper person for award of degree of Ph.D. On 25.7.1988, the petitioner was declared successful in the Ph.D. examination held in the month of July, 1988 by the Controller of Examination, Bhagalpur University by way of accepting her thesis i.e. "POLITICAL MOBILISATION AND CASTE-CONFLICT IN BIHAR SINCE 1967 TO 1980-A SURVEY". It was further alleged by the complainant, that the subject of thesis became more and more relevant after installation of Janta Party Government at Centre and in Bihar in the year 1989-90. It was alleged that taking advantage of the changed scenario the petitioner published a book in the year 1992 under the title "CASTE POLARISATION AND POLITICS" describing herself as the author and other accused persons as publisher and printer. Thereafter, the accused persons marketed the book and earned a lot.

3. It was further disclosed by the complainant, that after completing her research work and getting Ph.D. degree she permanently settled at Calcutta, West Bengal with her husband. In the second week of April, 2000, the complainant visited Bhagalpur and during said stay she learnt about the book published by the petitioner. After obtaining a copy of the book she came to know that the book was virtually copied from the thesis of the complainant herself and as such, the

complaint was filed by the complainant. After conducting enquiry, the learned Magistrate by its order dated 30.9.2000, took cognizance of offence under Section 120B of the Indian Penal Code and Sections 63, 67 & 68 of the Copy Right Act.

4. Aggrieved with the order of cognizance, the petitioner approached this court by filing the present petition which was admitted on 11.12.2001 and while issuing notice to opposite party no. 2, this court also directed that during the pendency of the application further proceedings in Complaint Case No. 454 of 2000 pending in the court of Judicial Magistrate, Ist Class, Bhagalpur shall remain stayed and order of stay is still continuing. In this case, opposite party no. 2 / complainant has already appeared through her Advocate and also filed a counter affidavit refuting the claim of the petitioner.

5. Sri Sanjay Kumar Verma, learned counsel for the petitioner while challenging the order of cognizance, at the very outset, has argued that the allegation of the complainant, regarding copying from the thesis of the complainant is not sufficient for attracting either of the penal provisions of the Copy Right Act. In view of peculiar facts and circumstances of the present case, it was argued that it is not a case that the petitioner had exactly copied from the thesis of the complainant. Moreover, thesis by the complainant itself was prepared under the guidance of the petitioner. Even ideas and language of the petitioner, to some extent, was adopted by the complainant while preparing thesis. The complainant, in her complaint herself has admitted, that from the year 1983 to 1988, she was under the guidance of the petitioner, and in her guidance the complainant had prepared thesis on the subject "POLITICAL MOBILISATION AND CASTE-CONFLICT IN BIHAR SINCE 1967 TO 1980 - A SURVEY". So far allegation of similarity is concerned, it was the petitioner, who even prior to the preparation of thesis, on the subject by the complainant, had herself published several literatures / books similar to the subject on which thesis was prepared by the complainant under the guidance of the petitioner. It was argued that, in a case of a guide and disciple the allegation of copying from the thesis by the guide cannot be applicable unless it is a case of exact copying from the thesis. The learned Magistrate, even during the enquiry, and its order of cognizance, had not held that it was exact copy from the thesis of the complainant but the learned Magistrate to some extent had found similarity of

the contents. Sri Verma, has further argued that the petitioner being a guide of the complainant had guided the complainant to go through certain unpublished manuscript for preparing the concept of thesis, and even the expression of the petitioner, to some extent, was adopted by the complainant while doing the research and preparing the theses.

6. Sri Verma, submits that petitioner being a commissioned Professor of Tilka Manjhi Bhagalpur University and reputed teacher has worked on several topics, which have been published in different journals, and at least seven persons including the complainant have completed their thesis under the guidance of the petitioner, and they were awarded Ph.D. degree. The petitioner, being renowned Professor has worked on different topics. Learned counsel for the petitioner, has also contended while referring to paragraph 14 of the petition, that the petitioner was author of following important publications:

1. Fundamentals of the Caste System: Published in 1984
2. Emergence of Caste From Class: Published in 1987.
3. Exploitation of Caste in Bihar Polity: Published in 1987
4. Lok Prasashan (In Hindi): Published in 1992
5. Socio-Economic and Political Impact of Reforms: Published in 1999
6. Caste Polarization and Politics: Published in 1992

7. It was further argued by Sri Sanjay Kumar Verma, learned counsel for the petitioner, that in the present case, book in question, was published in the year 1992, and present complaint was filed by the opposite party no. 2, in the month of May, 2000 i.e. almost after lapse of about eight years from the date of publication, and as such, the order of cognizance was barred under Section 468 of the Code of Criminal Procedure. In support of his argument, learned counsel for the petitioner has relied on 2005 (1) PLJR (SC) 95 (Zandu Pharmaceutical Works Ltd. Vs Md. Sharaful Haque), A.I.R. 2003 SC 3635 (Ramesh Chandra Sinha Vs The State of Bihar) and 1980 (1) Cr.L.J. 339 (Panney Singh Vs The State of Rajasthan). It was

submitted, that on the ground of limitation itself, the order of cognizance is liable to be set aside. It was further argued, that the facts and circumstances of the present case, hardly makes out a case of civil nature, and in such circumstances, criminal court may not be allowed to be abused.

8. Sri Anil Singh, learned counsel appearing on behalf of the opposite party no. 2, has strongly opposed the prayer of the petitioner. It was argued, that the question of limitation is considered from the date of knowledge, not exactly from the date of commission of the offence. In the present case, the complainant has made a categorical statement in her complaint petition that after completing her thesis in the year 1988, she was settled at Calcutta, and while sometime in the year 2000, she came back to Bhagalpur, she could know that the petitioner copying thesis of the complainant had become author of a book which was published in the year 1992. Accordingly, it was submitted by Sri Anil Singh, that the complainant had given a plausible explanation for delayed filing, and as such, on the ground of limitation the order of cognizance may not be set aside.

9. Sri Anil Singh has strongly argued that the petitioner had approached this court while invoking its inherent jurisdiction under Sections 482 of the Code of Criminal Procedure against the order of cognizance. It was submitted, that repeatedly it has been held that, at initial stage, this court may not interfere with the criminal proceeding. At the time of cognizance only, requirement is to see, as to whether; a prima facie case is made out or not. In support of his argument, Sri Singh has relied on A.I.R. 1992 SC 1894 (Mohinder Singh Vs Gulwant Singh). It was submitted, that Hon'ble Supreme Court has held, that during the enquiry, only thing is required to be seen, as to whether, based on materials on record a prima facie case is made out or not for putting the proposed accused on a regular trial. Sri Singh, has also relied on 1993 Cr.L.J. 3537 (State of Bihar Vs K.J.D. Singh) regarding inherent jurisdiction of the court. In sum and substance, it was submitted, that this court might not interfere with the order of cognizance in view of the facts and circumstances of the present case. Accordingly, it has been prayed to reject the present petition.

10. Besides hearing learned counsel for the parties, I have also perused the materials available on record.

11. There is some substance in the argument advanced by learned counsel for the petitioner, that since petitioner was the guide of the complainant, there was possibility of recording expression of the petitioner by the complainant in her thesis, and on such, similarity it cannot be said, that the petitioner, while being an author of a book published in the year 1992 had exactly copied from the thesis of the complainant. The court is conscious of the fact, that while hearing a petition under Section 482 of the Code of Criminal Procedure, no such finding can be recorded by this court nor this court can conduct a roving enquiry, and as such, it would not be appropriate to record any finding on the merit of the case. So far, question of limitation, which has been raised by learned counsel for the petitioner is concerned, there is substance in the argument. It is true, that in complaint petition, some explanation was tried to be given regarding filing of the complaint after about eight years from the date of publication but in the order of cognizance the learned Magistrate has not at all dealt with the delay nor he has passed any order for condoning the delay. In the present case, learned Magistrate has taken cognizance of the offence under Sections 63, 67 & 68 of the Copy Right Act and Section 120B of the Indian Penal Code. So far as, maximum punishment under Sections 67 & 68 is concerned, it is punishable not for more than one year. So far as, punishment under Section 63 is concerned, for said offence, maximum punishment is sentence of three years, and as such, in the present case, restriction under Section 468(2)(C) will be applicable and accordingly, after the expiry of three years, the learned Magistrate was not justified to take cognizance of the offence. In the present case, the learned Magistrate while taking cognizance of the offence has not passed any order on the point of limitation. Learned counsel for the petitioner, has rightly relied on Zandu Pharmaceutical Works Ltd. Case (Supra), and the court is of the opinion, that in the present case, order of cognizance is barred by limitation, as prescribed under Section 468(2)(C) of the Code of Criminal Procedure, and as such, the order of cognizance dated 30.9.2000 passed by learned Judicial Magistrate, Ist Class, Bhagalpur is hereby set aside and petition stands allowed.