(2012) 08 PAT CK 0099

Patna High Court

Case No: Criminal Miscellaneous No. 13722 of 2009

Sabita Devi	APPELLANT
Vs	
The State of Bihar, Arvind Tripathi and Ved Prakash Ojha	RESPONDENT

Date of Decision: Aug. 30, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 203, 397(3), 482
- Penal Code, 1860 (IPC) - Section 182, 211, 34, 341, 376

Citation: (2013) 2 PLJR 813

Hon'ble Judges: Rakesh Kumar, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

Rakesh Kumar, J.
Heard Sri Mukesh Kumar Singh, learned counsel for the petitioner, Sri Pradip Narayan Kunwar, learned Addl. Public Prosecutor and Sri Shatrughan Pandey, learned counsel, who has appeared on behalf of Opp. Party nos. 2 and 3. The sole petitioner, who had initially filed complaint petition before the learned Chief Judicial Magistrate, Saran, has approached this Court with a prayer to quash an order dated 13.01.2009 passed in Cr. Revision No. 350 of 2008 by learned Addl. Sessions Judge, Fast Track Court-II, Saran, whereby the learned Addl. Sessions Judge had rejected the revision preferred by the petitioner against the order dated 23.10.2008 passed in Enquiry No. 715 of 2008. By order dated 23.10.2008, the learned Magistrate had dismissed the complaint petition (protest petition) vide Complaint Case No. 1645 of 2008. The complainant earlier had filed a complaint case, which was referred to the police for its registration and investigation u/s 156(3) of the Code of Criminal Procedure and, as such, an F.I.R. vide Mashrakh P.S. Case No. 09 of 2007 was registered on 12.01.2007 for the offence under Sections 448, 341, 376 /34 of the

Indian Penal Code. It was alleged by the complainant that Opp. Party nos. 2 and 3 had intruded into the house in the night of 01.01.2007 at about 10.00 P.M. along with two other unknown accused persons and had committed rape on her. Despite the fact that it was a case of commission of rape, the complainant instead of approaching the Police Station, at later stage, filed a complaint, which was referred to the police for its investigation. During investigation, it was found that the said case was lodged falsely and maliciously. The reason for filing such false case was mentioned that earlier Opp. Party nos. 2 and 3 being Mukhiya and Sarpanch of the locality had taken steps for getting the unauthorized occupation by the petitioner and other 11 persons, who had unauthorisedly occupied Gairmazarua Land, which was being used by the local people as place of cremation. It transpired that since Opp. Party nos. 2 and 3 had taken steps for getting evicted unauthorized persons, the present false case was cooked up and, as such, after thorough investigation, the police submitted final report and at the same time, the police decided for prosecuting the petitioner for the offence under Sections 182 and 211 of the Indian Penal Code. The complaint petition before the learned Magistrate was filed on 3rd January, 2007 for the alleged offence, which had taken place on 01.01.2007. After the order of the learned Magistrate, the complaint was received in the Police Station and immediately on 12.01.2007, an F.I.R. was got registered and investigation commenced and finally final report was submitted. Before submission of final report, immediately even before expiry of one month, on 18.01.2007 a protest petition was filed by the petitioner. Subsequently, the said protest petition was treated as complaint and after enquiry, the court was satisfied that there was no ground for proceeding and, as such, complaint was rejected u/s 203 of the Code of Criminal Procedure by order dated 23.10.2008. After rejection of complaint petition, the petitioner preferred a revision, which too stood dismissed by a reasoned order by the learned Addl. Sessions Judge-cum-Fast Track Court no. II, Saran.

2. Sri Mukesh Kumar Singh, learned counsel for the petitioner has argued that during investigation, re-statement of the petitioner was got recorded, in which she corroborated the allegation made in the F.I.R. and, thereafter, two witnesses have also supported the case. In spite of those materials, the police under influence of Opp. Party nos. 2 and 2 submitted final report. The petitioner apprehending that the Investigating Officer may not do justice in the case had filed protest petition and subsequently, the police submitted final report and during enquiry by the learned Magistrate, the witnesses had supported the case of the prosecution, but the learned Magistrate in a mechanical manner has rejected the same. He submits that in similar manner, the revisional court has also passed order in a mechanical manner and, as such, according to learned counsel for the petitioner, both the orders are required to set aside.

3. Learned Addl. Public Prosecutor and learned counsel appearing on behalf of Opp. Party nos. 2 and 3 have opposed the prayer of the petitioner. In this case by order dated 11.04.2012, case diary was summoned, which is on record. This Court has also

examined the case diary.

4. After hearing the parties and considering the materials available on record, this Court is satisfied that the police had rightly submitted final form as well as learned Magistrate has also passed a correct order, whereby the complaint petition was rejected. I have also perused the order of the revisional court, which is a reasoned order. After going through the materials available on record, the Court is satisfied that there is no ground for interference with either of the orders. Moreover, once revision preferred against rejection of the complaint petition was rejected, in normal course a petition in the garb of Section 482 of the Code of Criminal Procedure is not maintainable since it is barred u/s 397(3) of the Code of Criminal Procedure. I do no find any ground for interference. The petition stands dismissed.