

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.8603 of 2015

Arising Out of PS.Case No. -33 Year- 2002 Thana -GAYGHAT District- MUZAFFARPUR

Dr. R.K. Singh @ Raj Kishore Singh @ Ram Kishore Singh, S/o Sri Mahendra Singh R/o village - Ramnagar, P.S. - Gaighat, District - Muzaffarpur. A/p Village/Mohalla - Riga Mill Bazar, P.S. - Riga, District - Sitamarhi.

.... Petitioner

Versus

1. The State of Bihar.
2. Ajay Kumar Singh, S/o Ram Ekbal Singh, R/o Village - Ramnagar, P.S. - Gayghat, District - Muzaffarpur.

.... Opposite Parties

With

Criminal Miscellaneous No. 8637 of 2015

Arising Out of PS.Case No. -33 Year- 2002 Thana -GAYGHAT District- MUZAFFARPUR

Dr. R.K. Singh @ Raj Kishore Singh @ Dr. Ram Kishore Singh, S/o Sri Mahendra Singh, R/o Village- Ramnagar, P.S.-Gaighat, District-Muzaffarpur. A/p village/Mohalla-- Riga Mill Bazar, P.S.- Riga, District- Sitamarhi.

.... Petitioner

Versus

1. The State of Bihar
2. Ajay Kumar Singh, S/o Ram Ekbal Singh, R/o Village- Ramnagar, P.S. -Gaighat, District- Muzaffarpur.

.... Opposite Parties

Appearance :

(In Cr.Misc. No. 8603 of 2015)

For the Petitioner/s : Mr. Dinesh Jha, Advocate

For the Opposite Party/s : Dr. Mayanand Jha, APP

(In Cr.Misc. No. 8637 of 2015)

For the Petitioner/s : Mr. Dinesh Jha, Advocate

For the Opposite Party/s : Dr. Mayanand Jha, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 18-09-2015

Heard Mr. Dinesh Jha, learned counsel for the petitioner and Dr. Mayanand Jha, learned APP for the State.

2. Since these two applications arise out of the same FIR and parties are common in both the cases, they have been heard together and are being disposed of by a common order.

3. In Cr. Misc. No. 8603 of 2015, the petitioner has challenged the order dated 05.09.2008 passed by the learned Chief Judicial Magistrate, Muzaffarpur in Gaighat P.S. Case No. 33 of 2002, whereby the learned Magistrate has taken cognizance for the offence punishable under Section 384 of the Indian Penal Code.

4. In Cr. Misc. No. 8637 of 2015, the petitioner has challenged the orders dated 22.09.2012 and 06.12.2013 passed in connection with the aforesaid Gaighat P.S. Case No. 33 of 2002 whereby the learned Chief Judicial Magistrate, Muzaffarpur has issued non-bailable warrant of arrest against the petitioner and issued proclamation order against him.

5. Learned counsel for the petitioner submits that the FIR was instituted on 06.03.2002. On completion of investigation, the police submitted charge-sheet vide charge-sheet No. 14/2008



dated 17.01.2008 in the court on 24.01.2008 and the learned Chief Judicial Magistrate, Muzaffarpur took cognizance of the offence punishable under Section 384 of the Indian Penal Code on 05.09.2009. He submits that subsequently vide orders dated 22.09.2012 and 06.12.2013, the learned Judicial Magistrate before whom the case was transferred has issued non-bailable warrant of arrest and proclamation order under Section 82 of the Code of Criminal Procedure (For short 'Cr. P.C.') against the petitioner.

6. The contention of the learned counsel for the petitioner is that having regard to the bar contained under Section 468(2) of the Cr. P.C., the learned Chief Judicial Magistrate has committed a serious error in taking cognizance of the offence as it would appear from the records that the cognizance was taken after the expiry of the period of limitation without condoning the delay.

7. Dr. Mayanand Jha, learned APP for the State submits that the impugned order dated 05.09.2008 passed by the learned Chief Judicial Magistrate, Muzaffarpur is justified in law. He submits that since the case was under investigation, the Magistrate would not have taken cognizance of the offence before the submission of charge-sheet. He further contends that Section 473 of the Cr. P.C. empowers the Magistrate to condone the delay and take cognizance of the offence of the offence beyond the period

prescribed under Section 473 of the Cr. P.C.

8. I have heard learned counsel for the parties and perused the record.

9. In view of the fact that the learned Chief Judicial Magistrate, Muzaffarpur has failed to exercise his jurisdiction under Section 473 of the Cr. P.C. and has taken cognizance of the offence punishable under Section 384 of the Indian Penal Code which prescribes the maximum punishment of three years beyond the period prescribed under Section 468(2) of the Cr. P.C. the order cannot be sustained. Section 384 IPC prescribes a maximum punishment of three years. It would be evident from the FIR that the occurrence took place on 15.01.2002 for which an FIR was instituted on 06.03.2002. As noted above, the learned Chief Judicial Magistrate took cognizance of the offence on 05.09.2008. The limitation for taking cognizance in the present case would be three years in terms of Section 468(2)(c) as the offence alleged is punishable for three years. From perusal of the impugned order, it would be evident that the learned Chief Judicial Magistrate has not exercised his power under Section 473 Cr. P.C. It is true that a Court, in view of Section 473 Cr. P.C. can take cognizance of an offence beyond the period of limitation, but the said power can be exercised when it is satisfied that the delay has properly been

explained or in absence of proper explanation if it is satisfied that it is necessary to do in the interest of justice. In the present case, the delay has not been explained by the prosecution and the court has not recorded its satisfaction that condonation of delay is necessary in the interest of justice. Hence, the order taking cognizance of the offence and all subsequent orders are bad in law.

10. Accordingly, the impugned orders dated 05.09.2008, 22.09.2012 and 06.12.2013 passed by the learned Chief Judicial Magistrate, Muzaffarpur in connection with Gaighat P.S. Case No. 33 of 2002 in Cr. Misc. No. 8637 of 2015 are set aside.

11. The applications are allowed.

(Ashwani Kumar Singh, J.)

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