

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.45921 of 2013

Arising Out of PS.Case No. -null Year- null Thana -null District- BHABHUA (KAIMUR)

- =====
1. Maghani Devi Wife Of Tulsi Prajapati Resident Of Village - Khaira, P.S. - Sonhan, District - Kaimur (Bhabhua)
 2. Lala Prajapati Son Of Ghurmari Prajapati Resident Of Village - Khaira, P.S. - Sonhan, District - Kaimur (Bhabhua)
 3. Nandu Prajapati Son Of Ghurmari Prajapati Resident Of Village - Khaira, P.S. - Sonhan, District - Kaimur (Bhabhua)
 4. Malik Prajapati Son Of Ghurmari Prajapati Resident Of Village - Khaira, P.S. - Sonhan, District - Kaimur (Bhabhua)

.... Petitioner/s

Versus

1. The State Of Bihar
2. Ramashish Singh @ Ramashish Yadav Son Of Nathuni Singh Resident Of Village - Khaira, Ps.- Sonhan, District - Kaimur (Bhabhua)

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Dhanendra Chaubey, Adv.
For the State : Mr. Narsingh Tanti, APP
For Opposite Party/ No.2 : Mr. Vikram Deo Singh, Adv.
Mr. Manoj Kumar, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 19-05-2017

The petitioners have filed the present application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') for quashing the order dated 20.08.2013 passed by the learned Sessions Judge, Kaimur at Bhabhua in Cr. Rev. No. 74 of 2013 by which the learned Sessions Judge allowed the revision application and set aside the part of the order dated 17.06.2013 passed by the learned Judicial Magistrate 1st Class, Bhabhua by which he had taken cognizance of the offence under Section 182 of the Indian Penal Code (for short ('IPC')) against the opposite party no.2.



2. One Ramashish Singh (opposite party no.2) had lodged a written report against the petitioners being Sonhan P.S. Case No. 302 of 2009 under Sections 457 and 380 of the IPC in which on completion of investigation while submitting final report holding the accusation to be false, a recommendation was made to initiate a proceeding against the opposite party no.2 under Sections 182 and 211 of the IPC.

3. Being aggrieved by the submission of final report in the aforesaid police case, the opposite party no.2 filed a complaint in the court of Judicial Magistrate 1st Class vide Complaint Case No. 1358(C) of 2009.

4. In the said complaint, the complainant was examined on solemn affirmation under Section 200 of the Cr.P.C. and apart from him three other witnesses were examined in course of enquiry under Section 202 of the Cr.P.C.

5. The learned Magistrate also called for a report from the Gram Kutchery while holding enquiry of the complaint and after receipt of the same and on the basis of the materials available on record finding no justifiable ground to summon the accused persons dismissed the complaint in exercise of powers conferred under Section 203 of the Cr.P.C. vide order dated 13.05.2010.

6. Being aggrieved by the said order dated 13.05.2010



passed by the learned Judicial Magistrate, the opposite party no.2 preferred a revision application vide Cr. Rev. No. 50 of 2010 before the learned Sessions Judge, Kaimur at Bhabhua, which was dismissed vide order dated 07.01.2011.

7. The opposite party no.2 being not satisfied with the aforesaid order dated 07.01.2011 filed an application under Section 482 of the Cr.P.C. before this Court vide Cr. Misc. No. 15858 of 2011, which also was dismissed by this Court on 16.01.2013 finding no error in the revisional order passed by the learned Sessions Judge, Kaimur at Bhabhua.

8. While dismissing the aforesaid Cr. Misc. No. 15858 of 2011, this Court granted liberty to the opposite party no.2 to take appropriate defence in the proceeding under Section 182/211 Cr.P.C. and the court below was directed to consider the same without being prejudiced by the order of this Court.

9. On receipt of the aforesaid order dated 16.01.2013 passed by this Court, the learned Magistrate proceeded on the basis of the recommendations made by the police in the final report submitted in Sonhan P.S.Case No. 302 of 2009 and took cognizance of the offence punishable under Section 182 of the IPC against the opposite party no.2 and directed him to be present in the court vide order dated 17.06.2013.



10. The aforesaid order dated 17.06.2013 passed by the learned Magistrate was challenged by the opposite party no.2 in the court of Sessions Judge, Kaimur at Bhabhua vide Cr. Rev. No. 74 of 2013. The learned Sessions Judge vide impugned order dated 20.08.2013 considered the facts and circumstances of the case and set aside the order passed by the learned Magistrate by which he had taken cognizance of the offence punishable under Section 182 of the IPC against the opposite party no.2.

11. The petitioners being aggrieved by the aforesaid order dated 20.08.2013 filed the present application under Section 482 of the Cr.P.C. before this Court.

12. Learned counsel for the petitioners submitted that the impugned order is erroneous one as opposite party no.2 had instituted the police case, which was found to be false during investigation pursuant to which the police had not only submitted final report but also recommended for initiation of the proceeding against him. He contended that both the learned Magistrate and the learned Sessions Judge erred in law as the learned Magistrate failed to take cognizance against the opposite party no.2 under Section 211 of the IPC whereas the learned Sessions Judge dropped the proceedings by quashing the cognizance taken by the learned Magistrate under Section 182 of the IPC. He contended that the person who abuses the process of law by



instituting a false case must be dealt with iron hands or else the entire criminal justice system would collapse.

13. On the other hand, learned counsel for the opposite party no.2 submitted that there is no illegality in the order passed by the learned Sessions Judge as the aforesaid police case, which is said to be false, was instituted on 22.07.2009 and the cognizance had been taken much beyond the prescribed time of limitation on 17.06.2013.

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

15. There is no dispute to the fact that in the present case the opposite party no.2 had submitted the written report on 22.07.2009 to the Officer-in-Charge of Sonhan Police Station on the basis of which Sonhan P.S.Case No. 302 of 2009 was instituted. There is also no dispute to the fact that in the said Sonhan P.S. Case No. 302 of 2009 the police submitted final report on 30.09.2009 and the final report submitted by the police was accepted by the learned Magistrate on 16.11.2009. It is also not in dispute that the order of cognizance under Section 182 of the IPC was passed on 17.06.2013.

16. Section 182 of the IPC under which cognizance had been taken prescribes punishment for the offence of giving false information with intent to cause public servant to use his lawful power to the injury of another person. The maximum punishment



prescribed for the said offence is six months or with fine which may extend to one thousand rupees, or with both.

17. Section 468 of the Cr.P.C. prescribes limitation for taking cognizance of certain offences. In view of the provisions prescribed under Section 468(2)(b) of the Cr.P.C. the period of limitation for taking cognizance of offence shall be one year if the offence is punishable with imprisonment for a term not exceeding one year.

18. In that view of the matter, the cognizance in the present case should not have been taken by the learned Magistrate after expiry of one year time from the date of submission of final report in the police case. It is reiterated that the final report was filed by the police in the court on 30.09.2009. In that view of the matter, the court should not have taken cognizance of the offence on or after 01.10.2010 without condoning the delay in exercise of power conferred under Section 473 of the Cr.P.C.

19. Admittedly, in the present case cognizance has been taken for the offence under Section 182 of the IPC by the learned Magistrate on 17.06.2013, i.e. after more than three years from the date of knowledge about the offence. Hence, the order passed by the learned Magistrate was certainly much beyond the period of limitation prescribed in law. In that view of the matter, no error can



be found with the order passed by the revisional court whereby it has set aside the order taking cognizance passed by the learned Magistrate.

19. Accordingly, the application, being devoid of any merit, is hereby dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	22-05-2017
Transmission Date	22-05-2017

