

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 44817 of 2014

Arising Out of PS. Case No.-68 Year-2006 Thana- Manigachi District- Darbhanga

Shatrughan Prasad Sah Son of Late Ramchandra Prasad Sah resident of
village- Vajitpur, Police Station- Manigachi, District- Darbhanga

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Suresh Kumar

For the Opposite Party/s : Mr. Madan Kumar (APP)

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

2. 08-09-2017 Heard Sri Suresh Kumar, learned counsel for the
petitioner and learned Addl. Public Prosecutor.

The sole petitioner has approached this Court invoking its inherent jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 (for short “Cr.P.C.”), with a prayer to quash an order dated 31-07-2014 passed by learned Chief Judicial Magistrate, Darbhanga in G.O. No. 61 of 2007, arising out of Manigachi P.S. Case No. 68 of 2006. By the said order, the learned Magistrate, on the basis of prosecution report submitted by the D.P.O., found *prima facie* case against the petitioner under Section 182/211 of the Indian Penal Code and directed for summoning the accused.

Short fact of the case is that the petitioner was informant in Manigachi P.S. Case No. 68 of 2006 for offence



under Sections 363(A), 366 of the Indian Penal Code, however; during investigation, police found the case as false and submitted final report and at the same time, it was recommended to prosecute the petitioner (informant) for offence under Sections 182/211 of the Indian Penal Code and thereafter, on the basis of prosecution report submitted by D.P.O., order impugned was passed on 31-07-2014.

Learned counsel for the petitioner, by way of referring to statement made in paragraph – 12 of the petition, submits that the order of cognizance is liable to be set aside, since it was barred under Section 468(2) of the Cr.P.C. He submits that as per offence under Section 182 of the I.P.C., the maximum punishment is imprisonment for six months, whereas, for offence under Section 211 of the I.P.C., the maximum sentence is imprisonment for two years. According to him, Section 468(2) prescribes the period for taking cognizance in such cases is within two years. By way of referring to fact disclosed in paragraph – 12 of the petition, he submits that the prosecution report was submitted by the police on 23-12-2006, whereas, order of cognizance was passed on 31-07-2014. Accordingly, the order of cognizance is liable to be set aside.

Learned Addl. Public Prosecutor, opposing the prayer,



tried to persuade the Court that the learned Magistrate was well competent to condone the delay and order impugned indicates that delay has already been condoned and as such, order impugned may not be interfered with.

Besides hearing learned counsel for the parties, I have also perused the materials on record. It is not in dispute that prosecution report was submitted in the year 2006, whereas, the order of cognizance under Sections 182/211 of the I.P.C. was passed on 31-07-2014 i.e. after about eight years.

Ofcourse, in the order impugned, the learned Magistrate has mentioned regarding condonation of limitation, but save and except the word, *“From further perusal of case record it appears that this case is barred by the limitation. So the period for delay of limitation is hereby condoned and the cognizance is taken....”*, nothing has been stated.

It is true that even after expiry of period of limitation, the delay may be condoned, but the manner, in which, the learned Magistrate has passed the order to show condonation of delay is not sufficient to satisfy the Court about the reason for condonation of delay in passing such order. Fact remains that prosecution report was submitted in the year 2006 and order of cognizance was passed much beyond the period of limitation



and as such, the order, being violative of Section 468(2) of the Cr.P.C., is liable to be interfered with.

Accordingly, the order dated 31-07-2014 passed by learned Chief Judicial Magistrate, Darbhanga in G.O. No. 61 of 2007 (arising out of Manigachhi P.S. Case No. 68 of 2006) is, hereby, set aside.

The petition stands allowed.

(Rakesh Kumar, J.)

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