

(2017) 11 PAT CK 0048

In the Patna High Court

Case No : 45594 of 2014

Abdul Ahad Son of Abdul Hafeez

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 29-11-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 34](#), [Section 379](#), [Section 323](#), [Section 506](#), [Section 504](#), [Section 341](#) - Acts d

Citation : (2017) 11 PAT CK 0048

Hon'ble Judges : Mohit Kumar Shah

Bench : SINGLE BENCH

Advocate : Madhusudan Kumar, ?Kaushal Kumar Jha

Final Decision : Dismissed

Judgement

1. The Opposite Party No.2 namely, Bhaglu Safi lodged a complaint before the SC/ST Police Station, Samastipur on 16.7.2011, inter alia, stating therein that on 4.7.2011 at about 4 P.M. while he was going from his house to Badarbanna and had reached near the mosque behind the culvert in between Badarbanna and Shrirampur, the petitioners herein surrounded him, whereupon the petitioner no.2 exhorted while abusing the Opposite Party No.2 that this is "Dhobiya Harijan" who has deposed in a case against him. The said petitioner no.2 had further exhorted to kill the said ?Dhobiya?, whereafter all the accused persons tied the hands and legs of the Opposite Party No.2 with a rope and started assaulting the Opposite Party No.2 over his

entire body, resulting in the Opposite party No.2 suffering grave injuries and blood also started oozing out from his nose and mouth. In the meantime, the accused persons also snatched money and watch from the Opposite Party No.2. It is the further contention of the Opposite Party No.2 that subsequently, the villagers had come there and had taken him on a cot to the hospital where his condition deteriorated and then he was taken to the D.M.C.H., Darbhanga where he was treated and after his condition improved, he has filed the present complaint.

2. On the basis of the said complaint of the Opposite Party No.2 dated 16.7.2011, SC/ST Samastipur P.S. Case No. 29 of 2011 was registered against the petitioners herein under Sections 341, 323, 379, 504 and 506 / 34 of the Indian Penal Code as well as under Sections 3 (i)(x) of the SC/ST Prevention of Atrocities Act.

3. The police had investigated the case and had found the case true, whereafter a charge sheet dated 25.5.2012 was filed against the petitioners herein under Sections 341, 323 and 504 of the Indian Penal Code as well as section 3(i)(x) of the Prevention of Atrocities Act. It appears that the learned trial court has also taken cognizance of the offences, as alleged, against the petitioners herein. Besides, the aforesaid facts, the petitioners herein had filed a petition for discharge under Section 227 of the Code of Criminal Procedure before the learned court of Additional Sessions Judge- 1st -cum- Special Judge, Darbhanga in connection with SC/ST Case No. 212 of 2014, however, the learned trial court has dismissed the said petition by a well reasoned and judicious order dated 10.9.2014, which is under challenge in the present proceeding.

4. The learned counsel for the petitioners has submitted that no case is made out against the petitioners herein, which would be apparent from paragraph nos. 11, 12, 13, 22 and 24 of the case diary.

5. This Court had called for the case diary of the aforesaid case and the same has been received, which has also been perused by this Court.

6. As far as the contention of the learned counsel for the petitioners regarding there being no material in the case diary to proceed against the petitioners herein is concerned, it is stated that paragraph-11, 12 and 13 only relate to some of the witnesses while there are other witnesses, who have been examined by the police and all of them have supported the alleged occurrence. By referring to paragraph-22 of the case diary, which contains the supervision note of the Sub-Divisional Police Officer as well as paragraph-24 of the case diary, the learned counsel for the petitioners has stated that the aforesaid case has been found to be false and it has been opined to file a closure report (final form). It may be relevant to state here that it is unfortunate on the part of the petitioners to only point out the material in their favour, however, the fact is that subsequently, in paragraph-26 of the case diary, the Superintendent of Police as well as the Inspector General of Police have opined that the victim was treated by a Doctor and the allegations, as levelled against the petitioners, are true hence the Investigating Officer should again start the investigation.

Thereafter, the matter was re-investigated and the case has been found to be true, hence the charge sheet dated 25.5.2012 was submitted by the police.

7. Therefore, it is apparent that the arguments advanced on behalf of the petitioners are bereft of any merit and an incorrect picture has been projected, whereas the fact is that upon re-investigation, the case was found to be true and only then the charge sheet was filed.

8. In any view of the matter, it is a trite law that while dealing with a quashing petition, the court has ordinarily to proceed

on the basis of the averments in the complaint and the defence of the accused cannot be considered at that stage and moreover, the court considering the prayer for quashing, does not adjudicate upon a disputed question of fact. Reference in this connection be had to the judgments reported in (2008) 13 SCC 678 [Suryalakshmi Cotton Mills Ltd. V. Rajvir Industries Ltd .], (2011) 13 SCC 88 [Rallis India Ltd. V. Poduru Vidya Bhushan], (2015) 11 SCC 776 [HMT Watches Ltd. V. M.A. Abida] and one reported in (2016) 10 SCC 458 [Sampelly Satyanarayan Rao v. Indian Renewable Energy Development Agency Ltd .].

9. I further find from perusal of the record as also the case diary that there are ample materials on record to prima facie make out a case against the petitioners herein. The entire materials also suggest commission of cognizable offence by the petitioners herein, hence the ongoing criminal prosecution of the petitioners requires no interference by this Court.

10. For the reasons stated herein above, there is no merit in the present petition and the same is dismissed, however, without any order as to costs.