
(2012) 02 PAT CK 0009

In the Patna High Court

Case No : Criminal Miscellaneous No. 12160 of 2008

Abdul Kaium and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 24-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 482
Penal Code, 1860 (IPC) — Section 147, 323, 379, 420, 468

Citation : (2012) 4 PLJR 565

Hon'ble Judges : Rajendra Kumar Mishra, J

Bench : Single Bench

Advocate : Kali Prasanna Dubey and Sunil Kumar Singh, for the Appellant; N.N. Tiwari for the State, for the Respondent

Final Decision : Allowed

Judgement

Rajendra Kumar Mishra, J.—The petitioners have approached this Court u/s 482 of the Code of Criminal Procedure to quash the order dated 23.6.2007 passed in Complaint Case No. 147C of 2007 by the Court of Sri A.K. Shukla, Judicial Magistrate, First Class, Birpur, summoning the accused, named in the complaint petition, including the petitioners, finding prima facie case under Sections 420, 147, 323, 379 and 468 of the Indian Penal Code. A prayer has also been made to quash the entire criminal proceeding, arising out of the aforesaid complaint case, against the petitioners. In brief, the case is that the opposite party no. 2, Nabi Hassan, filed the complaint petition, numbered as Complaint Case No. 147C of 2007, against the accused, named in the complaint petition, including the petitioners in the Court of the Sub-Divisional Judicial Magistrate, Birpur (Supaul), alleging therein that on constructing the house on the land of Plot Nos. 8385 and 8346 of Khata No. 201 of village-Bhawanipur, Tola-Pratapganj, which was acquired by his father, Md. Ishaque, he is residing there. His other brothers used to reside at their native Village-Bhagwatpur. On 24.4.2007 in the day hours, he was talking at his house with Shubhak Lal Paswan and Md. Shamim, who had come from his native Village-Bhagwatpur. In the meantime, all the accused,

named in the complaint petition, including the petitioners armed with weapons reached there and started to abuse and assault him. In that course, they also damaged the thatched boundary wall of the house. At that time, accused no. 1, Tara Nand Sah, snatched a wrist watch worth Rs. 800/- from his hand whereas the accused no. 2, Badri Sah, snatched Rs. 600/- from his pocket and the accused no. 3, Sampat Sah, took the utensils and clothes. Thereafter, all the accused moved from there giving threatening to him for dire consequences in case of making the complaint regarding the aforesaid occurrence to anyone. The opposite party no. 2 further alleged that the accused-petitioner nos. 1 to 3, namely, Abdul Kaium, Md. Ayub and Mohammad Hassan, are his own brothers, who, under conspiracy, sold the aforesaid land of his father and also of his minor brothers to the other accused, named in the complaint petition, in which the main role was of the accused-petitioner no. 4, Md. Tayyab. His father, in his lifetime in the year 1972 through registered deed of gift nos. 2858/72, 2859/72 and 2866/72, had given the land to his sons according to their shares except the lands of Village-Bhawanipur, Tola-Pratapganj, which was kept with him for his other minor sons, which was also accepted by the accused-petitioner nos. 1 to 3 vide registered agreement no. 5377/75. The opposite party no. 2 further alleged that before two months, when he came to know about executing the sale deed by the accused petitioner nos. 1 to 3, then he contacted to accused-petitioner nos. 1 to 3 and other accused, who are vendees, and made complaint but they did not pay any heed.

2. After filing of the complaint petition by the opposite party no. 2, Nabi Hassan, on inquiry u/s 202 of the Code of Criminal Procedure, the Court of Sri A.K. Shukla, Judicial Magistrate, First Class, Birpur, summoned all the accused, named in the complaint petition, including the petitioners, finding prima facie case under Sections 420, 147, 323, 379 and 468 of the Indian Penal Code through the impugned order dated 23.6.2007.

3. Learned counsel appearing on behalf of the petitioners made submission that the petitioner nos. 1 to 3 are own brothers whereas petitioner no. 4 is the co-villager of the opposite party no. 2 and they have been falsely implicated in this case due to malice. In fact, the petitioners had not participated in the alleged occurrence on 24.4.2007. It is further submitted that even if the allegation, as made in the complaint petition in second part, is taken at its face value and is accepted to be true, no offence under Sections 420 and 468 of the Indian Penal Code is made out. So far as the allegation in first part of the story of abusing and assaulting the opposite party no. 2, as narrated in the complaint petition, is concerned, the same are vague and no specific allegation has been made against the petitioners.

4. On perusal of the complaint petition, it appears that in first part, the allegation has been made against the accused, named in the complaint petition, including the petitioners to reach at the house of the opposite party no. 2 and to abuse and assault him by damaging the thatched boundary wall of the house with

further allegation of snatching wristwatch worth Rs. 800/- by the accused no. 1, Tara Nand Sah and snatching Rs. 600/- from the pocket by the accused no. 2, Badri Sah and taking away the utensils and clothes by the accused no. 3, Sampat Sah, from the house at that time. In the second part, there is allegation against the petitioner nos. 1 to 3 to execute the sale deed, under conspiracy of the petitioner no. 4, in favour of other accused, named in the complaint petition in the back of the opposite party no. 2 in the year 1980 with respect to Plot Nos. 8385 and 8346 of Khata No. 201, while Md. Ishaque, the father of the opposite party no. 2 in his life time had given the share in the land to the petitioner nos. 1 to 3 through registered deed of gift in other Village-Bhagwatpur, retaining the land of his share and other minor children. As such, the averments made in the complaint petition do not disclose the ingredients for constituting the offence under Sections 420 and 468 of the Indian Penal Code for cheating and forgery against the petitioners. Under the aforesaid facts and circumstances, the impugned order dated 23.6.2007 passed in Complaint Case No. 147C of 2007 by the Court of Sri A.K. Shukla, Judicial Magistrate, First Class, Birpur, summoning the accused-petitioners for the offence, under Sections 420 and 468 of the Indian Penal Code appears to be an abuse of the process of the court. Accordingly, the impugned order dated 23.6.2007, with respect to the petitioners, regarding the offence under Sections 420 and 468 of the Indian Penal Code, is hereby quashed and this application stands allowed to that extent.

So far as the impugned order dated 23.6.2007, summoning the petitioners for the offences under Sections 147, 323 and 379 of the Indian Penal Code is concerned, I find no illegality with the same, hence, the trial will continue against the petitioners with respect to that offences.