

(2011) 02 PAT CK 0060

In the Patna High Court

Case No : Criminal Miscellaneous No. 18043 of 2007

Ajay Kumar Keshari @ Ajay Keshari, Sunil Kumar Keshari @
Sunil Keshari, Anjani Kumari @ Anjani Keshari All Above and
Dr. Bans Ropan Keshari @ Bansropan Keshari

APPELLANT

Vs

The State of Bihar and Rajendra Prasad Keshari

RESPONDENT

Date of Decision : 04-02-2011

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 482
Penal Code, 1860 (IPC) — Section 147, 148, 182, 211, 379

Citation : (2011) 59 BLJR 678

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—Four Petitioners, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, have prayed for quashing of an order dated 20.8.2007 passed by learned Judicial Magistrate, Ist Class, Buxar in Complaint Case No. 432C of 2006/Tr. No. 163 of 2007. By the said order, learned Magistrate has taken cognizance of offence under Sections 147, 379 and 427 of the Indian Penal Code.

2. Short fact of the case is that initially the opposite party No. 2 had filed a complaint on 6.7.2005 in the court of Chief Judicial Magistrate, Buxar against eight accused persons including the Petitioners on allegation of commission of offence under Sections 147, 148, 379 and 427 of the Indian Penal Code and Section 27 of the Arms Act. It was disclosed in the complaint that after constructing a small house and shop, he was doing business of Kirana and General Store at Station Road, Buxar. His son Bijay Kumar was doing the business for supply of Chocolate, Bulb etc. to different shops. It was disclosed that besides the house of the complainant, there was house of accused Binod Sao and in the year 1998, accused Binod Sao and his father Sheo Kumar Sao

had taken Rs. 50,000/- from the complainant and in lieu of that amount, they allowed the complainant to use his one room with Varandah and vacant land for which it was agreed that rent at the rate of Rs. 250/- per month shall be adjusted against the loan amount of Rs. 50,000/-. Meaning thereby that the complainant occupied the said premises and land as a tenant. It was agreed that if the amount is adjusted from the said rent, the complainant will have no objection to return the possession of the house and the land in question. It was alleged that on 26.6.2005 at about 4.45 P.M. (Evening), all the named accused named along with some un-social elements came to the shop of the complainant and asked him to vacate the premises. It was told by the complainant that if accused Binod Kumar and his father were ready to return the remaining amount from Rs. 50,000/-, he will vacate the same within a week. Thereafter, all the accused persons started to abuse the complainant. In the meanwhile, accused Pawan Kumar Keshari (not Petitioner) took out a country made pistol. After being frightened, the complainant entered inside his house and from upper floor of the house, he started raising alarm after noticing the activities of the accused persons. It was alleged that accused persons in lieu of Rs. 50,000/- took away most of the articles from his shop. In the said occurrence, the accused persons looted the articles from the godown to the tune of Rs. 40,000/- and destroyed other articles to the tune of Rs. 8,000/-. It was alleged by the complainant that after the occurrence, he went to Buxar Police Station and on refusal, he went to the residence of Superintendent of Police, Buxar, but he failed to meet him. Again on the next day i.e. on 27.6.2005, he gave a written application to the Superintendent of Police, which was referred to the Buxar Town Police Station but no action was taken and thereafter he filed the complaint case. The said complaint was subsequently referred u/s 156(3) of the Code of Criminal Procedure to Buxar Town Police Station for its registration and investigation and as such an F.I.R. vide Buxar (T) P.S. Case No. 148 of 2005 was registered on 15.7.2005 for the offence under Sections 147, 148, 379 and 427 of the Indian Penal Code. After the F.I.R. was registered, police started investigation. However, during investigation, allegation made by the informant was found un-true and as such on 31.1.2006, a final report was submitted by the police and also it was recommended to prosecute the informant/complainant for the offence under Sections 182/211 of the Indian Penal Code. Before filing of the final report in Buxar Town P.S. Case No. 148 of 2005, the complainant apprehending that police may not do justice with the case, since police was in collusion with the accused persons, the informant filed a protest petition on 26.8.2005 in the court of Chief Judicial Magistrate, Buxar. Subsequently, the protest petition was treated as complaint and a case vide Complaint Case No. 432C of 2006 was initiated. After recording the statement of complainant on S.A. and examining four witnesses, during the enquiry, the learned Magistrate was, prima facie, satisfied for commission of offence under Sections 147, 379 and 427 of the Indian Penal Code and took cognizance of the same offence and directed for summoning the accused persons including the Petitioners.

3. Aggrieved with the order of cognizance, the aforesaid Petitioners approached this Court by filing the present petition. On 21.8.2007, while issuing notice to opposite party No. 2, this Court directed that in the meanwhile, no coercive action shall be taken against the Petitioners. Subsequently on 18.9.2008, the petition was admitted for hearing. At the time of admission itself, opposite party No. 2 had already entered his appearance. It was further directed that in the meanwhile, further proceeding in Complaint Case No. 432C of 2006 pending in the court below shall remain stayed and order of stay is still continuing.

4. Shri Suraj Narayan Prasad Sinha, learned Senior Counsel appearing on behalf of the Petitioners, has argued that the allegation made by the complainant is totally incorrect and false, which is evident from the fact that initially the said complaint was referred to the police and police, after thorough investigation, came to the conclusion that the complainant/informant had made a complete false allegation and as such police submitted final report No. 25 of 2006 dated 31.1.2006 and also recommended for prosecuting the informant/complainant for commission of offence under Sections 182/211 of the Indian Penal Code. It was argued that the allegation was examined by the statutory investigating agency and thereafter, the allegation was found to be un-true and false. It was also argued that after submission of final report, the learned Magistrate, by its order dated 10.5.2006, had accepted the final report and once the final report was accepted by the learned Magistrate, he was not required to proceed with the case treating the protest as complaint petition and as such all the subsequent proceeding was illegal.

5. Shri Sinha, learned Senior Counsel for the Petitioners, has also argued that even for the time being, if the allegation made in the complaint petition is considered as true, no offence is made out so far as Petitioners are concerned. It was submitted that save and except putting the name of Petitioners in the accused column of the complaint petition not even a single word has been whispered against any of the Petitioners. Even in the statement of complainant recorded on S.A., he has not said any single word against the Petitioners. It was also argued that the witnesses, who had come in support of the complainant, are sons and wife of the complainant and no independent witness was produced by the complainant. It was submitted that since the Petitioner Nos. 1, 2 and 3 are cousins of Accused No. 1, Binod Sao and there were some dispute in relation to premises in question in between the complainant and Binod Sao, along with Binod Sao, Petitioners have also been made accused in the present case. The Petitioner No. 1 was working at L.B.S. National Academy of Administration at Mussoorie at the relevant time and presently he was posted at National Academy of Direct Taxes, Nagpur (Ministry of Finance, Government of India) as Assistant Commissioner and as such it was submitted that a complete false case was lodged against the Petitioners.

6. Shri Binod Kumar Singh, learned Counsel for opposite party No. 2, has strongly opposed the prayer of the Petitioners. It was submitted that it is true

that specific role played by all the Petitioners have not been described in the complaint petition, but in the complaint petition, the Petitioners were also arrayed as accused and it was specifically asserted that on the date of occurrence, all the accused persons had committed the crime and as such non mentioning of name separately regarding overt act has got no relevance for the purpose of entertaining the present petition. It was further submitted that Petitioners have come against the order of cognizance i.e. initial state of a criminal proceeding and as such this Court may not interfere with the impugned order.

7. Smt. Indu Bala Pandey, learned Additional Public Prosecutor, has appeared on behalf of the State.

8. Besides hearing learned Counsel for the parties, I have also perused the materials available on record. After going through the record, as per the complainant, occurrence had taken place on 26.6.2005 in the market area at 5.45 P.M. After the occurrence, the complainant, at belated stage on 6.7.2005, filed a complaint in the court of Chief Judicial Magistrate, Buxar, which was subsequently referred to the police and thereafter, an F.I.R. vide Buxar Town P.S. Case No. 148 of 2005 was registered on 15.7.2005. The case was thoroughly investigated by the police. During investigation, it appears from Annexure-3 to the petition i.e. final report No. 25 of 2006 dated 31.1.2006, that police, during investigation, had examined number of witnesses, but none had come forward to support the case of the informant/complainant. On the contrary, witnesses had said that the story of alleged occurrence was un-true, the police also noticed that only complainant and his family members were supporting the case and thereafter, final report was submitted by the police. The said final report was also accepted by the learned Magistrate. However, the protest petition, which was filed earlier by the complainant was treated as complaint case vide Complaint Case No. 432C of 2006. During the enquiry as it was submitted by learned Counsel for the Petitioners only close relatives of the complainant deposed in support of the complaint case.

9. It also appears that only name of Petitioners were mentioned in the accused column of the complaint petition. However, specific allegation was made mainly against Accused No. 1, Binod Sao and Accused No. 2, Pawan Keshari. It is also evident that four witnesses, who were examined in support of the complaint's case, were non-else, but two sons of the complainant Vijay Keshari and Dhananjay Keshari, daughter Nirmala Devi and wife of the complainant Amritesh Keshari were examined in support of the complaint case during the enquiry. This corroborates the veracity of the final report submitted by the police wherein it was indicated that except complainant and his family members, non-else had supported the case of prosecution. Of course, at the time of hearing, a petition against the order of cognizance, those facts are not required to be examined in detail, but keeping in view the fact that initially complaint was investigated by the police and thereafter, final report, with recommendation of prosecution of the

informant/complainant, was itself filed. Examination of only close relatives of the complainant has got some significance to create serious doubt on the complainant's case. It further appears that with a view to take a defence in proposed prosecution of the complainant for offence under Sections 182 and 211 of the Indian Penal Code, the protest-cum-complaint petition was filed in a calculated manner.

10. After going through the materials on record, the court is of the opinion that prosecution of Petitioners in Complaint Case No. 432C of 2006 appears to be malicious and as such the order of cognizance is liable to be set aside.

11. Accordingly, the court is of the opinion that allowing further proceeding in Complaint Case No. 432C of 2006, so far as Petitioners are concerned, will amount to allowing abuse of the process of the court and with a view to prevent the abuse of the process of the court, it is imperative to interfere with the impugned order of cognizance.

12. The order dated 20.8.2007 passed by Judicial Magistrate, First Class, Buxar in Complaint Case No. 432C of 2006/Tr. No. 163 of 2007, so far as Petitioners are concerned, is hereby set aside and petition stands allowed.