
(2010) 08 PAT CK 0165
In the Patna High Court

Amar Laskar Banarjee and Others

APPELLANT

Vs

The State of Bihar and Md. Sultan

RESPONDENT

Date of Decision : 25-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144, 145, 482
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323

Citation : (2010) 08 PAT CK 0165

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—Five 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 21.9.2001 passed by Judicial Magistrate, Ist Class, Katihar in Complaint Case No. 664 of 2001. By the said order, the learned Magistrate has taken cognizance of offence under Sections 447, 323 and 379 of the Indian Penal Code and directed for issuance of summons against the petitioners.

2. Short fact of the case is that opposite party No. 2 filed a complaint in the court of Chief Judicial Magistrate, Katihar, which was numbered as Complaint case No. 664 of 2001. In the complaint petition, it was alleged by the complainant that the accused persons forcibly plucked mangoes from five mango trees, which were standing over the land of the complainant. It was alleged that in the said occurrence, the complainant had suffered a loss of Rs. 8,000/-. After filing the complaint petition, the complainant was examined on S.A. and in support of the complaint petition, three witnesses were examined as enquiry witnesses and thereafter, by the impugned order i.e. order dated 21.9.2001, the learned Magistrate, while taking cognizance of offence under Sections 447, 323 and 379 of the Indian Penal Code, directed for issuance of summon against the petitioners.

3. Aggrieved with the order of cognizance, the petitioners approached this Court by filing the present petition. On 31.7.2002, while issuing notice to opposite

party No. 2, this Court directed that until further orders, further proceeding in the court of Judicial Magistrate, Ist Class, Katihar in Complaint Case No. 664 of 2001 shall remain stayed. Subsequently on 26.2.2004, the case was admitted for hearing and it was directed that interim order dated 31.7.2002 shall remain operative during the pendency of this application. The order of stay is still continuing. Despite the fact that opposite party No. 2 had entered his appearance through advocate, at the time of hearing, none has come forward on his behalf.

4. Shri Ramesh Kumar Agrawal, learned Counsel appearing on behalf of the petitioners, while challenging the order of cognizance as well as initiation of the proceeding against the petitioner submits that the present complaint petition was filed maliciously by the opposite party No. 2 due to the reason that since long litigation in between the parties was going on. It was further submitted that even in the year 1998, a proceeding vide Case No. 164(M) of 1998 was initiated under Sections 144 and 145 of the Code of Criminal Procedure and in that case, the learned Magistrate had noticed that dispute in respect of five mango trees over the land in question was going on and the learned Magistrate, in the proceeding, had found possession of father of petitioner No. 4 over the land over which five mango trees were standing. Shri Agrawal has referred to Annexure-1 to the petition, which is a copy of an order passed on 18.8.2000 by the Executive Magistrate, Katihar in Case No. 164(M) of 1998. Learned Counsel for the petitioners has also referred to Annexures 2 and 3 to the petition, which is the typed copy of the charge sheet dated 28.2.1999, submitted in Rautara P.S. Case No. 123 of 1997 and a copy of charge sheet dated 20.11.1999 submitted in Rautara P.S. Case No. 147 of 1999. In Rautara P.S. Case No. 123 of 1997, the informant was Shri Gauranga Chandra Laskar, who is father of petitioner No. 2. In the said case, charge sheet was submitted u/s 395 of the Indian Penal Code against the opposite party No. 2/complainant and other accused persons. At the time of hearing, learned Counsel for the petitioners has produced certified copy of charge sheet in Rautara P.S. Case No. 123 of 1997 and Rautara P.S. Case No. 147 of 1999, which are kept on record. Shri Agrawal has also submitted that in the second case i.e. Rautara P.S. Case No. 147 of 1999, the petitioner No. 2 was informant and police after investigation had submitted charge sheet against the opposite party No. 2/complainant and others for the offence under Sections 147, 148, 149, 323, 324, 307 and 504 of the Indian Penal Code. It was submitted that since the complainant was made accused and charge sheeted at least in two cases which were instituted at the instance of the petitioners' side, the opposite party No. 2 in retaliation as well as with oblique motive, had filed the present complaint petition. Shri Agrawal has also referred to the statement of complainant, which was recorded on solemn affirmation. While referring to said statement, it was submitted that the complainant before the learned Magistrate, had made a complete false and incorrect statement. On answer to court question, the complainant stated that in respect of the land, there were some dispute. However, no case was initiated. He had stated that the land was his

Khatiyani land. He had further made a complete false statement that there were no dispute with the accused person. While referring/to the said statement of the complainant, Shri Agrawal submits that this shows that the statement on S.A. was false and contrary to the averments made in the charge sheet of two cases. Accordingly, it has been prayed that the order of cognizance and proceeding in the present case against the petitioners may be set aside on the sole ground of malicious prosecution.

5. I have heard Shri A.M.P. Mehta, learned Additional Public Prosecutor appearing on behalf of the State. Learned Additional P.P. has submitted that those questions, which have been raised in the present case, can well be addressed at the time of charge.

6. Besides hearing learned Counsel for the parties, I have also perused the materials available on record particularly certified copy of the charge sheet submitted in Rautara P.S. Case No. 123 of 1997 and 147 of 1999. I have also perused the statement of the complainant recorded on S.A. On the basis of materials available on record, the court is satisfied that the present complaint petition was filed maliciously and with oblique motive and as such the order of cognizance is liable to be set aside.

7. Accordingly, the order dated 21.9.2001 passed by the Judicial Magistrate, 1st Class, Katihar in Complaint Case No. 664 of 2001 is hereby set aside and petition stands allowed.