
(2009) 08 PAT CK 0033
In the Patna High Court

Arun Kumar Jha

APPELLANT

Vs

State of Bihar and Nagendra Nath Tiwari

RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202
Penal Code, 1860 (IPC) — Section 323, 504

Citation : (2010) 1 PLJR 543

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Abhijit Sinha, J.—The petitioner who has been named as the sole accused in Complaint Case No. 769(C) of 2006 has prayed for the quashing of the order dated 22.12.2006 passed therein by Sri R.K. Shukla, Judicial Magistrate, 1st Class, Buxar, whereby he has taken cognizance against the accused for offences under Sections 323 and 504 IPC and has summoned him to face the trial and the consequential order dated 14.8.2007 passed by Sri Bashistha Narain Singh, learned Presiding Judge, Fast Track Court No. III, Buxar, whereby he has dismissed the Cr. Revision No. 170 of 2006 preferred against the order dated 22.12.2006.

2. One Nagendra Nath Tiwary, the complainant, impleaded herein as O.P. No. 2, filed the aforesaid complaint case on 18.9.2006 inter alia alleging that at about 9 A.M. on 14.9.2006 he had gone to the residence of the accused on being summoned by him by virtue of being a Ward Commissioner to discuss remedial measures for the problems concerning his Ward and as soon as he started narrating the problems the accused allegedly got furious and asked him to sit down and when the complainant remonstrated against the misdemeanour of the accused, the accused slapped him once which infuriated him but he kept his cool. It is further alleged that the accused then abused the complainant in front of the witnesses. It is further claimed that the complainant went to the P.S. where his

statement was recorded and when on 17.9.2006 he went to the police station to inquire about his case he was told to take appropriate action in the Court.

3. The grievance of the petitioner is that it would be apparent from perusal of the complaint petition as also the evidence of his two witnesses, which have been annexed as Annexures with the supplementary affidavit, that no case either u/s 323 or 504 IPC is made out against the petitioner and the complaint had been filed on concocted grounds to harass and vex him.

4. Section 323 IPC provides for punishment for causing hurt voluntarily. This would mean that the accused caused hurt to another person and that the hurt was caused voluntarily. In the instant case the allegation against the petitioner is of having slapped the complainant once but there is no allegation of the complainant getting him. In these circumstances an offence u/s 323 IPC offence could not be said to have been made out against the petitioner.

5. Similarly for an offence u/s 504 IPC it is necessary that the actual words used or supposed to have been used should be mentioned in the complaint failing which the court would not be in a position to decide whether the words used amounted to intentional insult. Secondly the words used which amounted to intentional insult should be such as to give provocation for the commission of a breach of the peace. It does not appear from the complaint petition or from the evidence of his witnesses at the inquiry u/s 202 Cr.P.C. that the complainant had been provoked in any manner so as to commit breach of peace.

6. Due regard being had to the facts and circumstances of the case the impugned orders of the two courts below are hereby set aside and the application is allowed.