

(2016) 05 PAT CK 0141

In the Patna High Court

Case No : Criminal Miscellaneous No. 45503 of 2015 (Arising Out of P.S. Case No. 30 Year 2014 Thana Mehdiganj District-Patna)

Astanand Rai

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 12-05-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 425

Citation : (2016) 3 ECRC 586 : (2017) 1 PCCR 21

Hon'ble Judges : Mr. Ashwani Kumar Singh, J.

Bench : Single Bench

Advocate : Mr. Santosh Kumar Singh, Advocate, for the Petitioners; Mr. Jharkhandi Upadhyay, APP, for the Opposite Parties

Final Decision : Dismissed

Judgement

Mr. Ashwani Kumar Singh, J. (Oral)—Heard learned counsel for the petitioner and learned counsel for the State.

2. By way of the present application preferred under Section 482 of the Indian Penal Code (for short "the IPC"), the petitioner seeks quashing of the First Information Report (for short "FIR") of Mehandiganj P.S. Case No. 30 of 2014 dated 5.5.2014.

3. The FIR has been instituted against the petitioner and others unknown on the basis of written report submitted by the Circle Officer, Patna Sadar. The informant has alleged that the petitioner and others unknown were filling the Government land bearing Plot No. 2964 situated at Mauza-Ranipur, Thana No. 19, Ward No. 25, Sheet No. 187 in Patna Sadar with large amounts of clay and dirt.

4. Learned counsel for the petitioner has submitted that the allegations made in the FIR do not constitute ingredients of any cognisable offence and, hence, the institution of FIR is an abuse of process of law. He has submitted that the

petitioner is the rightful owner of the land, in question, and the said land is not a public land rather the same is a "Raiyati" land and it has already been mutated in the name of the wife of the petitioner. In order to support his contention, learned counsel for the petitioner has tried to refer to certain documents annexed to the present application.

5. On the other hand, learned counsel for the State has submitted that the land, in question, is a public land and is being used for fisheries. By filling clay and dirt over the plot in question, the petitioner has changed the land use and damaged the public property. He has submitted that in view of Section 3 of the Prevention of Damage to Public Property Act (for short "the Act"), a cognisable offence is clearly made out.

6. I have heard respective counsel for the parties and perused the report.

7. In order to appreciate the rival submissions made by the learned counsel for the parties, it would be appropriate to refer to Section 3 of the Act which reads as under:-

"3. Mischief causing damage to public property.- (1) Whoever commits mischief by doing any act in respect of any public property, other than public property of the nature referred to in sub-section (2), shall be punished with imprisonment for a term which may extend to five years and with fine.

(2) Whoever commits mischief by doing any act in respect of any public property being ?

(a) any building, installation or other property used in connection with the production, distribution or supply of water, light, power or energy;

(b) any oil installations;

(c) any sewage works;

(d) any mine or factory;

(e) any means of public transportation or of telecommunications, or any building, installation or other property used in connection therewith, shall be punished with rigorous imprisonment for a term which shall not be less than six months, but which may extend to five years, and with fine:

Provided that the Court may, for reasons to be recorded in its judgment, award a sentence of imprisonment for a term of less than six months."

8. The word "Mischief" has not been defined under the Act. It is defined under the IPC in Section 425, which reads as under:-

"425. Mischief.- Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it

injuriously, commits "mischief."

Explanation 1.- It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.- Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly."

9. In my opinion, filling of clay and dirt on a public land being used for fisheries would certainly be an act of mischief as defined under Section 425 of the IPC. Keeping in mind the pre-requisites of mischief causing damage to public property as narrated in Clause (1) of Section 3 of the Act, it cannot be said, at this stage, that no cognisable offence is made out as the punishment provided under the Act provides for punishment upto five years. The Act does not classify the offences mentioned therein as to whether or not they are cognisable offences. In such circumstance, it has to be seen from the Schedule II of the Code of Criminal Procedure whether the offence under Section 3 of the Act is cognisable or not. In Schedule II, it has been stipulated that if the offence is punishable with imprisonment for three years and upwards under the laws other than the IPC, it would be treated to be a cognisable offence.

10. In that view of the matter, the police have statutory power to institute a case and investigate the same.

11. So far as the defence taken by the petitioner that he is the rightful owner of the land is concerned, it is a disputed question of fact which can be inquired/ investigated by the police during investigation and determined by a court at an appropriate stage. The defence of an accused cannot form ground for quashing of the FIR.

12. In view of the discussions made, herein above, the application, being devoid of any merit, is dismissed.