

(2007) 09 PAT CK 0016

In the Patna High Court

Case No : Criminal Miscellaneous No. 1142 of 2006

Balbir Prasad Bagish and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 19-09-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 202, 482
Electricity (Supply) Act, 1948 — Section 39, 44, 81, 82
Electricity Act, 1910 — Section 56
Penal Code, 1860 (IPC) — Section 21, 3, 323, 379, 447

Citation : (2007) 1 PLJR 577

Hon'ble Judges : Madhavendra Saran, J

Bench : Single Bench

Advocate : Rashid Izahar, for the Appellant; Mahendra Thakur for the O.P. No. 2 and Mr. Lala Kailash Bihari Pd. for the State, for the Respondent

Final Decision : Allowed

Judgement

Madhavendra Saran, J.—This application u/s 482 of the Code of Criminal Procedure (in short as Code) has been filed for quashing the order dated 25.9.2002 passed by Sri Sanjay Kumar Sinha, Judicial Magistrate, 1st Class, Hajipur, Vaishali in complaint case No. 37/ 2002 corresponding to Tr. No. 259/2005 whereby and whereunder he took cognizance u/ss. 379, 323, 447, 504 of the IPC and directed for issuance of summons against the petitioners. The case of O.P. No. 2/complain-ant, in short, is that complainant Shashi Bhushan Singh filed a petition of complaint on 5.1.2002 in the court of C.J.M., Vaishali at Hajipur alleging therein that on 24.12.2001 at about 2.30 PM he had gone to the house of Dr. R.B. Gupta for medical check up and also to see his generator set. He was waiting there. In the meantime, the petitioners in a group of 8-10 persons arrived there and began to search Dr. R.B. Gupta. They also started abusing the doctor in filthy language. The complainant protested against their behaviour. A scuffle took place between them. The complainant said that he is an advocate but still the accused persons abused him. It is said that accused

Ramesh Prasad told that he is related to the District Judge and do not care for advocates. It is further said that accused persons took away two generator sets worth Rs. 36,000/ and in this way they defamed the complainant also. In the evening at about 4 PM the complainant learnt that his generator sets have been kept in the premises of Hajipur Police Station. So he went there to enquire about it when accused Brijnandan Singh falsely implicated him in a false case of electricity theft. It is also said that taking away the generator set does not come in the category of official duty. It is further said that complainant fell ill in the night of 24.12.2001 and so delay occurred in filing the complaint.

2. It appears that during enquiry u/s 202 of the Code six witnesses were examined and the learned Magistrate after being satisfied that there was sufficient materials for proceeding further against the accused petitioners ordered to issue summons against them for offences punishable u/ss. 447, 323, 504 and 3 / 9 of the Penal Code. Against the said order the petitioners have preferred the present application for quashing before this court.

3. It was contended that present complaint case is counter blast to the case filed against the complainant vide Hajipur Nagar PS Case No. 713/2001 dated 24.12.2001 u/s 379 of the IPC and 39/44 of the Indian Electricity Act. He further contended that a raid was conducted by the engineers of the Electricity Department under the leadership of Sri Bindu Madho Singh, an Executive Magistrate, Vaishali at Hajipur on 24.12.2001 at 3.30 PM at the place of complainant for detecting electricity theft. The complainant was arrested and generator set was seized. He further contended that complainant being an advocate after release from the custody filed the complaint case with altogether false allegations. He also pointed out that complaint petition was filed quite late even when the complainant was released from custody on the next day of his arrest. He further pointed out that allegation of theft of generator set against the raiding party is an article of seizure of Hajipur Nagar PS Case No. 713/2001. Learned counsel also pointed out that order of cognizance is hit by Section 197 of the Code.

4. Learned counsel for O.P. No. 2 opposed the application and submitted that it was no part of their duty to arrest the complainant and commit theft of generator sets and, therefore, the protection of law as urged on their behalf was not available to them. He also contended that the petitioners may raise the question of sanction during the course of trial before the court below. In support of his contention learned counsel placed reliance on a decision of this court reported in Bhartendu Prasad Deb Vs. The State of Bihar and Another .

5. It appears from the FIR of Hajipur Nagar PS Case No. 713/2001 dated 24.12.2001 u/s 379 of IPC and 39 / 44 of the Electricity Act that on 24.12.2001 under the leadership of Sri Bindu Madho Singh, Executive Magistrate, Vaishali at Hajipur the engineers of Electricity Department alongwith others conducted raid at three different places to detect electricity theft. The premises of complainant was raided at about 3.30 PM when he was found consuming theft of electricity

froelectm L.T. line. A generator set was found there and it was seized and handed over to the police. It further appears that at the time of said raid petitioners No. 1 and 3 were Junior Engineers and petitioner No. 2 was Assistant Engineer in the Electricity Department. The raid was conducted during performance of their official duty. It is the petitioners stand that at the time of raid the complainant was arrested also.

6. According to learned counsel u/s 81 of the Electricity (Supply) Act, 1948 all members and officers and other employees of the Board shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of Section 21 of the Indian Penal Code. Section 82 of the said Act provided that no suit, prosecution or other legal proceeding shall lie against any member or officer or other employee of the Board for anything which is in good faith done or intended to be done under this Act.

7. Then Section 56 of Indian Electricity Act, 1910 provided that no suit, prosecution or other proceeding shall lie against any public officer, or any servant of a local authority, for anything done, or in good faith purporting to be done, under this Act. It further provided that no court shall take cognizance of an offence under this Act, by a public officer except with the sanction of the Central Government or the State Government as the case may be. In the case of Balram Singh vs. The State of Bihar reported in 1989 PLJR page 600 this court observed that act if done by the public servant in discharge of official duty sanction of prosecution is required.

8. From the facts available on the record, it is clear that three petitioners being officers of the Electricity Department had gone to conduct raid on official duty and the act was done in the capacity of public servant.

9. Then in 1978 PLJR 480 in the case of Pancham Lal vs. Sri Dadan Singh a Bench of this court held that an amount of latitude must be conceded when public servants are in the field attending to explosive situations.

10. Thus, the cognizance of the offence alleged to have been committed by the petitioners without sanction is illegal and violative of the mandate of provisions of law as mentioned above. In the above facts and circumstances, this application is allowed and the impugned order of cognizance is hereby quashed.