

(2010) 07 PAT CK 0021
In the Patna High Court
Case No : Cr. Misc. No. 38491 of 2004

Bharat Kishore Narayan Saraswati and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 13-07-2010

Acts Referred:

Citation : (2010) 07 PAT CK 0021

Final Decision : Allowed

Judgement

Anjana Prakash, J.—The Petitioners seek quashing of the order dated 16.8.2004 passed by Judicial Magistrate, 1st Class, Darbhanga in T.R. No. 620/200/C.R. No. 967/2000 by which he refused to discharge the Petitioners from the liability of criminal prosecution in a complaint instituted by the opposite party No. 2, in which cognizance had been taken for offences punishable under Sections 147, 148, 323, 342, 379 of Indian Penal Code.

2. On 6.1-2006 notices were issued to the opposite party No. 2 and further proceeding in court below was stayed. Thereafter on 14.4.2006 matter was admitted for hearing. The opposite party No. 2 has appeared and the matter is being disposed off in the presence of the parties concerned.

3. The case of the opposite party No. 2 is that he was a rightful owner of Khata Nos. 379 and 380, plot Nos. 2147, 2148 and 2149 measuring 10 Kathas of land and he had grown the paddy crops on the same but the accused persons had committed theft of the same and also assaulted him in the transaction when prevented from doing so. After the examination of the complainant on solemn affirmation and three witnesses on his behalf, the court took cognizance in the matter by an order dated 5.1.2001. The Petitioners then filed a Criminal Revision before the Sessions Judge, Darbhanga which was heard by Vth Additional Sessions Judge, Darbhanga but he was pleased to dismiss the same by an order dated 23.4.2002 vide Cr. Revision No. 317 of 2001. The Petitioners then moved this Court vide Cr. Misc. No. 21574/2002 which was heard on 10.9.02 but dismissed with liberty to raise all the points before the court below at the time of

framing of charge. The Petitioners thereafter moved the court below for discharging them u/s 245(1) Code of Criminal Procedure which the court below dismissed on grounds stated therein.

4. The learned Counsel for the Petitioner submits that before the present case was instituted by the opposite party No. 2 a Title Suit had been filed with regard to the same piece of land numbered as Title Suit No. 78 of 97 in which by a final adjudication, the Sub-Judge, Darbhanga on 15.9.2000/23.9.2000 had declared possession of the Petitioners on the suit land. In view of such, since, it is not in dispute that the suit land was common as mentioned in the complaint petition filed by the opposite party No. 2. none of the ingredients essential u/s 342/379 I.P.C. are present to justify putting the Petitioners on trial.

5. However, the opposite party No. 2 states that accepting it for argument sake, even if there had been a final adjudication with regard to the title and right of the parties on the suit land, yet a criminal case would be made out since the decree was only with regard to the seven Kathas of land, whereas the allegation of theft by the Petitioners is with regard to 10 Kathas of land. His further submission is that at the stage of framing of charge the documents produced by the accused persons could not be looked into by the court below and therefore the order is completely valid. To advance this proposition he has relied upon a decision reported in (2008)10 SCC 9 where it has been held that at the stage of framing of charge only documents filed on behalf of the prosecution could be gone into. The same view has been reiterated in a case reported in P. Vijayan Vs. State of Kerala and Another,

6. The objection of the counsel for the opposite party No. 2 that, at stage of charge, the Court cannot look into defence documents is no doubt correct, but with a caveat, for the reasons stated hereinafter.

7. Since the courts had been perpetually vexed with the issue as to whether the Trial Court can consider the material filed by the accused, at the stage of framing of charge, the matter was referred to a larger Bench in the case of State of Orissa Vs. Debendra Nath Padhi, . Examining the scheme of the old Code and the newly introduced Section 227 Code of Criminal Procedure 1973 Act, the issue was decided therein in para 8 as quoted below:

What is to the meaning of the expression "the record of the case" as used in Section 227 of the Code. Though the word "case" is not defined in the Code but Section 209 throws light on the interpretation to be placed on the said word. Section 209 which deals with the commitment of case to Court of Session when offence is triable exclusively by it, inter alia, provides that when it appear" to the Magistrate that the offence in. triable exclusively by the Court of Session, he shall commit "the case" to the Court of Session and send to that Court "the record of the case" and the document and articles, if any, which are to be produced in evidence and notify the Public Prosecutor of the commitment of the case to the Court of Session. It is evident that the record of the case and

documents submitted therewith as postulated in Section 227 relate to the case and the documents referred in Section 209. That is the plain meaning of Section 227 read with Section 209 of the Code. No provision in the Code grants to the accused any right to file any material or document at the stage of framing of charge. That right is granted only at the stage of the trial.

Overruling the decision of *Satish Mehra Vs. Delhi Administration and Another*, and distinguishing the case of *P.S. Rajya Vs. State of Bihar*, and repelling the contention of accused that the procedure which deprives the accused to seek discharge at the initial stage by filing unimpeachable and unassailable material of sterling quality would be illegal and violative of Articles 14 and 21 of the Constitution. It held in para 18 as follows:

....at the stage of framing of charge the defence of the accused cannot be put forth. The acceptance of the contention of the learned Counsel for the accused would mean permitting the accused to adduce his defense at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. By way of illustration, it may be noted that the plea of alibi taken by the accused may have to be examined at the stage of framing of charge if the contention of the accused is accepted despite the well settled proposition that it is for the accused to lead evidence at the trial to sustain such a plea. The accused would be entitled to produce materials and documents in proof of such a plea at the stage of framing of the charge, in case we accept the contention put forth on behalf of the accused. That has never been the intention of the law well settled for over one hundred years now. It is in this light that the provision about hearing the submissions of the accused as postulated by Section 227 is to be understood. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression "hearing the submissions of the accused" cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the stage of framing of charge hearing the submissions of the accused has to be confined to the material produced by the police.

After clarifying the limitation of the Courts before which discharge petition had been filed, it discussed the powers of the High Court u/s 482 Code of Criminal Procedure and under writ jurisdiction and concluded thus in para 29:

Regarding the argument of accused having to face the trial despite being in a position to produce material of unimpeachable character of sterling quality, the width of the powers of the High Court u/s 482 of the Code and Article 226 of Constitution of India is unlimited where under in the interests of justice the High Court can make such orders as may be necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice within the parameters laid down in *Bhajan Lal's* case.

Therefore, as I understand it, the limitations so mentioned in the judgment

quoted above is confined to the subordinate Courts. The High Court while exercising its jurisdiction u/s 482 Code of Criminal Procedure is permitted to look into unimpeachable documents, to prevent abuse of the process of the Court, or else the whole trial will be a drama of the absurd.

8. I may here, to buttress my view, quote yet another recent decision reported in Rukmini Narvekar Vs. Vijaya Satardekar and Others, of the Hon'ble Supreme Court which examined the cases mentioned above and held as reproduced hereunder:

....therefore, there is no scope for the accused to produce any evidence in support of the submissions made on his behalf at the stage of framing of charge and only such material as are indicated in Section 227, Code of Criminal Procedure can be taken into consideration by the learned Magistrate at that stage. However, in a proceeding taken therefrom u/s 482, Code of Criminal Procedure the court is free to consider material that may be produced on behalf of the accused to arrive at a decision whether the charge as framed could be maintained. This, in my view, appears to be the intention of the legislature in wordings Sections 227 and 228 the way in which they have been worded and as explained in Debendra Nath Padhi's case (supra) by the larger Bench to which the very same question had been referred.

9. Further, while exercising the powers u/s 482 Code of Criminal Procedure I am of the opinion that, if a Court finds that injustice has been caused to a party, it is duty bound to come to his aid and protect him from the vagaries of a criminal prosecution, since the entire purpose of having a hierarchical justice delivery system with wider powers at every stage, is only to ensure that justice is meted out to a party, who may have suffered on account of the inherent limitations of the subordinate courts.

10. In the present case when a Civil Court of competent jurisdiction had positively arrived at the conclusion that the Petitioners were in possession of part of the suit land, the entire edifice on which the prosecution case vests is demolished and therefore, in my view, grave injustice would be caused if the prosecution is allowed to continue.

11. In the result, this application is allowed and the order dated 16.8.2004 passed by Judicial Magistrate, 1st Class, Darbhanga in T.R. No. 620/200/ C.R. No. 967/2000 by which he refused to discharge the Petitioners from the liability of criminal prosecution is hereby quashed.