
(1989) 03 PAT CK 0016

In the Patna High Court

Case No : Criminal Miscellaneous No. 1041 of 1988 (R)

Bicycle Supply Agency and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 29-03-1989

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 — Section 11, 14, 20, 28, 28(2)
Contempt of Courts Act, 1971 — Section 12
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 427

Citation : (1990) 1 PLJR 778

Hon'ble Judges : L.P.N. Shahdeo, J

Bench : Single Bench

Final Decision : Allowed

Judgement

L.P.N. Shahdeo, J.—This is an application u/s 482 of the Code of Criminal Procedure for quashing the order dated 1.3.1988 passed by the Additional Chief Judicial Magistrate, Jamshedpur whereby he has taken cognizance of the offence u/s 28 of the Bihar Buildings (Lease, Rent & Eviction) Control Act, 1982 (hereinafter referred to as the Act) read with Section 427 of the Indian Penal Code and Contempt of Court Act in the following circumstances:

2. It appears that the Petitioners are tenant of holding Nos. 2 and 4 measuring an area about 12"×20", a portion of Malkhiram Market and the Opposite Party No. 2 is the landlord. It appears that the Opposite party No. 2 has filed an Eviction Suit No. 94/84 in the court of Munsif, Jamshedpur, which was decreed against, the tenant and thereafter that decree was put into execution in Execution Case No. 36/86. It appears that thereafter also a Civil Revision has been filed in the High Court by the Petitioners being Civil Revision No. 67/88 and that Civil Revision was also dismissed on 24.8.87 and thereafter the matter was taken to the Supreme Court which was ultimately dismissed.

3. The Opposite Party No. 2, Complainant thereafter filed a complaint petition vide Annexure-1 giving history of the case, stating in paragraph 5 that inspite of the direction made by the courts to vacate the suit premises the Petitioners had not vacated it and, therefore, it is alleged that the accused persons committed breach of lawful direction and as such they have contravened the provisions for which offence they are liable for punishment as provided u/s 28(2) of the Act. It has also been submitted that they are also liable for Contempt of Court Act u/s 12 for failure to comply with the said direction. In paragraph 11 of the complaint petition, it is alleged that the action of the accused in preferring the revision and contesting the case resulted substantial losses and damages for which he has claimed legal expenses and has alleged that the Petitioners are liable for mischief for which complainant had sustained a loss of Rs. 80,000/-

4. Shri P.K. Sinha, learned Counsel appearing on behalf of the Petitioners has submitted that no offence is made out as the Petitioner has availed of all the legal stages provided under the Act and under the provisions of the CPC and as such he has not committed any breach or contravention of the provisions of the Act.

5. On the other hand, Mr. Narayan Roy, earned Advocate appearing on behalf of the Opposite party No. 2 had submitted that in substance, the Petitioners have committed the breach or not complying the direction passed u/s 11 and Section 14 of the Act and as such (sic) facie offence has been made out u/s 28(2) of the Act.

6. The legal point which falls for constitution is as to whether the Petitioners are liable criminal prosecution u/s 28(2) of the Act if they had availed of the legal opportunity provided to them or available under any of the provisions of the Act or under the Code of Civil Procedure. In this case, the Petitioners have contested the eviction suit and thereafter also contested the decree and ultimately they also filed three Civil Revisions which were ultimately dismissed as indicated above and then also they approached to the Supreme Court which was also dismissed.

7. The remedy which were available under the law or in law were availed of by the Petitioners and for that it cannot be said that they have contravened any of the "provisions" of the Act for which they shall be liable for prosecution u/s 28(2) of the Act. If the right which has been given to the Petitioners under the Act or under the CPC and they have exercised those rights conferred under the statute, no body can be penalised or prosecuted for those lawful actions. The direction issued u/s 11 or u/s 14 of the Act for vacating the premises is not that kind of violation of the provisions which is contemplated u/s 28 of the Act for prosecution, otherwise, in substance that would mean or tentamounts to depriving all the valuable rights conferred on the Petitioners under the Act and under the CPC for preferring the appeal or revision. For doing such lawful acts they cannot be held to be liable for criminal prosecution u/s 28(2) of the Act as has been done in this case.

8. In this connection, learned Counsel for the Petitioners has relied upon a ruling reported in 1955 B.L.J.R. 577 in the case of Ram Narain Mehra v. State of Bihar in which it was held that:

Where aggrieved party is seeking lawful remedy in a bonafide manner, it cannot be held that he is guilty of the contravention of the direction of the Controller or a provision of the Act which would import the necessary guilty intention to contravene and in such circumstances he is not liable to penalty u/s 20, Clause (2) the Bihar Buildings (Lease, Rent and Eviction) Control Act.

9. Similar view was expressed in another ruling reported in Hira Lal Sao Vs. Ramrekha Sao, in which after discussing the point it was held that:

It is only when the suit of the tenant is finally disposed of by the Civil Court in all stages, that any circumstances arising therefrom which may entitle the landlord to ask the Controller for the issue of a fresh summons upon the tenant, may be brought to the notice of the Controller having jurisdiction who would take the necessary steps according to law.

In that case also the summons were issued upon the tenant of that suit and that was held to be bad.

10. Yet another ruling reported in S.C. Tenja Vs. House Controller-cum-Sub-Divisional Magistrate, Patna and Another, in that case also it was held that there are two contingencies under which penal provision is attracted. In that case a fair rent was fixed by the Controller and criminal case was filed for default of payment of that rent. The Court held that non-payment of fair rent by tenant fixed by the authority is not covered by this section.

11. In this case, there is no allegation of any mischief caused to the building or premises in occupation of the Petitioners but mischief has been claimed Section 11 of the Act, which in substance means legal expenses defrayed by the Opposite Party No. 2 to meet the legal expenses. This remedy is of civil nature for which he can file a civil suit. This allegation is not sufficient to constitute an offence u/s 427 of the Indian Penal Code. The legal expenses incurred during the course of the suit or in execution of a decree or at any stage or in revision or in the Supreme Court, cannot be a basis for making a criminal offence u/s 427 of the Indian Penal Code.

12. So far as Contempt of Court is concerned the same matter can be disposed of. No Contempt of Court arises in this case because what steps the Petitioner had taken have in fact were available to them under the law and as such there does not appear to be any violation of disobedience committed by them in complying with the lawful order passed by the court. When decree was executed, they were entitled to contest the same and they have done so and thereafter they were entitled to file Civil Revision which they have done and by doing that they have availed of that right and in fact they have not committed any Contempt of Court during the intervening period and finally they lost the battle.

It is admitted submission by the parties that, they have vacated the premises and now the premises in question for which this case has been filed is in occupation of the Opposite Party No. 2. In these circumstances, for the reasons recorded above, no question of Contempt of Court arises in this case.

13. Having considered all these facts and circumstances of the case. I am satisfied that no criminal offence against the Petitioners is made out in this nature of allegation and in fact, they have not violated any of the provisions for which they are liable to be prosecuted u/s 28 of the Act. Therefore, the order taking cognizance amounts to abase of the process court and requires interference by this Court retrieve the mischief done.

14. In the result, this application is allowed. The order taking cognizance and the criminal prosecution against the Petitioners are hereby quashed.