
(2012) 08 PAT CK 0038

In the Patna High Court

Case No : Criminal Miscellaneous No. 33719 of 2011

Bimalendu Shekhar Jha

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 22-08-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)
Penal Code, 1860 (IPC) — Section 182, 211, 34, 427, 447

Citation : (2012) 4 PLJR 926

Hon'ble Judges : Shivaji Pandey, J

Bench : Single Bench

Advocate : Rama Kant Sharma and Lakshmi Kant Sharma, for the Appellant;
Nirmala Kumari, for the Respondent

Final Decision : Allowed

Judgement

Shivaji Pandey, J.—Heard learned counsel for the petitioner and learned counsel for the State. No one has appeared on behalf of opposite party no. 2 even the case was adjourned on different dates. This application has been filed for quashing the order dated 13.8.2011/17.8.2011 passed in Laheriasarai P.S. Case No. 83 of 2010 by the Chief Judicial Magistrate, Darbhanga by which he has taken cognizance against the petitioner under Sections 448 and 447 /34 of the Indian Penal Code.

2. In this case basically the point that has been raised by the petitioner is that the complainant (opposite party no. 2) has filed the present case in order to settle his personal score with the College as admittedly the land in question belongs to the College and is in possession for more than 50 years. The complainant has filed the case in order to grab the property of the College through a forged and fabricated document and the present case is nothing but a malicious prosecution and that too that has been lodged against the officials of the College who have no personal interest over the property as they have acted for the benefit of the College which is an institution imparting education to the

students doing social service for the public.

3. It appears that one Laxman Jha who is opposite party no. 2 in this case has filed a complaint case vide Complaint Case No. 238 of 2010 stating therein that the land appertaining to Khata No. 415, Kheshra No. 896(old)-1224 (new) in Mouja-Bhikharisarai, Thana-Laheriasarai, District-Darbhanga belongs to him. It has been alleged that he has got the land through registered deed dated 20.7.2003 and since then he is in possession over the land peacefully. It has been further stated that after mutation he has been paying rent and accordingly he has claimed right, title and possession over the property in question. It has been further alleged that on 26.12.2009 the complainant wanted to construct the boundary wall. In the meantime, Officer In-charge came to the site and orally stopped the construction of the boundary wall as he has received instruction from the Sub-Divisional Officer, Sadar Darbhanga on the complaint made by the Principal, Marwari College, Darbhanga. While the discussion was going on, in the meantime, the Principal, Sri. Bimlendu Shekhar Jha alongwith his associates came to the place of construction whereupon the complainant asked the Principal to bring the documents showing the title of College over the land in dispute. The Principal sought five days time for procurement of documents. The complainant has stated that as the boundary wall was erected up-to three feet height and no party would do any harm to the boundary wall which was accepted by both the parties.

4. On 3.2.2010 one Md. Nashim Ahmad alias Gulzar came to the construction site alongwith 8-10 persons and started removing the wall. On receiving information the complainant reached there and on seeing the complainant they stopped removing the wall and on being asked he informed the complainant that they were removing the wall on the instruction of Professor Arun Kumar Thakur and the Principal, Bimlendu Shekhar Jha. Those persons further asked the complainant that if the complainant would pay Rs. 5,00,000/- only then they would not harm the wall. He had produced some documents which was not any way connected to the disputed property.

5. On 15.2.2010 at 6 P.M. the complainant received information that the accused persons have started removing the boundary wall, on spot the complainant found that 8-10 persons were removing the same. On raising objection the accused persons humiliated the complainant with an abusive language giving threatening to the life. The Magistrate in exercise of power u/s 156(3) of the Code of Criminal Procedure has sent the matter to the police who instituted a regular case vide Laheriasarai P.S. Case No. 83 of 2010.

6. It appears that the police after investigation found the allegation to be true against the petitioner and submitted charge-sheet against him for offences under Sections 448 and 427 /34 of the Indian Penal Code.

7. From the record it appears that prior to institution of this case Marwari College has filed a title suit vide Title Suit No. 174 of. 2009 in which the present

complainant has also been added defendant first party. The present disputed land has been shown in Schedule-I property of the plaintiff and has sought the relief of decree for title over the property in question and also made a prayer to declare that wrong entries in the revisional survey Khatiyani with respect to the suit lands are illegal and not binding upon the plaintiff. Further relief has been sought for a decree for permanent injunction against defendant no. 1 (opposite party no. 2 in this case) by restraining him from interfering with the possession of the plaintiff (the College) over the lands in question.

8. From the contents of the plaint it appears that basically the College is standing over an area of about 5 Bighas 15 Kathas and 16 Dhurs which consists of several plots including the plot in question. It also appears that the College was established in the year 1958 but during the revisional survey operation due to inadvertence and mistake some of the survey plots were not properly recorded but the College has been shown in possession over the land. Some of the lands have wrongly been shown as Anawad Sarba Sadharan and some entries made in the Khatiyani have been made in the name of strangers who have got no concern with the land under the suit. It has been further stated that different faculty attached to the College are standing on different plots and further it has been mentioned that opposite party no. 2 lodged a complaint before the Chief Judicial Magistrate, Darbhanga on 20.9.2004 against the then Principal with respect to Scheduled land with false and concocted grounds which was sent by the Magistrate for investigation u/s 156(3) of the Code of Criminal Procedure and after proper investigation the police filed the final report and recommended to initiate prosecution against defendant no. 1 (opposite party no. 2) under Sections 182 and 211 of the Indian Penal Code. It has been further stated that opposite party no. 2 tried to construct the wall which was objected by the College and in this way opposite party no. 2 was prevented from constructing the structure over the disputed land. On enquiry it transpired that opposite party no. 2 has got the land executed through one Ramanand Kumar who has no title and possession over the property.

9. Learned counsel for the petitioner has submitted that basically the dispute is of civil nature and the College is in possession since its establishment but during revisional survey some wrong entries have been recorded in Register-II. He has further submitted that earlier the complainant has filed a case that was investigated and was found that the story propounded by opposite party no. 2 is completely a false story as he has no right title over the property. He further submits that it is apparent from the record that title suit has already been filed for declaration of title and possession at the same time for a permanent injunction against opposite party no. 2. The present case has been filed with a mala fide intention giving a wrong fact in the complaint petition as the College is in possession since its establishment. He further submits that the present case is completely covered by the judgment in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, .

10. Even after repeated adjournments no one has come forward to support the case of opposite party no. 2 and as such this Court on the basis of the averments made in the this petition and argument advanced by learned counsel for the petitioner is deciding the case on merit.

11. Having considered the arguments of learned counsel for the petitioner, it apparently clear that it is by and large a civil dispute over the property as the complainant claims to have purchased the land in 2003 but has not mentioned as to whether his vender has a right, title and possession over the property which is silent in the complaint petition. On perusal of the plaint of title suit it appears that the College has claimed the title over the property and has sought relief for declaration of title and confirmation of possession including permanent injunction restraining the plaintiff to interfere with the possession of the College. In this case the officials of the College have been made party who have no personal interest over the property rather they are interested to protect the property of the institution which engaged in imparting education to the students in general.

12. In this view of the matter, this court finds that the order of cognizance and continuation thereof is an abuse of the process of the court and accordingly the order of cognizance dated 13.8.2011/17.8.2011 passed in Laheriasarai P.S. Case No. 83 of 2010 by the Chief Judicial Magistrate, Darbhanga and subsequent proceeding is hereby quashed. However, the parties will be (sic--at ?) liberty to get the dispute decided through the civil court of competent jurisdiction and any observation made in this order will not have any bearing in the title suit. With the aforesaid observation this application is allowed.