

(2009) 05 JH CK 0074

In the Jharkhand High Court

Case No : Criminal Revision No. 344 of 2004

Binay Kumar Singh and Others

APPELLANT

Vs

The State of Jharkhand and Ashok Kumar Sharma

RESPONDENT

Date of Decision : 27-05-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197(1), 227
Railway Protection Force Act, 1957 — Section 20(3)

Citation : (2009) 57 BLJR 2483

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Advocate : Mahesh Tewari, for the Appellant; S.K. Dutta, APP and Binod Kumar, for the Opp. Party No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Kumar, J.—The revision is directed against the order dated 27.3.2004 passed by Sri Birendra Prasad Singh, Additional Sessions Judge, Fast Track Court No. IV, Deoghar in Sessions Case No. 100 of 2002, dismissing the application u/s 227 Cr. P. C. for discharge of the petitioners.

2. The only point argued by the learned Counsel for the petitioners is that the petitioner No. 1, Binay kumar Singh was posted as the Inspector (In-charge) in the R.P.F., Post at Madhupur Railway Station, Deoghar, while petitioner No. 2, Ajay Kumar was posted as Sub-Inspector in R.P.F., Post at Madhupur Railway Station and the other petitioners No. 3 to 8 all are Constables and were posted at R.P.F., Post at Madhupur Railway station and all of them were entitled to get protection u/s 20(3) of the Railway Protection Force Act and as such in absence of notice for filing the case u/s 20(3) of the R. P. F. Act is bad and the learned Additional Sessions Judge ought to have discharged the petitioners. He has further submitted that all the petitioners were on duty on the alleged date of occurrence maintaining law and order at Deoghar Railway Station and as such they acted as per the then official duty and hence they required protection u/s

20(3) of the R.P.F. Act. He has further submitted that the learned Additional Sessions Judge has failed to appreciate that the informant-opposite party No. 2 and other G.R.P. Constables and personnel, are accused of Madhupur P. S. Case Nos. 7/2000 & 9/2000, instituted on the F.I.R. lodged by the petitioners in connection with occurrence that took place at Madhupur Platform No. 1.

3. It is submitted by the learned Counsel for the petitioners that as per the judgment of the Patna High Court in the case of D.S. Bhorla and Another Vs. N. Singh, it has been ruled that if the members of R.P.F. are on duty and if an offence has been committed during the discharge of their official duty then a case cannot be instituted without giving notice u/s 20(3) of the Railway Protection Force Act. The said case was subsequently followed in other cases and the said case was also followed by the Calcutta High Court in the case of R.N. Das and others on 8.10.2002 and as such the finding of the learned Additional Sessions Judge that the act of the petitioners in assaulting the constables and personnel of G.R.P. Post at Madhupur Railway Station was outside their duty and as such it is not covered u/s 20(3) of the of the Railway Protection Force Act, 1957, and no sanction or notice u/s 20(3) of the Railway Protection Force Act as required is bad in law and fit to be set aside.

4. On the other hand, learned Counsel for the State has opposed the prayer and submitted that there is serious allegation against the petitioners, who being the members of the Railway Protection Force, were posted at Madhupur Railway Station at Platform No. 1, they were doing illegal work and when they were trying to remove the coal bags from the Railway Platform to R.P.F post then the police personnel of G.R.P. Madhupur Post at Railway Platform No. 1 objected. Whereupon, it is alleged that the petitioners in presence of witnesses assaulted the Inspector of G.R.P. and other police personnel and even attempted to commit the murder of Inspector, Ashok Kumar Sharma by pressing his neck and as such the aforesaid act of assault, on objection of G.R.P. who were also posted at the platform, and the platform of the G.R.P. is beyond their duty area. Learned Counsel for the State has also relied on a decision of the High Court reported in Cri. Law Journal and submitted that no sanction or notice u/s 20(3) of the R.P.F. Act is required and as such the impugned order suffers from no illegality.

5. After hearing the parties and going through the records, I find that the main point, which has been raised by the learned Counsel for the petitioners is that the petitioners being the members of the Railway Protection Force posted at Madhupur Post were on duty on platform No. 1 and in discharging of their duty they were protecting the platform when the occurrence took place. They have also filed a case of assault with G.R.P. The allegations against the petitioners are also serious that they were trying to remove the coal bags from platform No. 1, which was under the control of G.R.P. personnel. They assaulted the Inspector and other personnel of G.R.P. Learned Counsel for the petitioners has submitted that since the occurrence took place while they were on duty and as such the protection granted u/s 20(3) of the R.P.F Act reads as under.

Protection of Acts of members of the Force.: (1) In any suit or proceeding against any member of the farce for any act done by him in the discharge of his duties, it shall be lawful for him to plead that such act was done by him under the orders of a competent authority.

(2) Any such plea may be proved by the production of the order directing the act, and if it is so proved, the member of the Force shall thereupon be discharged from any liability in respect of the act so done by him, notwithstanding any defect in the jurisdiction of the authority which issued such order.

(3) Notwithstanding anything contained in any other law for the time being in force, any legal proceeding, whether civil or criminal, which may lawfully be brought against any superior officer or member of the Force for anything done or intended to be done under the powers conferred by, or in pursuance of, any provision of this Act or the rules thereunder shall be commenced within three months after the act complained shall have been committed and not otherwise ; and notice in writing of such proceeding and of the cause thereof shall be given to the person concerned and his superior officer at least one month before the commencement of such proceeding.

6. As per the aforesaid Section 20(sic), it is stated that Notwithstanding anything contained in any other law for the time being in force, any legal proceeding, whether civil or criminal, which may lawfully be brought against any superior officer or member of the Force then a notice in writing is required to be given one month before to the concerned and its superior officer.

It is important to note that Section 20(3) comes in force only when the act is done in discharge of duty as Railway Protection Force and Personnel.

7. Interpreting the above Section 20(3) of the R.P.F. Act as relied by the learned Counsel for the petitioner in the case of D.S. Bhoria and Another Vs. N. Singh, ruled that even if some act of assault or offence has been committed by the members of R.P.F. during the course of their duty then also it will be covered u/s 20(3) of the R.P.F. Act and sanction u/s 197(1) of the Code of Criminal Procedure cannot proceed. The aforesaid case was followed in other cases also by different High Courts including Calcutta High Court, but subsequently the judgment of the Single Judge of Patna High Court was considered in another case of State of Maharashtra Vs. Suresh N. Vaidya and others, .

8. After considering the aforesaid judgment of Patna High Court and other judgment of Supreme Court of India reported in Manohar Nath Kaul Vs. State of Jammu and Kashmir, , the apex court has come to a clear finding about the legal position is that the assault or cause hurt cannot be part of any official duty. There is no provision in the Railway Protection Force Act or Rules for causing hurt or assaulting any person. Similarly while doing the official duty if the officer assault, or causes hurt to the police officer of R.P.F., police officials may in his defence assault him and as such the provision of Section 20(3) of the Act cannot

protect. Such officials knowingly must be assaulting other police officers.

9. It is important to note that the High Court in the case of State of Maharashtra v. Suresh N. Baidyata refused to give protection to the RPF personnel u/s 20(3) of the Act and refused to discharge them and found that the Judgment of the Patna High Court relied by the petitioners in this case is a bad law. It is further important to note that in the case of State of Maharashtra v. Suresh N. Baidyata also the members of RPF Force assaulted knowingly the official of the C.B.I and it was not their duty to assault the members of another police force since they were also doing their duty.

10. In this case also I find that the petitioners who were members of the Railway Protection Force, inspite of knowing that members of GRP were also on duty at the platform, but on their objection to remove certain coal bags from the platform the petitioners assaulted them or attempted to commit murder.

11. In that view of the matter, relying in the decision of State of Maharashtra v. Suresh N. Baidyata (Supra). I find that the petitioners in the facts and circumstances were not entitled to get the protection of Section 20(3) of the Railway Protection Act, 1957 and the learned Additional Sessions Judge rightly rejected their prayer for discharge on that ground.

12. I find no illegality in the impugned order, accordingly this revision petition is dismissed having no merit.