

(2011) 01 PAT CK 0067

In the Patna High Court

Case No : Criminal Miscellaneous No. 9501 of 2003

Binod Prasad Singh, Jpushpa Kumari @ Pushpa Das and Vijay
Yadav @ Vijay Kumar

APPELLANT

Vs

The State of Bihar and Sanju Devi

RESPONDENT

Date of Decision : 24-01-2011

Acts Referred:

Citation : (2011) 01 PAT CK 0067

Final Decision : Dismissed

Judgement

Rakesh Kumar, J.—Four Petitioners, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, have prayed for quashing of an order dated 13.9.2002 passed by the learned Sub Divisional Judicial Magistrate, Danapur, Patna in Complaint Case No. 461(C) of 2002. By the said order, learned Magistrate has taken cognizance of offence under Sections 323, 342, 365 and 506 of the Indian Penal Code.

2. Short fact of the case is that opposite party No. 2 filed a complaint in the court of Sub Divisional Judicial Magistrate, Danapur, which was numbered as Complaint Case No. 461(C) of 2002 against all the four Petitioners and others on an allegation of commission of offence under Sections 323, 342, 506 and 364 of the Indian Penal Code. It was disclosed in the complaint petition that one Rameshwar Prasad Singh, grand father-in-law (Dadia Sasur) of the complainant had purchased a house over a plot appertaining to Plot No. 261, Khata No. 50 on his own earning and on his own volition he gifted the said house to the complainant through a registered deed of gift. The father-

3. Aggrieved with the order of cognizance, the aforesaid Petitioners approached this Court by filing the present petition.

4. Mr. Farooque Ahmad Khan, learned Counsel appearing on behalf of all the Petitioners, has argued that the present complaint was filed maliciously by the complainant, which is apparent from the allegation made in the complaint

petition itself. It was submitted that on the basis of complaint filed by Petitioner No. 1, an F.I.R. was registered against the complainant, her father and her brother vide Complaint Case No. 472(C) of 2002 on an allegation of commission of offence under Sections 364, 467, 468, 420 and 120B of the Indian Penal Code. It was alleged by the Petitioner No. 1 that the accused persons had kidnapped the father of the Petitioner No. 1 for the purpose of preparing forged document in respect of properties of the Petitioner No. 1. Mr. Khan submits that the said complaint was referred to the police and thereafter, an F.I.R. vide Bihta P.S. Case No. 212 of 2002 was registered against the complainant of the present case as well as her father and brother. As per Mr. Khan, since the case was instituted as per instance of Petitioner No. 1 against the complainant of the present case, arbitrarily and maliciously, the present complaint was filed and as such it was argued that entire proceeding as well as order of cognizance in the present case is liable to be set aside since allegation in the complaint is inherently malafide. Learned Counsel for the Petitioners has also drawn attention of this Court to Annexure-4 to the petition, which is a photo copy of statement of Rameshwar Prasad Singh recorded u/s 164 of the Code of Criminal Procedure. Learned Counsel submits that in view of law settled by the apex court in State of Haryana and others Vs. Ch. Bhajan Lal and others, , the order of cognizance is liable to be set aside. It was submitted that the present case is squarely covered in the category prescribed by the Hon''ble Supreme Court in Bhajan Lal's case (Supra). It was further submitted that so far as allegation in respect of Petitioner No. 4 is concerned, same relates to discharge of official duty. It was submitted that Petitioner No. 4 was, at the relevant time, Officer-in-Charge of the Bihta Police Station and in discharge of his official duty, he has recovered the father of the Petitioner no.1 and since he was discharging his official duty, the learned Magistrate has committed serious error by way of taking cognizance of the offences in absence of any order for prosecution sanction issued by the competent authority against Petitioner No. 4. It was submitted that time without number, it has been held that in absence of prosecution sanction, no cognizance can be taken against public servant. Mr. Khan has specifically relied on a judgment reported in 2006 (2) PLJR SC 16 (Rakesh Kumar Mishra v. The State of Bihar and Ors. 2006 (2) PLJR SC 16) . It was also argued that the allegation made in the complaint petition appears to be not probable rather the same was made in a calculated and well design manner by the complainant with a view to create a defence in a case instituted against her. Accordingly, it has been prayed to set aside the order of cognizance and entire criminal proceeding in Complaint Case No. 461(C) of 2002 pending in the court of Sub Divisional Judicial Magistrate, Danapur.

5. In this case, despite valid service of notice, the opposite party no.2 has preferred not to appear. However, Smt. Indu Bala Pandey, learned Additional Public Prosecutor appearing on behalf of the State, has vehemently opposed the prayer of the petitioners.

6. Besides hearing learned Counsel for the Petitioners and State, I have also

perused the materials available on record. Firstly the plea which has been taken by Mr. Farooque Ahmad Khan, learned Counsel for the Petitioners is that the present complaint was filed maliciously with a view to create defence in a case instituted against the complainant. So far as this allegation is concerned, it is demolished merely on perusal of the complaint petition, which was filed by the Petitioner No. 1 against complainant and her father and brother. The said complaint was filed on 31.7.2002, which was referred to the police and thereafter, on 1st August, 2002, F.I.R. as Bihta P.S. case No. 212 of 2002 was registered against the complainant of the present case and her father and brother. A copy of F.I.R. in Bihta P.S. case No. 212 of 2002 along with Complaint Petition No. 472(C) of 2002 has been brought on record as Annexure-2 to the petition. Date of filing of the complaint petition is very relevant for the purpose of repelling the plea of malafide by the Petitioners. The present complaint petition against Petitioners was filed on 29.7.2002 and it was numbered as Complaint Case No. 461(C) of 2002. Meaning thereby that the present complaint was filed by the opposite party No. 2 against all the Petitioners prior to filing of the complaint by Petitioner No. 1, which was numbered as Complaint Case No. 472(C) of 2002. In the present complaint, date of occurrence has been alleged as 27.7.2002, the date on which her grand father-in-law was forcibly taken away by the accused persons and thereafter, the complainant was assaulted and also lodged in the Hajat. The complaint filed by the Petitioner No. 1 was transferred to the police and thereafter, F.I.R. as Bihta P.S. case No. 212 of 2002 was registered on 1.8.2002. Meaning thereby that prior to registration of F.I.R. against the complainant of the present case, there was no occasion for accused persons including Petitioner No. 4, who was Officer-in-Charge of the Bihta Police Station to conduct a raid in the house of the complainant and take away the grand father-in-law of the complainant from her house and arrest her father. Of course, at the time of hearing a petition u/s 482 of the Code of Criminal Procedure, this Court is not required to go into such detail, but for the purpose of repelling the submissions of malafide raised by learned Counsel for the Petitioners, this fact has been noticed by this Court. This fact is sufficient to persuade this Court to refuse the submission of the learned Counsel for the Petitioners that present complaint was filed maliciously and as such the Petitioners may not get any help from Bhajan Lal's case (Supra). On the contrary, the law laid down in Bhajan Lal's case (Supra), further put a rider to some extent on this Court to interfere at initial or interlocutory stage of a criminal case. It is true that in exceptional circumstances, power u/s 482 of the Code of Criminal Procedure can be exercised to prevent abuse of the process of the court, but at the same time, this power is to be exercised sparingly and in rarest or rare cases. At this juncture, it is appropriate to quote paragraph-109 of Bhajan Lal's case (Supra), which is as follows:

109. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases that the Court will not be justified in

embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.

7. So far as question of applicability of prosecution sanction in respect of Petitioner No. 4 is concerned, facts indicated above is sufficient to make it clear that the act alleged against Petitioner No. 4 was not in relation to discharge of official duty. First of all assaulting the complainant by the Petitioner No. 4 cannot be termed as an act of official duty. Moreover, on the date of occurrence in the present case from the facts narrated above, it is evident that no case/F.I.R. was lodged against the complainant and as such putting the complainant in the Hajat and at subsequent stage, her release on the basis of intervention of Dy. S.P. is enough to persuade the court that the allegation was not in relation to discharge of official duty of Petitioner No. 4. Accordingly, the Petitioners may not get any help either from the judgment of Hon"ble Supreme Court in Rakesh Kumar Mishra's case (Supra) or Bhajan Lal's case (Supra). The Petitioners, in the present case, have assailed the order of cognizance, which has been passed by the learned Magistrate after examining the complainant and witnesses examined in support of the complaint case. The Code of Criminal Procedure is a self contained Code and there are other remedies available to the Petitioners. The court is of the opinion that it is not a fit case for interfering with the order of cognizance and as such I do not find any merit in the present petition and petition stands rejected.

8. In view of rejection of this petition, interim order of stay dated 12.11.2003 stands automatically vacated.