

(2010) 05 PAT CK 0035

In the Patna High Court

Birendra Kumar Singh @ Birendra Prasad Singh

APPELLANT

Vs

The State of Bihar and Bhan Singh @ Ram Pratap Singh

RESPONDENT

Date of Decision : 06-05-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Penal Code, 1860 (IPC) — Section 120B, 182, 211, 341, 342

Citation : (2011) 6 RCR(Criminal) 1221

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—The sole petitioner, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, has prayed for quashing of order dated 24.2.1998 passed in Complaint Case No. 549 of 1992/Tr. No. 412 of 1998 by the Judicial Magistrate, 1st Class, Aurangabad. By the said order, the learned Magistrate has taken cognizance of the offence under Sections 120(B), 394, 341 and 342 of the Indian Penal Code.

2. Short fact of the case is that the opposite party No. 2 filed a complaint vide Complaint Case No. 540 of 1992 disclosing therein that he had taken loan from Punjab National Bank for the purpose of purchasing a Mahendra Tractor and thereafter, he purchased the same from the dealer, namely, Kirshi Machinery, Aurangabad and the said Tractor was registered as BHZ 4686. The said tractor was being run by the driver of the complainant, namely, Uma Thakur. It was further disclosed in the complaint petition that on 20.9.1990, the driver of the tractor informed the complainant that four accused persons forcibly took the tractor and also confined the driver and his two companions for about two hours. After being released from the confinement, the driver along with aforesaid two companions reached Risia Police Station for lodging the case. He remained there for a long time, but since no police officers were there, he returned back. While returning, he met with the complainant and he explained the story. The

complainant, thereafter, visited Amba Police Station along with his driver Uma Thakur and his three companions who were illegally detained by the accused persons. In Amba Police Station, statement of Uma Thakur was recorded and since the place of occurrence was lying within the jurisdiction of Risia Police Station on the basis of statement of Uma Thakur, a case was registered in the Risia Police Station. The complainant further disclosed in the complaint petition that the then Officer-in-Charge of the Amba Police Station visited the business premises of the petitioner and he saw that the trailer of the tractor of complainant was being painted. Subsequently with a view to seize the trailer of the tractor, the Officer-in-Charge of the Risia Police Station when again rushed to the business premises of the petitioner, he did not see the said trailer. However, some of the staffs of petitioner were arrested by the police. It was alleged in the complaint petition that on the interference of high police officials, the said arrested persons were got released. In complaint petition, it was disclosed that the complainant has got every apprehension that police may not do justice with the investigation since the police was in connivance with the petitioner. The complainant has further disclosed that at the time of purchase of the tractor, there was some serious dispute with the petitioner and as such, according to the complainant, the petitioner by hatching a conspiracy with other unknown persons had got the tractor removed. After filing the complaint petition, the complainant was examined on S.A. and in support of the complaint petition, three witnesses were examined. After being satisfied with the evidence brought on record during the enquiry, the learned Magistrate by the impugned order has taken cognizance of the offences as stated above.

3. Shri Ashwani Kumar Singh, learned Senior Counsel appearing on behalf of the petitioner, while challenging the order of cognizance and initiation of prosecution pursuant to the Complaint Case No. 549 of 1992, has argued that the complaint petition was filed solely with an object to create a defence in proposed prosecution, which was recommended by the Investigating Officer of Simra (Risia) P.S. Case No. 35 of 1990 and he submits that besides creating a defence, the present complaint was maliciously filed against the petitioner. Learned Senior Counsel, while referring to Annexure-1 to the petition, which is photo copy of certified copy of F.I.R. of Simra (Risia) P.S. Case No. 35 of 1990, submits that initially on the basis of written information given by the driver of the complainant, said F.I.R. was lodged for the offence u/s 394 of the Indian Penal Code against four unknown accused persons. He submits that in the said F.I.R., the driver, who was the informant, stated that while he was moving on tractor alone, the said tractor was intercepted by the accused persons and forcibly they took the possession of the tractor and also illegally confined the informant for about two hours and after being released, he filed the said report to the police alleged accusation against four unknown accused persons. Learned Senior Counsel has also referred to Annexure-2 to the petition, which is photo copy of certified copy of final form/charge sheet No. 13 of 1990 dated 4.7.1991, which was submitted in Simra (Risia) P.S. Case No. 35 of 1990. He submits that during

investigation, the police found the accusation in the F.I.R. as false and recommended for prosecuting the informant of the case i.e. driver of the informant for offence under Sections 182 and 211 of the Indian Penal Code. He submits that during investigation, it was found that with a view to get the insurance claim, false case was instituted. According to Shri Singh, learned Senior Counsel for the petitioner, after submission of the final report whereby it was recommended to prosecute the informant of Simra (Risra) P.S. Case No. 35 of 1990, the present complaint was filed. He has also referred to paragraph-16 of the complaint petition i.e. Annexure-4 to the petitioner. It is clear that when the final report with recommendation for prosecution under Sections 182 and 211 of the Indian penal Code was filed, the present complaint was filed in a well designed manner. The possibility of false implication is further evident from the averment made in the complaint petition to the extent that at the time of purchase of the tractor, there were dispute in between the petitioner and the complainant. This fact has been stated in paragraph-17 of the complaint petition at page-28 of the brief. Accordingly, he has submitted that the entire prosecution including order of cognizance is liable to be set aside only on the ground of malicious prosecution.

4. Shri Krishna Prasad Singh, learned Senior Counsel appearing on behalf of opposite party No. 2, has opposed the prayer of the petitioner. He submits that during the enquiry, sufficient materials were brought before the Magistrate and on the basis of such evidence/materials, the learned Magistrate had no option but to take cognizance and, accordingly, the Magistrate has rightly passed the impugned order of cognizance. Shri Singh has further argued that at the stage of cognizance, the Magistrate was not required to look into the report, which was submitted by the police and, accordingly, the learned Magistrate has rightly taken cognizance of the offence as mentioned above. He further submits that at this initial stage i.e. at the stage of cognizance, this Court may refrain from interfering. He further argued that all the defence, which has been taken by the petitioner, can be examined at appropriate stage before the court below and this is not the forum for raising all those pleas. Accordingly, he has prayed for rejection of the present petition. Shri Surendra Prasad Singh, learned A.P.P. appearing on behalf of the State, has supported the stand of Shri Krishna Prasad Singh, learned Senior advocate.

5. Besides, hearing learned Counsel for the parties, I have also examined the materials available on record of the present case. From the record particularly after perusing the F.I.R. of Simra (Risra) P.S. Case No. 35 of 1990, final report recommending prosecution of the informant and the complaint petition in the present case, I am of the view that the complaint petition was not filed honestly and fairly, but in a design way, the complaint petition was filed. On the basis of materials available on record as submitted by the learned Senior Counsel for the petitioner, the tractor in question was purchased after obtaining loan from the Kutumba Branch of Punjab National Bank. It was submitted by Shri Singh, learned Senior Counsel for the petitioner that even entire E.M.I. (installment) of

the bank was not paid. In such a situation, the Investigating Officer of Simra (Risra) P.S. Case No. 35 of 1990 has rightly recommended for prosecution of the informant of the case, who is none else, but the driver of the petitioner, who was for the time being owner of the tractor. Perusal of the F.I.R. further indicates that the informant of the said case had categorically stated that he was moving on the tractor alone, while the occurrence had taken place, but while filing the complaint petition, a new story was developed and with a view to get some support from created witnesses, it was stated that at the time of occurrence, the driver of the vehicle was accompanied by two other persons. All the three persons have been cited as witnesses in the complaint petition. The court is aware that while exercising power u/s 482 of the Code of Criminal Procedure in normal course, annexures of a petition, may not be looked into, but in peculiar facts and circumstances of the present case, I have examined those documents, which have been brought on record through the present petition. After examining the materials available on record, I am satisfied that the complaint petition was filed maliciously and allowing proceeding on such complaint will amount to allowing abuse of the process of the court and with a view to prevent the abuse of the process of the court as well as for the ends of justice, I hereby set aside the order of cognizance and all subsequent proceedings in Complaint Case No. 549 of 1992/Tr. No. 412 of 1998.

6. Accordingly, petition stands allowed.