

(2007) 04 PAT CK 0131

In the Patna High Court

Case No : Criminal Miscellaneous No. 24806 of 2003

B.R. Tripathi and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 10-04-2007

Acts Referred:

Constitution of India, 1950 — Article 16
Criminal Procedure Code, 1973 (CrPC) — Section 197
Penal Code, 1860 (IPC) — Section 166

Citation : (2007) 4 PLJR 90

Hon'ble Judges : Sadanand Mukherjee, J

Bench : Single Bench

Advocate : Rajesh Kumar Verma, for the Appellant; Amrendra Narayan for the O.P. No. 2, for the Respondent

Final Decision : Allowed

Judgement

Sadanand Mukherjee, J.—Heard the parties. This is an application for quashing the order dated 14.2.2003 passed by the Learned Judicial Magistrate, 1st Class, Darbhanga in CR. No. 379/2002, wherein and whereunder, the learned Magistrate held that the allegations against some of the accused persons set forth in the complaint petition are not proved, but provision of Section 166 of the I.P.C. appears to be true prima facie against the present petitioners and accordingly directed the office to issue summons.

2. The complainant-opposite party No. 2 filed complaint Case No. 379 of 2002 against seven senior officials of the Central Department as mentioned in the complaint petition, alleging therein, that all the petitioners in connivance with each other in a common design with a common intention to cause harm to the complainant and putting him in wrongful loss and damages entered into an agreement and played their separate part in one integrated and united effort to cause harm illegally to the complainant and they knowingly and deliberately disobeyed the Rules and directions, manufactured and fabricated documents and

further agreed to re-fix the pension of petitioner without taking into consideration the following grievances:-

(a) Naval service from the date of appointment to the date of retirement from 1.3.1951 to 28.2.1971 in accordance with fundamental right of equality under Article 16 of the Constitution of India;

(b) Re-fixation of initial pay on reemployment and especial pay granted to Ex-Serviceman on Civil re-employment in accordance with Memo No. B(34)-Estt. III/57 dated 25.11.58 of Ministry of Finance, Government of India;

(c) Correction of qualifying service for pension and gratuity in accordance with Rule 13 of C.C.S. (Pension) Rule, 1972 knowingly intended to cause injuries to the complainant.

In the complaint petition it is also alleged by the complainant-opposite party No. 2 that he has been prevented by the accused-petitioners from getting his grievances adjudicated by the Court of Law in accordance with fundamental right of equality and a prayer was made to take cognizance u/ss. 166, 167 and 120B of the I.P.C, against the accused-petitioners.

3. it has been submitted on behalf of the petitioners that after examination of the complainant on 4.6.2002 on solemn affirmation the learned Chief Judicial Magistrate, Darbhanga transferred the case to the Judicial Magistrate, Darbhanga for enquiry u/s 202 of the Cr.P.C. The complainant-opposite party No. 2 examined two witnesses. It has been submitted that the learned Magistrate without properly appreciating the allegations set forth in the complaint petition as well as deposition of the witnesses examined during course of enquiry u/s 202 of the Cr.P.C. passed the impugned order dated 14.2.2003 holding that prima facie at the first instance the offence punishable u/s 166 of the I.P.C against the petitioners appears to be true. It has been submitted that the aforesaid view is absolutely wrong and not tenable in the eye of law as no case whatsoever has been made out against the petitioners and as such the impugned order passed by the learned Judicial Magistrate is fit to be quashed.

4. In the case of R.S. Raghunath Vs. State of Karnataka and another, , wherein and whereunder the Hon"ble Supreme Court has illustrated category of cases wherein such power could be exercised u/s 482 of the Cr.P.C. to prevent abuse of the process of the Court or otherwise to secure ends of justice, making it clear that it may not be possible to lay down any precise and clearly defined inflexible guidelines or rigid formula and gave an exhaustive list of myriad types wherein the said power could be exercised. In the categories of cases inter alia the category is included where the allegations made in the first information report or in the complaint even if they are taken at their face value and accepted entirely did not prima facie constitute any offence and make out a case against the accused.

5. In the instant case cognizance has been taken u/s 166 of the I.P.C, against the

petitioners who are public servant. Section 166 of the I.P.C, lays down as follows.-

"Whoever, being a public servant, knowingly, disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both."

6. A supplementary affidavit has been filed on behalf of opposite party No. 2, who is complainant in this case, stating that the complainant had approached for obtaining sanction against the accused-petitioners for prosecuting them for the offences committed by them as envisaged in the complaint petition and filed petitions dated 1.5.1997, 24.3.1998, 19.7.1999 and 24.2.2002 addressed to the Hon"ble President of India for sanction u/s 197 of the Cr.P.C. to launch prosecution in the court of law, and pursuant to the complainant's letters Rastrapati Bhawan issued letters for taking action to the Secretary, Government of India, Ministry of Finance, copies of letters are annexed. The President Secretariat had forwarded the communication to the Secretariat, Government of India, Ministry of Finance, Department of Revenue. Although it appears that the aforesaid letter was dated 25th July, 1999, but no document has been furnished indicating the order of the concerned authority for sanction of prosecution has been obtained.

7. From the very complaint petition it appears that according to the complainant, omission has been done in respect of re-fixation of pension of the petitioner in course of official duty. It has been held by the Hon"ble Supreme Court in the case reported in AIR (S.C.W.) 5252(A) held that the aforesaid Section 197 of the Cr.P.C. can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in discharge of his official duty, and one safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty, if the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 of the Cr.P.C. does not get immediately attracted on institution of the complaint case. Use of the expression "official duty" implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty. [R. Balakrishna Pillai Vs. State of Kerala, ; 2004 AIRSCW 1926 and 2004 AIRSCW 4643 Rel. on 2005 AIRSCW 5252(A).]

8. There is nothing in the complaint to show that there was any criminal intention on the part of the public servant in causing injury to the complainant nor anything has been shown that the public servant, namely, the petitioners knowingly disobeyed any direction of the law or even dereliction of duty, for

proceeding pursuant to issuance of summons u/s 204 Cr.P.C., sanction is required.

9. In the instant case, not only that no sanction was obtained u/s 197 of the Cr.P.C. as required under the law under the circumstances of the case, but also that from the complaint itself there is nothing to show that the petitioners knowingly disobeyed direction of the law as the complainant himself in the complaint petition had stated about re-fixation of pension by the petitioners, but according to the complainant there is omission of non-consideration of the grievance constituting an offence. From the complaint itself no offence u/s 166 I.P.C, prima facie is made out. So far witnesses are concerned who were examined u/s 202 of the Cr.P.C., only allegation is that despite "continuous service", fixation was not done properly by the petitioners which led to retirement of the complainant on the lesser pension, which utmost even according to complaint case on the face of complaint, may be a dereliction of duty.

10. In view of the above circumstances the ingredients of an offence u/s 166 of the I.P.C in absence of sanction u/s 197 of the Cr.P.C. has not fulfilled. The impugned order dated 14.2.2003 purported to be u/s 204 of the Cr.P.C. passed by the Learned Judicial Magistrate, Darbhanga in CR. No. 379/2002 accordingly stands quashed. However, this order shall not prevent the petitioners to move for redressal of their grievances in any other forum seeking any other remedy. This criminal miscellaneous application is thus allowed.