
(2010) 03 PAT CK 0125

In the Patna High Court

Chandra Bhushan @ Appu and Upendra Kumar

APPELLANT

Vs

Prem Sagar Prasad and State of Bihar

RESPONDENT

Date of Decision : 26-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 360
Penal Code, 1860 (IPC) — Section 182, 211, 379, 392

Citation : (2010) 2 PLJR 799 : (2011) 6 RCR(Criminal) 2709

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shiva Kirti Singh, J.—Heard learned Counsel for the petitioners, learned Counsel for the State and learned Counsel for the Complainant- Opposite Party No. 1.

2. Both the petitioners are relations. Petitioner No. 1 is son of Shri Shashi Bhushan, owner of Lalji Market, a locality in the town of Patna and petitioner No. 2 is son-in-law of said Shri Shashi Bhushan. Both of them have prayed for quashing of order dated 4- 7-1998 whereby learned Judicial Magistrate, Patna City has taken cognizance in a complaint case bearing C.A. No. 130/98 leading to Trial No. 1006/98 for an offence u/s 379 of the Indian Penal Code.

3. Undisputed materials available on record show that the petitioners are relations of owner of Lalji Market who has taken steps through an eviction suit for eviction of the complainant/ O.P. No. 1 from a shop in his market. During the pendency of the eviction suit Opposite Party No. 1 initially filed a police case for the occurrence in question. That case bearing Agamkuan PS case No. 23 6/97 was instituted for an offence u/s 392 of the Indian Penal Code on the allegation that petitioners by show of arms snatched away a scooter belonging to Opposite Party No. 1 along with cash amount of Rs. 52,000/- kept in the said scooter. After investigation police found the case to be false and submitted final form recommending action against the Opposite Party No. 1 u/s 182/211 of the Indian Penal Code for lodging false case. Thereafter Opposite Party No. 1 filed protest-

cum- complaint petition and on the basis of his statement on Solemn Affirmation and that of three witnesses impugned order of cognizance was passed by the learned Magistrate.

4. On behalf of the petitioners, it has been submitted that entire criminal prosecution is malafide only to pressurize the owners not to pursue their case for eviction of Opposite Party No. 1 from the shop given to him on rent. It was highlighted that the alleged scooter was recovered by the police lying abandoned at a public place and except the complainant no witness can support the allegation of theft of Rs. 52,000/- because according to complainant it was kept in the dicky of the scooter. It was further highlighted that the witnesses examined on behalf of the complainant are associated with his business being Thelawala and Mazdoor. The 3rd witness claims to be a gardener in a hospital and his presence at the place of occurrence at a time when he was admittedly on duty, makes his evidence suspect.

5. Learned Counsel for the complainant on the other hand submitted that in an earlier criminal case lodged by the Opposite Party No. 1 for alleged theft of his Maruti Car by the petitioners, both the petitioners were convicted as would appear even from the appellate order, a copy of which has been brought on record through a supplementary counter affidavit. On that basis it has been submitted that if the earlier case was found true, it would not be proper to hold the present case to be malafide.

6. It appears from the judgement in the earlier case relating to theft of Maruti Car that the said case was lodged through a complaint petition filed in the year 2001 and on the case being referred to the police, it was found true and ended in a charge sheet although the Maruti Car was also recovered from another place not connected with the petitioners. According to learned Counsel for the petitioners in that case the prosecution succeeded because of deposition of some interested witnesses but in view of relevant facts and realizing the viability of petitioners defence, ultimately the appellate court granted the petitioners benefit of Section 360 of the Code of Criminal Procedure and they were not sentenced to any period of imprisonment. It has further been submitted that being encouraged by success in the earlier case the present case was also lodged but this time the police on thorough investigation found the allegations false.

7. Having considered the entire facts and circumstances, the pendency of the civil litigation, the relationship of the two petitioners with owner of the market, wherein a shop is rented out to the Opposite Party No. 1 and the fact that scooter was recovered from a public place and there is no evidence to corroborate keeping of Rs. 52,000/- in the dicky of the scooter, this Court is of the considered view that this criminal prosecution instituted through a protest-cum-complaint petition is only to wreak vengeance and to achieve an ulterior purpose. On that account, the prayer made in this application is allowed and the entire criminal prosecution against the petitioners is quashed.