

(2011) 11 SC CK 0028

In the Supreme Court Of India

Case No : Criminal Appeal No. 2293 of 2011 (Arising out of SLP (Criminal) No. 3923 of 2006)

Deo Lakhan Paswan

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 30-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 202, 482
Penal Code, 1860 (IPC) — Section 323, 500, 504

Citation : (2012) 1 JLJR 206

Hon'ble Judges : K.S. Radhakrishnan, J;Deepak Verma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Leave granted.
2. The Appellant/Accused herein is being charged and prosecuted for commission of offences alleged to have been committed by him under Sections 500, 504 and 323 of the Indian Penal Code (for short 'Indian Penal Code').
3. The Complaint Case No. 391 of 1999 was filed by Respondent No. 2-Dharam Raj Tiwari, before the Chief Judicial Magistrate, Palamu, Daltonganj, on 28.6.1999. According to the complaint filed by Respondent No. 2, the date and time of incidents have been mentioned between 3.11.1998 and 25.6.1999.
4. Admittedly, soon after the alleged incident, Respondent No. 2/Complainant did not lodge any First Information Report (for short 'FIR') with the Police Station. There is nothing on record to suggest or show that Respondent No. 2/Complainant took any steps to get the said FIR recorded by the Superintendent of Police of the District. Then, he waited for good three days and lodged the complaint before the Chief Judicial Magistrate, as mentioned hereinabove. Perusal thereof shows that according to him, the alleged offences were committed by Appellant/Accused between 3.11.1998 and 25.6.1999, repeatedly,

yet for the reasons best known to the Respondent No. 2/Complainant, he did not take any steps to lodge the FIR on an earlier date. No reason in this regard has been assigned before us by him.

5. It appears to us that only after the alleged incident, which took place on 25.6.1999, the Respondent No. 2/ Complainant thought it fit to submit his complaint before the Magistrate. In the said complaint, it is mentioned that on several previous occasions, Appellant/ Accused had used abusive language against them and was in the habit of throwing memorandum and copies of the orders passed by High Court and this Court on their faces. It is further alleged in the complaint that on the date of the incident, Appellant/Accused, in a fit of anger, threw a paper-weight on the Respondent No. 2/Complainant which had hit him on his right toe.

6. Admittedly, Respondent No. 2/ Complainant did not get himself medically examined nor there was any Medical Report to suggest that he had sustained any such injury.

7. Since the complaint was filed and preliminary evidence of certain witnesses were recorded, the Magistrate found sufficient prima facie material on record and therefore, directed issuance of summons to the Appellant/Accused. Appellant/Accused also filed an Application before the Magistrate on the ground that no prior sanction has been obtained from the Government to prosecute him as at the relevant point of time he was holding the post of Executive Engineer (Irrigation), and thereby, prayed for the proceedings to be dropped. The said Application came to be rejected by the Magistrate on 24.3.2004.

8. It is relevant to mention here that at the relevant point of time, Appellant was working and holding the post of Executive Engineer (Irrigation) and the present Respondent No. 2/Complainant was working under him on the post of Accounts Clerk, Grade-III.

9. It is also pertinent to mention here that on account of order issued by Government of Bihar, process for reversion of those employees who were wrongly absorbed from the Work Charge Establishment to Regular Establishment, had already commenced with effect from 3.11.1998. The Respondent No. 2/ Complainant was very well aware of the fact that after the completion of all the other formalities required in this regard, an order of reversal would be passed against him by the Appellant who at the relevant point of time was working as Executive Engineer (Irrigation). Between the period 3.11.1998 and 4.7.1999, there were several correspondence between the Superintendent Engineer and Chief Engineer and Government showing thereby that all those employees who have wrongly been absorbed on Regular Establishment have got to be reverted to the substantive posts. This fact was very well known to the Complainant and all other such employees who were working under the Appellant in that Establishment.

10. No doubt, it is true that the actual order of reversion against the Complainant

was passed by the Appellant on 7.7.1999 when not only the Complainant but five other employees were reverted to their substantive posts. It is also pertinent to mention here that Complainant chose to examine the other five reverted employees as the witnesses in the complaint filed by him u/s 202 Code of Criminal Procedure. Obviously, they had spoken in one voice with regard to the incident which is said to have taken place on 25.6.1999. But still, we are yet to find out an element of truth from the cock and bull story as has been sought to be built up by Complainant.

11. After having categorically gone through the entire record and the evidence adduced for registration of the criminal complaint against the Appellant, we have come to a conclusion that it was an afterthought, with an intention to harass the Appellant, who at the relevant point of time was holding the charge of Executing Engineer. Ultimately, it was this Appellant who had issued the order of reversion against the Complainant. Thus, the act of complainant taking recourse to the criminal action against the Appellant was malicious counter action against the Appellant. Even after critically examining it, we do not find any element of truth in the complaint lodged by him.

12. Even though there are many reasons for coming to this conclusion but some of the important ones are highlighted herein below:-

(i) According to the Complainant himself, the Appellant's atrocities started with effect from 3.11.1998 and continued up to 25.6.1999, but in between he took no step to either lodge an FIR or file a complaint or even to bring it to the notice of Appellant's superior.

(ii) No reasons have been assigned or explained by the complainant for this inordinate delay in doing so.

(iii) Admittedly, soon after the alleged incident also on 25.6.1999. Complainant did not go to the Police Station to lodge an FIR.

(iv) Even assuming that his FIR was not registered then he took no steps to proceed further in accordance with provisions of Code of Criminal Procedure wherein he could have, lodged the said FIR with the Superintendent of Police of the District.

(v) Again, he waited for good three days to lodge the aforesaid complaint. This unexplained delay is naturally fatal to his case.

(vi) Lastly, it must also be mentioned that if he was really injured on his right toe then as a prudent man, he should have gone to a hospital or a Police Station so that he could have got examined by a Doctor. No such injury or medical report is placed on record before us.

13. With the aforesaid reasons, we are of the considered opinion that prosecution of the Appellant at this point of time when he has already demitted the office with effect from 31.8.2008, would tantamount to abuse of the process of law.

14. As has been mentioned hereinabove, the Complainant's action of filing of the complaint at such a late stage was nothing but a malicious counter action to the proposed action to be taken by the Appellant.

15. In this regard, we may profitably refer to the judgment of this Court reported in Anjani Kumar Vs. State of Bihar and Another, , the relevant paras 12 and 14 thereof, are reproduced herein below:-

12. As the factual scenario goes to show the complaint filed of 4.2.1993 appears to be a counterblast by Respondent 2 for the action taken by the Appellant against him.

14. When the factual background as noted above is considered on the touchstone of legal principles set out above the inevitable conclusion is that certainly mala fides were involved apart from the applicability of Section 197 of the Code. It is no doubt true that at the threshold interference by exercise of Section 482 of the Code has to be in rare cases. The present case appears to be of that nature and falls under Category (7) indicated in State of Haryana and others Vs. Ch. Bhajan Lal and others, . The continuance of the proceedings by the prosecution would amount to abuse of the process of law. The criminal proceedings in the Court of the learned Chief Judicial Magistrate, Begusarai in PS Case No. 63 of 1993 are quashed. The appeal is allowed.

16. Needless to say, one of the most celebrated cases of this Court in this regard reported in State of Haryana and others Vs. Ch. Bhajan Lal and others, , has given seven salient features where the criminal prosecution can be dropped at the threshold. The aforesaid case would fall in Category (7). The relevant portion thereof is reproduced herein below:-

Where a criminal proceeding is manifestly attended with mala fide and/ or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

17. In the light of the foregoing discussion, we have no doubt in our mind that the prosecution of the Appellant, since retired, after such long gap of time would tantamount to great harassment and humiliation and it would certainly be an abuse of process of law which cannot be permitted.

18. Thus, the criminal prosecution of Appellant is hereby quashed and set aside. The Appeal stands allowed but with no order as to costs.