
(2010) 08 PAT CK 0163

In the Patna High Court

Dineshwar Singh, Chandradeo Singh, Surendra Singh and
Brajesh Singh

APPELLANT

Vs

The State of Bihar and Deodhari Singh

RESPONDENT

Date of Decision : 26-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 34, 379, 504

Citation : (2010) 08 PAT CK 0163

Hon'ble Judges : Akhilesh Chandra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Akhilesh Chandra, J.—Heard learned Counsel for the petitioners, Additional Public Prosecutor for the State and learned Counsel for the opposite party.

2. This is an application u/s 482 of the Code of Criminal Procedure, seeking quashing of order dated 04.03.2004 passed by Sri S. Chandra, Judicial Magistrate, 2nd Class, Ara in complaint Case No. 1403C of 2002, Trial No. 22 of 2004 taking cognizance u/s 504 of the Indian Penal Code and issuing processes and order dated 07.04.2005 passed by learned 5th Additional Sessions Judge, Bhojpur at Ara in Criminal Revision No. 63 of 2004 affirming the order of the Magistrate aforementioned.

3. The relevant fact of the case is that opposite party No. 2, filed Ara (Mufasil) P.S. Case No. 116 of 2002 instituted under Sections 379, 504/34 of the Indian Penal Code, stating therein that a few days before in storm, trees standing over Khata No. 158, Khesra No. 1293, Area 49 decimal in village Bhakura fell down and he entrusted one Bhuneshwar Sharma to cut the woods. During such cutting the accused persons i.e. the petitioners not only abused Bhuneshwar Sharma but also stopped him from doing the work, subsequently they also got the woods taken away in spite of protest by witnesses. Police after investigation submitted final form.

4. The informant-opposite party No. 2 filed protest complaint alleging same facts and during enquiry apart from complainant, three more witnesses were examined and the court below finding prima facie case only for the offence u/s 504 of the Indian Penal Code, took cognizance giving rise to Criminal Revision No. 63 of 2004, which was dismissed by Revisional Court on 07.04.2005, giving rise to this instant petition.

5. It is submitted on behalf of the petitioners that no case is made out against them, but they have been forced to face the trial by taking cognizance, the complaint petition completely lacks containing the actual abusing words, if any, uttered to said Bhuneshwar Sharma, who has also not been examined as witness and the persons examined during enquiry have not stated a single word about such abuses to said Bhuneshwar Sharma. Learned Counsel for the opposite party initially tried to submit that the witnesses have been examined on the point and further this point may be agitated at the point of charge, also learned Additional Public Prosecutor after initial hesitation conceded that there is no material in spite of the prosecution case.

6. From very reading of the complaint petition, it appears that whatever abusing word allegedly has been used by the petitioners that too against one Bhuneshwar Sharma, who is only witness to that part of the occurrence, if at all taken place, but he has not been produced for the reasons bases known to the complainant-opposite party. The other three witnesses examined also have not said one single word on such portion of the occurrence. Moreover, the complainant-opposite party, also in complaint petition as well as on his statement on solemn affirmation has said nothing, which may qualify the requirements for constituting an offence u/s 504 of the Indian Penal Code, which reads as such:

504. Intentional insult with intent to provoke breach of the peace:

Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

7. In view of the above, the impugned order is not at all sustainable, consequently quashed and this application stands allowed.