
(2011) 12 PAT CK 0066

In the Patna High Court

Case No : Criminal Miscellaneous No. 847 of 2010

Dr. Ashok Kumar Jha and Dr. Deo Nandan Prasad

APPELLANT

Vs

The State of Bihar and Anil Kumar

RESPONDENT

Date of Decision : 15-12-2011

Acts Referred:

Citation : (2011) 12 PAT CK 0066

Final Decision : Allowed

Judgement

Aditya Kumar Trivedi, J.—Dr. Ashok Kumar Jha, Dr. Deo Nandan Prasad happen to be the petitioners of Cr.Misc.No.847/2010 while in Cr. Misc. No. 26699 of 2009, Dr. Gopal Mishra happens to be petitioner who have challenged order dated 13.4.2009 passed in Complaint Case No. 2581(c) of 2008 by which learned lower court, Sri Daya Shankar Singh, J.M. 1st Class, Begusarai had summoned all of them to face trial for an offence punishable u/s 341 as well as 3(x) of SC ST (PA) Act.

2. On 18.11.2008, O.P. No.2, Anil Kumar an employee of Sadar Hospital, Begusarai filed complaint against all the petitioners disclosing therein that he happens to be a member of scheduled caste and is presently employed at Sadar Hospital, Begusarai. On 18.11.2008 at about 2:00 P.M. while he was proceeding towards chambers of Civil Surgeon, he was intercepted by all the accused in midst of way. Dr. Deo Nandan Prasad caught hold his collar and abused and further said that as he happens to be Deputy Superintendent therefore he has to abide by his direction. On his protest and further disclosing that written order be issued thereupon, Dr. Gopal Mishra and Dr. Ashok Kumar Jha spat over his mouth. He rushed to Sadar Hospital but as the police failed to entertain him therefore complaint has been filed.

3. It has been submitted on behalf of the petitioners of both the petitions that the order impugned is bad in law as well as on facts hence is fit to be set aside. Then submitted that the allegation whatever been alleged in the complaint is as such that no prudent man can accept the same nor it is expected at the hands of

petitioners who happens to be doctors of Sadar Hospital to indulge in such kind of nefarious activities. So it comes within one of the category identified under Bhajanlal Case. 4. Then thereafter referring different annexures submitted that delivery of Pinki Devi, Anita Devi an Aasha volunteer brought her and got her admitted at Sadar Hospital and during said course one of the hospital staff demanded undue money who was identified as Abha Kumari and over which an enquiry was entrusted on a complaint and then, she was transferred to different place by an order of Civil Surgeon but she flouted the order and remained there which was seriously taken up by the administration. Complainant who sided Abha Kumari becoming frustrated in his attempt to get the transfer order revoked, got this case filed with ulterior motive. As such submitted that in the aforesaid facts and circumstances of the case the order impugned cannot sustain. 5. On the other hand, O.P.No.2 opposed the prayer and submitted that for the purpose of summoning of accused a prima facie case is only required to surface. From the S.A. as well as statement of witnesses recorded u/s 202 of the Cr.P.C., prima facie against the petitioners are very much available on the record as a result of which no indulgence is required.

6. Learned APP opposed the prayer and submitted that in routine manner, there should not be interference. Whatever contention petitioners have, that happen to be factual one which could be dealt with during course of trial. As such, the order impugned is fit to be confirmed.

7. Both the petitioners by filing annexures have tried to inspire that the complaint against nurse Abha Kumari over demanding of money illegally and taking serious action thereupon by the administration of which petitioners happen to be part and parcel and further getting the transfer order revoked, the complainant who had taken a cause get this case filed. Whether those annexures, i.e. annexures-3, 4, 5, 6 of Cr. Misc. No. 847/2010 and in likewise manner of 26699/2009 can be considered at this moment, for that I would like to refer Harshendra Kumar D. Vs. Rebatilata Koley Etc., and the relevant paragraphs happen to 21 and 22 which are as follows:

21. In our judgment, the above observations cannot be read to mean that in a criminal case where trial is yet to take place and the matter is at the stage of issuance of summons or taking cognizance, materials relied upon by the accused which are in the nature of public documents or the materials which are beyond suspicion or doubt, in no circumstance, can be looked into by the High Court in exercise of its jurisdiction u/s 482 or for that matter in exercise of revisional jurisdiction u/s 397 of the Code. It is fairly settled now that while exercising inherent jurisdiction u/s 482 or revisional jurisdiction u/s 397 of the Code in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations. However, in an appropriate case, if on the face of the documents-which are beyond suspicion or doubt-placed by accused, the accusations against him cannot stand, it would be travesty of justice if accused is

relegated to trial and he is asked to prove his defence before the trial court. In such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may look into the materials which have significant bearing on the matter at prima facie stage.

22. Criminal prosecution is a serious matter; it affects the liberty of a person. No greater damage can be done to the reputation of a person than dragging him in a criminal case. In our opinion, the High Court fell into grave error in not taking into consideration the uncontroverted documents relating to appellant's resignation from the post of Director of the Company.

8. How the jurisdiction of inherent power vested u/s 482 of the Cr.P.C. is to be exercised for that a reference may have State of A.P. Vs. Gourishetty Mahesh and Others, and the relevant paragraph happens to be para-12 which has been formulated after taking into account, the identifiable cases (a) R.P. Kapur v. State of Punjab, (b) State of Andhra Pradesh v. Bajjoori Kanthaiah & another. (c) State of Haryan Vs. Bhajanlal & Ors.

12. While exercising jurisdiction u/s 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge/Court. It is true that Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, otherwise, it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time, Section 482 is not an instrument handed over to an accused to short-circuit a prosecution and brings about its closure without full- fledged enquiry. Though High Court may exercise its power relating to cognizable offences to prevent abuse of process of any Court or otherwise to secure the ends of justice, the power should be exercised sparingly. For example, where the allegations made in the FIR or complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused or allegations in the FIR do not disclose a cognizable offence or do not disclose commission of any offence and make out a case against the accused or where there is express legal bar provided in any of the provisions of the Code or in any other enactment under which a criminal proceeding is initiated or sufficient material to show that the criminal proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused due to private and personal grudge, the High Court may step in. Though the powers possessed by the High Court u/s 482 are wide, however, such power requires care/caution in its exercise. The interference must be on sound principles and the inherent power should not be exercised to stifle a legitimate prosecution. We make it clear that if the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of inherent powers u/s 482.

9. So from conjoint reading of both the decisions as referred above it happens to be a mandate of law that where sufficient material has been placed to show that the prosecution brought up to be malicious and with ulterior motive for wreaking vengeance apart from other identifiable points, then in that event the prosecution is liable to be quashed. 10. From Annexure-5 itself, it is evident that O.P. No.2 was custodian of attendance register wherein Abha Kumari nurse continued to give her attendance in spite of having been transferred and further indulgence of O.P. No.2 in derogatory manner has been brought to the knowledge of Civil Surgeon. From Annexure-4, being a deputy Superintendent, petitioner no.2 of Cr.Misc. No. 847/2010 had issued notice to O.P.No.2 on 18.11.2008 itself. The date of occurrence of instant case happens to be dated 18.11.2008. Therefore, some sort of ruckus appears to have erupted on that very day. The time of occurrence has been shown as 2:00 P.M. and then moving to P.S. and then coming to court getting the complaint case filed on the same day really smacks some foul smell that too in the background of the fact that having the occurrence committed within the periphery of Sadar Hospital and instead of complaining before the Civil Surgeon or asking for permission from the Civil Surgeon who, till then, had already taken initiative against Abha Kumari by transferring her from Sadar Hospital and further having signature of Abha Kumari over attendance register which was in custody of petitioner from 14.11.2008 to 18.11.2008 is really a matter of concern that has an impact upon the prosecution case whatever been narrated. The aforesaid annexures have not been controverted by the O.P. No.2 by way of filing of counter affidavit.

11. Thus, taking into account, the relevant law as referred above in consonance with the factual aspect so coming out as discussed above, the instant prosecution appears to be mala fide, consequent thereupon, the order dated 13.4.2009 passed in Complaint Case No. 2581(c) of 2008 by Sri Daya Shankar Singh, J.M. 1st Class, Begusarai is hereby quashed.

12. Thus, the petition is allowed.