
(2001) 07 PAT CK 0030
In the Patna High Court
Case No : Criminal Revision No. 341 of 1999

Dr. Jyoti Prakash

APPELLANT

Vs

The State of Bihar and Umesh Chandra Prasad

RESPONDENT

Date of Decision : 06-07-2001

Acts Referred:

Citation : (2001) 07 PAT CK 0030

Final Decision : Allowed

Judgement

A.K. Sinha, J.—This revision application has been directed against the order dated 9.6.1999 passed in Complaint Case No. 1718 of 1996 by Sri U.C. Mishra S.D.J.M., Chapra, whereby the prayer made on behalf of the Petitioner to discharge him was rejected on the ground that there is no provision to discharge the accused in summons cases. It has been prayed that the entire criminal proceeding pending against the Petitioner in the court of S.D.J.M. Chapra be quashed, including the order dated 22.11.96, whereby cognizance u/s 17(A), 18(3), 19 and 29 of the Industrial Disputes Act, 1947 was taken by the C.J.M., Chapra.

2. The relevant facts concerning the present revision application are that seven persons worked for more than 240 days on daily wages in the year 1991 and the Incharge Medical Officer, Bhore Hospital recommended to Civil Surgeon-cum-Chief Medical Officer, Gopalganj for their regular appointment and the Civil Surgeon-cum-C.M.O., Gopalganj appointed them as such. Thereafter, the Civil Surgeon-cum-C.M.O. terminated the services of Sanjay Kumar Tiwary, Ramnaumi Ram, Mohan Sah and Ramayatan Bhagat vide letter dated 10.10.92 and the services of Madan Sah, Rajiv Lochan Tripathi and Rameshwari Twiary were also terminated by letter dated 9.12.(sic) Against the termination, the seven persons filed writ petition before this Hon"ble, Court bearing C.W.J.C. No. 11289 of. 1992 for quashing the order of termination, which was disposed of as withdrawn and the Petitioners were directed to seek remedy before the appropriate courts under the Industrial Disputes Act. There after, the terminated

employees took the issue under the Industrial Disputes Act and the Government referred the matter for adjudication to Labour Court, Chapra where case No. 8 of 1994 was registered and the Civil Surgeon-cum-C.M.O. was made party representing the management. The Presiding Officer, Labour Court, Chapra passed an ex-parte order/award against the Civil Surgeon-cum-C.M.O., Gopalganj on 1.12.94 and held that the termination of the Petitioner's services by the Civil Surgeon was illegal and the Petitioners were entitled for reinstatement, regularisation and arrears, of salary (vide Annexure-2). In compliance to the said award the Civil Surgeon-cum-C.M.O., Gopalganj by his order dated 30.12.95 reinstated regularised the services of the awardees and directed the Medical Officer Incharge to make payment of the arrears of wages to all the seven employees, vide Annexure-3.

3. The Petitioner joined in Saran Division at Chapra on 27.7.95 to the post of Regional Deputy Director and after his joining, the Treasury Officer, Gopalganj raised objection against the acts of the then Civil Surgeon for not contesting the case pending before the Labour Court resulting in passing of the award. The copy of objection raised by the Treasury Officer was sent to the Petitioner as also to the Collector, Gopalganj, vide Annexure-4 and after getting the knowledge of the objection raised by the Treasury Officer, the current salary of the awardees were stopped. The Petitioner directed Dr. R.K. Rai who had joined as Civil Surgeon-cum-C.M.O. at Gopalganj, without taking charge from his predecessor, to obtain all relevant papers and reconstitute file for the purpose of enquiry and for filing appeal before the competent court. After that, the Petitioner received a show cause notice issued by Assistant Labour Commissioner vide letter No. 850 dated 23.5.96, whereby the Petitioner was directed to file a show cause as to why the management had not paid the arrears of salary as well as the current salary to the workers and as to why a complaint u/s 29 of the Industrial Disputes Act may not be filed before the C.J.M., Gopalganj for non-compliance of the award. The Petitioner, however, did not file any reply. The Petitioner, however, directed the Civil Surgeon-cum-C.M.O. to file appeal against the ex parte award and also wrote to the Commissioner-cum-secretary, Department of Health vide letter dated 3.10.96 and requested the Govt. to issue necessary order to Civil Surgeon-cum-C.M.O. to file appeal against the award. The Petitioner also requested to Secretary, Law Department vide letter No. 782 dated 17.12.96 for permission to file an appeal but he did not receive any information and, thereafter, he retired from service on 31.12.96. It has been stated that opposite party No. 2 U.C. Prasad, the Deputy Labour Commissioner filed a complaint against the Petitioner and Dr. R.K. Roy, Civil Surgeon-cum-C.M.O. Gopalganj alleging that the award dated 1.12.94 was not implemented within 30 days of its publication under the provisions of Section 17 (A) of Industrial Disputes Act, 1947 which was binding upon them under the provisions of Sections 18(3) and 19 of the Act and non-compliance of which is punishable u/s 29 of the Industrial Disputes Act. On the basis of the complaint (Annexure-6) filed by the Deputy Labour Commissioner, the learned C.J.M., Chapra took cognizance for the offence

under Sections 18(a), 18(3), 19 and 29 of the Act against the Petitioner and Dr. R.K. Rai, Civil Surgeon-cum-C.M.O., Gopalganj vide order dated 22.11.96 and ordered to issue process against them. The case was transferred to the court of S.D.J.M., Chapra who issued summons upon the Petitioner.

4. The learned Counsel appearing for the Petitioner submitted at the very outset that the entire prosecution of the Petitioner is illegal, inasmuch, as the Petitioner was not a party in the case before the labour court and the award was passed in favour of awardees of that case much before the Petitioner had joined at Chapra as Regional. Deputy Director of Health and it was Civil Surgeon-cum-C.M.O., Gopalganj who was the party in dispute before the Labour Court. Therefore, the Petitioner cannot be prosecuted for non implementation of the award, in question. It was pointed out that the award had already been implemented by the Civil Surgeon-cum-C.M.O. and in that view of the matter also there could be no question of committing any offence under the Industrial Disputes Act, but the learned C.J.M., Chapra without applying his mind took cognizance against the Petitioner in a mechanical manner without ascertaining the facts of the case. It was submitted that, in fact, no case whatsoever was made out against the Petitioner in the circumstances, as stated above. Hence, the prosecution of the Petitioner was an abuse of the process of the court and the entire criminal proceeding against the Petitioner deserves to be quashed.

5. Provisions of Section 29 of the Industrial Disputes Act, 1947 may usefully be quoted as here under:

Any person who commits a breach of any term of any settlement or award, which is binding on him under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both and where the breach is a continuing one, with a further fine which may extend to two hundred rupees for every day during which the breach continues after the conviction for the first, and the court trying the offence, if it fines the offender, may direct that the whole, or any part of the fine realised from him shall be paid, by way of compensation, to any person who, in its opinion has been injured by such breach.

6. The award passed by the Labour Court has been filed as Annexure-2 which shows that it was passed against the Civil Surgeon-cum-C.M.O. Gopalganj who was described as the sole management in the case and not against the Petitioner. In such view of the matter the proper person who can be prosecuted u/s 29 of the Act for non-compliance of the award was Civil Surgeon-cum-C.M.O., Gopalganj and the Petitioner who was not the party before the Labour Court nor any direction was given to him in the award cannot be prosecuted for non-compliance of the terms of the award. Therefore, the argument advanced by the learned Counsel for the Petitioner that the Petitioner has been illegally prosecuted by the Deputy Labour Commissioner has got much force in it.

7. It appears from the impugned order that the learned S.D.J.M., Chapra rejected the prayer of the Petitioner to discharge him on the ground that there is no

provision for discharge of the accused in summons case. In this connection the learned Counsel for the Petitioner has drawn my attention to Sections 251 and 258 of the Code of Criminal Procedure and submitted that the learned S.D.J.M. had ample powers u/s 258 of the Code to stop the proceeding against the Petitioner at any stage in view of the facts and circumstances of the case. He relied upon the decision in the case of Shaikh Ahmed Hussain and another Vs. State of Maharashtra, wherein it has been held as hereunder:

In summary proceedings where the accused claims to be tried, the procedure specified in the Code under Chapter XX for the trial of summons case is required to be followed. It is true that Chapter XX does not make any provision for discharge, of the accused but Section 258 very clearly specifies that at any stage of the trial the Magistrate may stop the proceedings. It is implicit that if it is brought to the notice of the Magistrate at any stage of the proceedings, that there is no evidence or that the charge is groundless, he may forthwith stop the proceedings and acquit the accused. To this extent, therefore, the learned Magistrate was not justified in having rejected the application filed by the Petitioners on the ground that no powers were vested in him.

In the same judgment it was also observed as follows:

However, as far as the present case is concerned, we would have to be guided by the observations of the Supreme Court as reported in Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandojirao Angre and Others, where the Supreme Court has rightly observed that there are instances where the High Court would be justified in taking into account special facts and circumstances on the basis of which the court concludes that a prosecution is liable to be quashed for the reason that the material placed before the trial court is of such a nature that it would not result in a conviction and consequently the continuance with the prosecution would be unjustified.

8. The learned Counsel for the Petitioner relied upon another decision in the case of Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, wherein the apex court held as hereunder:

Summoning of an accused in a criminal case is a serious matter. Criminal Law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. No doubt, the Magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court u/s 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against him when

the complaint does not make out any case against him and still he must undergo the agony of a criminal trial.

In the same decision it was further observed as hereunder:

Nomenclature under which petition is filed is not quite relevant and that does not debar the court from exercising its jurisdiction which otherwise it possesses unless there is special procedure, prescribed which procedure is mandatory. If in a case the court finds that the Appellants could not invoke its jurisdiction under Article 226, the Court can certainly treat the petition one under Article 227 or Section 482 of the Code. It may not, however, be lost sight of that provisions exist in the Code of revision and appeal but sometime for immediate relief Section 482 of the Code or Article 227 may have to be resorted to for correcting some grave errors that might be committed by the subordinate courts. The present petition filed in the High Court as one under Articles 226 and 227 could well be treated under Article 227 of the Constitution.

9. Relying upon the aforesaid decisions, the learned Counsel for the Petitioner submitted that the learned trials court had ample powers to stop the proceedings against the Petitioners against whom the charge was groundless and the learned C.J.M. had taken cognizance against the Petitioner in a mechanical way without considering the relevant documents and materials. If the learned C.J.M. would have considered the materials at the time of taking cognizance there was no question of issuing summons against the Petitioner since there was no material against him which could, show that he was liable for his prosecution u/s 29 of the Industrial Disputes Act for violation or the non-compliance of the award. It was, therefore, submitted that the entire prosecution of the Petitioner is illegal and the criminal proceeding pending against him deserves to be quashed.

10. Lastly, it was submitted that the prosecution of the Petitioner was illegal on yet another ground because no sanction for his prosecution was obtained prior to the filing of the complaint by the Deputy Labour Commissioner and the facts and circumstances of the case would go to show that the complaint was filed by the Deputy Labour Commissioner for the alleged acts committed by the Petitioner and the Civil Surgeon-cum-C.M.O. in discharge of their official duties. In support of his contention, the learned Counsel for the Petitioner relied upon a decision in the case of Gauri Shankar Prasad Vs. State of Bihar and Another, wherein the apex court held as hereunder:

It is manifest that the Appellant was present at the place of occurrence in his official capacity as Sub-Divisional Magistrate for the purpose of removal of encroachment from Government land and in exercise of such duty he is alleged to have committed the acts which form the gravamen of the allegation contained in the complaint lodged by the Respondent. In such circumstances, it cannot but be held that the acts complained of by the Respondent had nexus with the official duty of the Appellant. It follows, therefore, that the Appellant, is entitled to the immunity from criminal proceedings without sanction provided u/s 197.

11. Relying on the aforesaid decision of the apex court the learned Counsel submitted that the facts of the instant case is akin to the facts of the case before apex court in the decision cited above where the apex court held that the Appellant could not be prosecuted without sanction as provided u/s 197 of the Code of Criminal Procedure.

12. I may say without any reservation that the arguments advanced by the learned Counsel for the Petitioner are well founded. In the facts and circumstances of the case, I am of the view that even if there is no provision for discharge of the accused under Chapter XX of the Code of Criminal Procedure but it is implicit u/s 258 of the Code of Criminal Procedure that the Magistrate may stop the proceeding at any stage if it is brought to I the notice of the Magistrate that the charge is groundless or that there is not material to proceed against accused will be an abuse of process of the court (sic) the court insists the accused to face trial although there is no material against him. As noticed above, the Petitioner was prosecuted for non-compliance of the award although he was not a party in the award and in no way it was obligatory on his part to comply the award. I am at loss to understand that how the Deputy Labour Commissioner made him an accused in the complaint and more worrying is that the learned C.J.M. lost sight of the important fact and took cognizance against the Petitioner in mechanical way and passed order to issue summons against him without stating in Tits order to how the Petitioner is also concerned the case filed by Deputy Labour Commissioner and as such the order taking cognizance against the Petitioner appears to be illegal and the proceedings against the Petitioner deserves to be quashed on this score alone.

13. Even though such an illegality had been committed by the learned C.J.M. while taking cognizance in the case and issuing summons against the Petitioner, when the matter was brought to the notice of S.D.J.M. in the petition file by the Petitioner wherein it was clearly stated that the Petitioner is in no way concerned with the alleged non-compliance of the award and it was the Civil Surgeon-cum-C.M.O., Gopalganj who was answerable to that, the learned S.D.J.M. should have examined the matter and passed order for stopping the proceeding against the Petitioner u/s 258 of the Code of Criminal Procedure which he was competent to do. It was also brought to the notice of the learned S.D.J.M. that the Petitioner is being prosecuted without obtaining any sanction as required u/s 197 of the Code of Criminal Procedure and as such the proceeding against the Petitioner was illegal. The learned S.D.J.M. should have dropped the proceeding against the Petitioner for he simple reason that an illegal proceeding going on against the accused should not be continued and if illegality is pointed out to the court, the court should stop the proceeding.

14. In the facts and circumstances of the case and in view of the discussions made above, the proceeding against the Petitioner in the Complaint Case No. 1718/1096 of 1996/1999 is dropped and fine entire criminal proceeding, including the order taking cognizance against the Petitioner in the aforesaid case

is hereby quashed.

15. In the result, this revision application is allowed.