

(2010) 03 PAT CK 0023

In the Patna High Court

Dr. Kuber Ram Mourya, Ganpat Gope and Ayodhya Paswan

APPELLANT

Vs

The State of Bihar and Chandra Shekhar Kunwar

RESPONDENT

Date of Decision : 25-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Penal Code, 1860 (IPC) — Section 147, 148, 241, 323, 341

Citation : (2010) 03 PAT CK 0023

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—No one appears on behalf of the petitioners either to press this application or to make a prayer for adjournment. However, Mr. S.K. Saraf, learned Counsel on behalf Opp. Party No. 2 is present. He has also filed a counter affidavit to oppose the prayer of the petitioners. On behalf of the State, Dr. Indihar Kumari, A.P.P. appears.

2. The three petitioners, while invoking inherent jurisdiction of this Hon'ble Court u/s 482 of the Code of Criminal Procedure, have prayed for quashing of their criminal prosecution in Complaint Case No. 201 of 1997 pending in the court of Sri S.P. Mishra, learned Judicial Magistrate, 1st Class, Bhagalpur. They have also prayed for the quashing of the order dated 3.6.1998, whereby cognizance order for offences under Sections 341, 323, 379, 384, 504 of the Indian Penal Code was passed.

3. The short facts of the case is that Opp. Party No. 2 filed a complaint case vide Complaint Case No. 201 of 1997 in the court of the learned Judicial Magistrate, 1st Class, Bhagalpur. In the complaint petition, it was alleged that the complainant was posted as Cashier in Bihar Agriculture College, Sabour, Bhagalpur, where petitioner No. 1 was functioning as Principal-cum- Professor. Petitioner No. 2 was posted as Peon and petitioner No. 3 was a Driver of the Jeep in the said college. It was alleged that earlier he had asked petitioner No. 1 not

to make false allegation against him regarding lending money on 2-3 per cent interest. It was subsequently alleged that on the date of occurrence, while the complainant was going to market, he was intercepted by the three petitioners and he was abused. Subsequently, the accused persons assaulted the complainant.

4. In paragraph-6 of the complaint petition, an specific assertion was made that in the said occurrence after being assaulted by the accused persons, the complainant fell down and thereafter accused No. 2 forcibly took a JANTA watch cost of Rs. 300 from the hand of the complainant and accused No. 3 took Rs. 350 from the pocket of the complainant. It was also alleged that accused No. 3 was carrying a pistol in his hand and in the occurrence, he put pistol on his chest and thereafter the complainant was compelled to put signature on plain paper. In the same paragraph , i.e. paragraph No. 6 of the complaint, it was alleged that petitioner No. 1 put the complainant in fear of death and thereafter he obtained signature of the complainant on plain paper and he also demanded Rs. 10,000/- forcibly and said that if the complainant wants to absolve from the charge of lending money , he will have to pay Rs. 10,000/-. The complainant was examined on S.A. and three witnesses were examined in support of the complaint case. Subsequently, by the order dated 3.6.1998, the learned Magistrate had taken cognizance of the offences under Sections 341, 323, 379, 384, 504 of the Indian Penal Code.

5. Learned Counsel appearing on behalf of Opp. Party No. 2, while referring to the counter affidavit, submits that petitioner No. 2 besides the present case was accused in one another case, namely, Sabour P.S. Case No. 194 of 1997, which was initiated on the basis of complaint petition, i.e. Complaint Case No. 952 of 1997 for the offences under Sections 147, 148, 241, 323, 506 and 379 of the Indian Penal Code and 27 of the Arms Act. He also submits that petitioner No. 1 was proceeded with departmentally and he was earlier put under suspension. Learned Counsel for Opp. Party No. 2 on the basis of those materials submits that the conduct of petitioner No. 1 shows that he is a habitual offender. Besides this, he submits that the learned Magistrate, while taking cognizance on the basis of materials available on the record, has committed no error.

6. I have examined the materials available on the record. The stand taken by the petitioner in the petition is that the complainant, who was earlier Cashier in the college in question, was transferred from the College and thereafter with a view to put pressure on petitioner No. 1 in order to get the order of his transfer stayed, the complainant has filed the present complaint. Learned Counsel appearing on behalf of Opp. Party No. 2 does not dispute the fact that he was transferred from the college in question. However, he disputes the contention of the petitioners taken in the petition and he submits that the occurrence in the complaint petition had actually taken place and there is no question of filing of any false complaint petition.

7. It is not in dispute that the complainant was under the control of petitioner

No. 1 and was transferred. The stand taken by petitioners that the complaint petition was filed maliciously and with a view to get an order of stay in his transfer finds some support.

8. The allegation made in the complaint petition against the Principal -cum- Professor prima facie not appears to be believable. Had such occurrence taken place, it was expected that even after refusal by the Police officials to register the case, the complainant, who was literate person, was expected to approach the concerned Superintendent of Police as well as higher police officials.

9. Considering the fact that the complainant was transferred from the college in question as also the fact that the petitioner No. 1 was the controlling Officer of the complainant as well as the contents of the complaint petition I am of the view that the present petition was filed maliciously and, as such, on the basis of such complaint it was not appropriate for the court below to proceed in the matter and take cognizance for the alleged offences.

10. Accordingly, the order of cognizance dated 3.6.1998 passed in Complaint Case No. 201 of 1997 is set aside and the petition stands allowed.