

(2011) 04 PAT CK 0186

In the Patna High Court

Case No : Cr. Misc. Nos. 6008 and 8070 of 2002

Dr. Lakshmi Roy

APPELLANT

Vs

State of Bihar and Shashi Kant Ranjan

RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Citation : (2011) 04 PAT CK 0186

Final Decision : Allowed

Judgement

Kishore Kumar Mandal, J.—Both the matters arise out of order dated 13.02.2002, passed by learned Judicial Magistrate, Patna in Complaint Case No. 2219 (C) of 2001 whereby, on a consideration of materials brought on record in course of enquiry, learned court below found a prima facie case against the Petitioners and accordingly cognizance has been taken under Sections 161, 323 and 504 IPC and processes have been issued against the Petitioners. Petitioner of Cr. Misc. No. 6008 of 2002, during the relevant time was serving as the Chairman of the Bihar Public Service Commission (hereinafter to be referred to as the "Commission"), whereas Petitioners of Cr. Misc. No. 8070 of 2002 were serving the Commission as its Secretary and Officer on Special Duty-cum-Budget Officer respectively. Since the issues are the same and both the applications are directed against the said order, both these matters, with the consent of the parties, have been heard together.

2. It is noted at the outset that in spite of service of notice and filing appearance through counsel, no body has appeared on behalf of the complainant (o.p. No. 2) to resist/contest the present application.

3. Relevant background facts shall be drawn from Cr. Misc. No. 6008 of 2002. They are as follows:

The complainant claimed himself the grandson of one Rajendra Prasad who was serving in the Commission and was slated to superannuate with effect from 30.09.1995. It is alleged in the complaint (Annexure-1), lodged on 04.12.2001,

that his grandfather had applied for post retiral dues in prescribed form and also for fixation of pension etc. To pursue the said matter, he used to visit the office of the Commission and meet with the officials. On 23.01.1996 a sanction order with respect to unutilized earned leave was issued in favour of his grand father(since deceased) with dearness allowance. Another sanction order dated 19.02.1996 for encashment of group insurance was also issued and paid but without interest. Major part of the post retiral dues, however, were not paid for which few representations were submitted to the Chairman of the Commission, but no positive action was taken. In the light of the judgment of the Hon''ble Patna High Court in the case of Most. Rukmini Devi v. State of Bihar passed in CWJC No. 4266 of 1996, the authorities were required to pass final orders within a time-frame. The aforesaid general direction of the High Court was not complied with making themselves liable for contempt. The complainant after the death of the grand father approached the officials of the Commission on several dates and to comply with the requirement as reflected from letter dated 30.01.2001 from the Treasury Officer, Patna and addressed to the Senior Accounts Officer, office of the Accountant General, Bihar Patna, as also letter dated Accountant General, Bihar Patna, as also letter dated 20.03.2001 issued by the Treasury Officer. The accused persons did not take appropriate action and thus rendered themselves liable to be proceeded against for violation of general direction(s) issued by Patna High Court. This is what the complainant has alleged in paragraphs 7 and 8 (page 28 to 30 of the brief) which reads thus:

That the complainant approached the accused persons several time with him grandmother on 5.2.91, 7.3.91, 27.4.01, 1.6.01, 21.8.01, 26.9.01 and requested them with to comply a letter No. 5208 dated 30.01.2001 from Treasury Officer, Patna addressed to Senior account officer, office of the Account general, Bihar, Patna and second letter from the office of the Accountant General(A and E) II, Bihar, Patna No. 20 dated 20.5.2001 sent to the Treasury Officer, Sachivalya Treasury, Patna subject to payment of Rs. 56170/- of Smt. Chandrika Devi wife of Rajendra Pd. In P.F. No. 293284 and one of them asked to spare Rs. 5000/- and they agreed to accept or attempted to obtain illegal gratification for ordinary service with them.

That all accused persons willfully and deliberately violating and flouting the judgment and order of the Hon''ble High Court and abused by all accused persons and also violated and not complying the order of the attached letters mentioned in page 7 of the complaint.

4. In course of enquiry under Sections 200 and 202, witnesses were examined including the statement of the complainant on solemn affirmation. On a consideration of materials on record, learned court below passed the impugned order leading to filing of the present case.

5. Learned Counsel representing the Petitioners of both the cases challenged the sustainability of the impugned order on diverse counts. It is contended that on bare perusal of the complaint, no case is made out against the Petitioners

inasmuch as no date and time of alleged occurrence has been set out therein. It is contended that allegations are, therefore, totally vague and evasive which cannot be proved at the trial. Arguing further, it is contended that the complainant in his S.A. has not alleged a word about involvement of Petitioner of Cr. Misc. No. 6008 of 2002. In his such deposition, he has stated that the accused(s) had violated the general direction issued by the High Court and, as such, his grand father had to file a writ petition. It has further been alleged therein that Petitioner Syed Ahsan Ahmad had demanded a sum of Rs. 5000/- and that he had manhandled the complainant. It is submitted that it is not alleged that accused persons abused him and also assaulted by using force of any kind. It is next contended that going by the materials on record, particularly the communications contained in annexures-7 and 8, it would appear that all the formalities relating to payment of pension and other retiral dues of the retired employee (grand father of the complainant) had already been completed by the Commission inasmuch as no dues certificate were also issued much prior to lodgment of the complaint. The complainant had, therefore, no occasion to make any grievance against the Petitioners for not taking prompt action in the matter. It is next contended that admittedly no sanction has been taken by the complainant in the case from the competent authority before the impugned order particularly when the Petitioners of Cr. Misc. No. 8070 of 2002 were senior officers of the government and were protected against such prosecution u/s 197 of the Code of Criminal Procedure (hereinafter referred to as the "Code"). Petitioner of 6008 of 2002 was then holding a constitutional post of Chairman of the Commission. Admittedly, the allegation pertains to discharge of their official duty and, as such, they were protected u/s 197 of the Code. The order impugned is vitiated on that count also. It is next contended that allegations set out in complaint are so patently absurd and inherently improbable that no man reasonably instructed in law would accept the same. The continuance of criminal proceeding would therefore be nothing but an abuse of the process of the court. Reliance in this regard has been placed on a judgment of the Supreme Court in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, According to the Petitioners, the gravamen of allegation is that the accused persons did not take prompt action in clearing the outstanding post retiral dues payable to the grand father of the complainant in breach of general direction issued by Hon"ble High Court in the case of Most. Rukmini Devi and, as such, they had made themselves liable to be prosecuted for committing breach of the order of the High Court. Learned Counsel arguing in the same vein, termed the impugned order as a product of complete non-application of mind which is manifest from the fact that the court below in a wholly mechanical manner has taken court below in a wholly mechanical manner has taken cognizance u/s 161 IPC when the said penal provision already stood deleted from the statute book in the year 1988. According to him, this is sufficient enough to conclude that order impugned has been passed mechanically without application of judicial mind to the materials on record.

6. Learned Counsel appearing on behalf of the State, on the other, supported the impugned order. It is submitted that court below has found and recorded its satisfaction based on materials on record about the presence of a prima facie case against the accused persons and as such this Court should refrain from interfering with said findings/satisfaction of learned Magistrate. Adverting to the other submissions of the Petitioners, it is submitted that sanction can be granted and/or obtained at the subsequent stage of the proceeding of the trial. On that count the order impugned cannot be said to have vitiated in law.

7. I have considered the submissions advanced on behalf of the parties and perused the materials on record.

8. A perusal of the complaint indicates that the complainant has not set out the date and time of the occurrence. In none of the paragraphs of the complaint, it is alleged that on what particular date and time he had met with the accused persons and was insulted/abused/manhandled and turned out of the office of the Commission. This is a lacuna in prosecution case which goes to the root and makes the allegation contained therein totally vague and incapable of being proved. It is well known that criminal accusations have to be precise and maker thereof is under heavy onus to prove the same at the trial beyond shadow of reasonable doubts. In his S.A. (Annexure-2) the complainant has not spoken a word about the Petitioner of Cr. Misc. No. 6008 of 2002. It has been alleged therein that Petitioner No. 1 of Cr. Misc. No. 8070 had demanded a sum of Rs. 5000/- from him for clearing remaining retiral dues and that he had raised hands on him. It appears therefrom that he was not assaulted and/or manhandled by any of the accuseds. It also does not appear therefrom that the complainant was abused by any of the accused persons in the office of the Commission. It has been argued on behalf of the Petitioners that according to the complainant himself, his grand father had already filed a writ petition for payment of remaining post retiral dues before his death. From perusal of the complaint, it appears that payment of part of the post retiral dues were made to the retired employee inasmuch as the GPF amount and encashment of unutilized leave had already been sanctioned and paid to him. Remaining part of the retiral dues were required to be cleared for which the Commission had to issue no dues certificate. Learned Counsel for the Petitioners drawing attention of the Court to page 33/36 of the brief, submits that these were the communications issued by the Treasury Officer and addressed to the office of the Accountant General for payment of remaining dues on account of pension/family pension and arrears thereof. Drawing attention of the Court to the communication dated 27.04.2001 (Annexure-7), it is submitted that no dues certificate relating to the said employee had already been issued and communicated to the concerned authority. Annexure-8 is the pension payment order dated 31.05.2001 copy whereof was duly forwarded to the widow of the employee. From the aforesaid document this much is evident that prior to lodgment of the complaint, all the formalities had been completed inasmuch as P.P.O. in favour of the employee had already been issued. The submission of the

Petitioners that in the backdrop of these facts appearing from records, the complainant had absolutely no occasion to visit the office of the Commission and meet the officials including the Petitioners when he was demanded gratification in sum of Rs. 5000/- by Petitioner No. 1 of Cr. Misc. No. 8070 of 2002 who abused/insulted him (complainant) are not, ex facie, acceptable. In the complaint the demand of illegal gratification is not directed against any of Petitioners. It has been vaguely alleged that the accused person(s) present there demanded the said amount from him.

9. Petitioner of Cr. Misc. No. 6008 of 2002 was serving as the Chairman of the Commission whereas Petitioners of Cr. Misc. No. 8070 of 2002 were senior government officials and during the relevant time were serving the Commission as its Secretary and Officer on Special Duty. The allegation pertains to discharge of their official duties. The occurrence, as per the complaint, had taken place in the office of the as per the complaint, had taken place in the office of the Commission when the complainant had met the Petitioners in connection with the clearance e of post retiral dues of his grand father. From the facts noted hereinabove it can be seen that the accuseds (Petitioners herein) were discharging their official duty and allegation pertains thereto. Counsel for the Petitioners has placed reliance on a judgment rendered in the case of State of H.P. Vs. M.P. Gupta, in order to submit that protective umbrella of Section 197 of the Code shall be available to the Petitioners. If the test considered in paragraph 8 of the said judgment is applied then it can be found that Petitioners could have been proceeded against for those allegations departmentally on the charge of dereliction of their official duties. It is contended that even if it is found that they exceeded their assigned duty the said protection would be still available to them.

10. On a consideration of submissions made on behalf of the parties, and after perusal of materials on record, it is but evident that the accuseds were discharging or purporting to discharge their official duty/function(s) when the complainant is said to have met them in connection with expeditious disposal of claims of his grandfather. This is what the Apex Court observed in paragraph 10 of State of H.P. v. M.P. Gupta (Supra):

Prior to examining if the courts below committed any error of law in discharging the accused, it may not be out of place to examine the nature of power exercised by the court u/s 197 of the code and the extent of protection it affords to public servants, who, apart from various hazards in discharge of their duties, in absence of a provision lie the one may be exposed to vexatious prosecution. Sections 197(1) and (2) of he Code read as under:

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government.

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the State, of the State Government.

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

The section falls in the chapter dealing with conditions requisite for initiation of proceedings. That is, if the conditions mentioned are not made out or are absent then no prosecution can be set in motion. For instance, no prosecution can be initiated in a Court of Session u/s 193, as it cannot take cognizance as a court of original jurisdiction, of any offence, unless the case has been committed to it by a Magistrate or the Code expressly provides for it. And the Jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 192 of the Code, either on receipt of a complaint, or upon a police report or upon information received from any person other than a police officer, or upon his knowledge that such offence has been committed. So far as public servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanctions obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, "no sanction". Use of the words "no" and "shall" makes it abundantly clear that the bar on the exercise of power of the Code to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is, the complaint cannot be taken notice of. According to Black's Law Dictionary the word "cognizance" means "jurisdiction" or "the exercise of jurisdiction" or "power to try and determine causes". In common parlance, it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty.

12. This Court thus finds substance in the submission of the Petitioners that the order impugned having been passed without obtaining sanction of the appropriate government would vitiate in law.

13. Another submission of the Petitioners requires to be taken note of. It has been contended that order impugned has been passed mechanically inasmuch as cognizance u/s 161 IPC has also been taken, whereas the said provision no

longer existed on the statute book. I have no manner of doubt in mind to hold that the order, in that view of the matter, can be termed as mechanical.

14. In the case of Bhajan Lal (supra) Hon"ble Supreme Court had the occasion to consider and enlist the circumstances which would make the prosecution unworthy of continuance. After scanning diverse judgments on the point/issue, Hon"ble Supreme Court in paragraph 102 categorized the circumstances whereunder the superior court can exercise its inherent jurisdiction for quashment of the order and the criminal proceeding if it is found sheer abuse of the process of the court. It has been contended that the case of the Petitioners would be covered by category 5 wherein it has been noted that if the allegations made in the FIR or in the complainant are so absurd or inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused, the same can be interfered with and quashed. Clause 7 of the said judgment also enables the High Court to exercise its jurisdiction 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. In my view, the case at hand would also be covered by the said categorization.

15. In the result, both the applications are allowed. Entire criminal proceeding arising out of Complaint Case No. 2219 (c) of 2001 (Tr. No. 1134/2002) including the order dated 13.02.2002, passed by Sri V.D. Rai, Judicial Magistrate, Patna is quashed and set aside.