

(2012) 07 PAT CK 0063

In the Patna High Court

Case No : Criminal Miscellaneous No. 49548 of 2006

Dr. Ram Prakash Mahto

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 03-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144, 149, 227, 482
Penal Code, 1860 (IPC) — Section 114, 115, 141, 147, 148

Citation : (2012) CriLJ 3480 : (2012) 4 PLJR 897

Hon'ble Judges : Ashwani Kumar Singh, J

Bench : Single Bench

**Advocate : Shakil Ahmad Khan and Mr. S.B.K. Mangalam, for the Appellant;
Ajay Mishra, A.P.P, for the Respondent**

Final Decision : Dismissed

Judgement

Mr. Justice Ashwani Kumar Singh

1. The sole petitioner has invoked the inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure (hereinafter referred to as the "code") and has prayed for quashing the order dated 9.11.2006, passed by the learned Additional Sessions Judge, F.T.C.-III, Katihar, in Sessions Trial No. 21 of 2006, by which the petition filed on behalf of the petitioner u/s 227 of the Code to discharge him from the case has been rejected. Heard Mr. Shakil Ahmad Khan, learned senior counsel for the petitioner and Mr. Ajay Mishra, learned A.P.P. for the State.

2. The aforesaid sessions trial arises out of Katihar (Mufassil) P.S. Case No. 208 of 2005 dated 19.5.2005 which was initially registered under Sections 147, 148, 149, 114, 115, 307, 326, 332, 333, 337, 338, 353, 186 and 188 of the Indian Penal Code. Subsequently, in course of investigation on the requisition made by the police, Section 302 of the Indian Penal Code was also added in the F.I.R.

3. The FIR was instituted on the basis of written report submitted by one Umesh Chandra Bishwas, the Block Development Officer-cum- Circle Officer, Katihar to

the Officer-in-Charge, Mufassil Police Station, Katihar on 19.5.2005. In the said written report, it has been alleged that on the basis of written instruction of the District Magistrate, Katihar, a team headed by the Sub-Divisional Magistrate, Sadar, Katihar was constituted to remove encroachment from public land. A police team consisting the Officer-in-Charge, Sahaik Police Station and the Officer-in-Charge, Mufassil Police Station was deputed for maintaining law and order. The police party reached at the place in question at 11.30 a.m. on 19.5.2005. It has been further alleged that a notice was published in the local Hindi daily "Hindustan" on 7.5.2005 regarding removal of encroachment pursuant to an order passed by the High Court. Public announcements were also made for three consecutive days in the town for removal of the encroachment from the land in question. As per written report, public notices were also served upon the encroachers by the office of the District Magistrate-cum-Collector, Katihar. Some tractors of the Municipal Corporation were requisitioned and 25-30 labourers were engaged in order to facilitate the anti encroachment drive of the administration.

4. It has further been alleged in the written report that the anti-encroachment drive was being carried out peacefully. However, at about 12.30 p.m., the petitioner, who was a local M.L.A. together with Up-mukhiya Ghanshaym Poddar, and some others came at the place of occurrence and instigated the encroachers not to vacate the land and, if necessary, sacrifice their life. In the meantime, the Up-mukhiya, Ghanshayam Poddar went away but the petitioner continued to be present. He kept on instigating the encroachers not to vacate the land. The Sub-Divisional Magistrate tried to persuade the petitioner not to create problem but the petitioner continued instigating the mob of encroachers, as a result of which, the situation became volatile. Apprehending danger, in order to maintain public tranquility, the Sub-Divisional Magistrate, Katihar issued order u/s 144 of the Code. Repeated announcements were made that the mob was unlawful and, thus, they should disperse but the mob of encroachers did not pay any heed to the orders issued u/s 144 of the Code. The Sub-Divisional Magistrate, Katihar (Mufassil) and the Inspector of Police-cum-Officer-in-Charge, Katihar town also intervened and tried to persuade the mob to maintain law and order but, in the meantime, on instigation of the petitioner and some others, the mob turned violent and started pelting bricks and stones, as a result of which, several persons including the informant and an A.S.I. of Police sustained injury. Some persons from among the mob, being variously armed with deadly weapons, attacked upon the police force. One of the accused Bipin Ram repeatedly assaulted constable Sahdeo Pandit with sword causing serious injuries to him as a result of which he became unconscious and was immediately taken to K.M.C.H. for treatment. In order to control the violent mob, the Sub-Divisional Magistrate, Katihar directed the police to arrest the persons indulged in rioting and breaking law. The police also used mild force in self-defence which caused ruckus among the persons leading the mob. The police arrested in all eight persons, including the petitioner, from the place at the time of occurrence.

5. Lastly, in the written report, it has been alleged that on the instigation of petitioner and others, an unlawful mob of 250-300 persons being variously armed attacked and assaulted the functionaries of the State and police personnels in order to deter them from discharge of their duty, as a result of which several public servants sustained injury.

6. As noted above, initially, the case was registered, inter alia, u/s 307 of the Indian Penal Code, but since the injured Constable Sahdeo Pandit subsequently died in course of treatment, Section 302 of the Indian Penal Code was also added in the F.I.R. The police investigated the case and submitted charge sheet. The accusation against the petitioner was also found true and he was sent up for trial along with others.

7. The learned Magistrate took cognizance of the offence. The case was, thereafter, committed to the court of sessions for trial. At the stage of framing of charge, the petitioner filed an application on 1.7.2006 u/s 227 of the Code for discharge, as according to him, there was no sufficient ground for proceeding against him in the case. The learned F.T.C.-III, Katihar after hearing the petitioner and considering the documents available on record, by his order dated 9.11.2006, rejected his petition. The petitioner has challenged the aforesaid order dated 9.11.2006 in the present application.

8. It has been submitted by Mr. Shakil Ahmad Khan, learned senior counsel, appearing on behalf of the petitioner that the petitioner has falsely been implicated in the present case. The anti-encroachment drive, admittedly, commenced at 11.30 a.m. and the petitioner, being a local M.L.A. arrived at the place of occurrence at about 12.30 p.m. He requested the Sub-Divisional Magistrate to verify the things as the persons who were being treated as encroachers were actually the settlee of the land by the State of Bihar but the Sub-Divisional Magistrate paid no heed to his request. In the meantime, the anguish amongst the settlee was swelling and the Sub-Divisional Magistrate was not ready to hear the grievance of the people. The people started agitation and prevented the members of the prosecution party. The petitioner, thereafter, was the first person to be arrested. The mob then became dissatisfied with the behaviour of the prosecution party members and individually one or two persons assaulted the constable Sahdeo Pandit, who succumbed to the injury subsequently.

9. Learned senior counsel further submits that the said act of co-accused Bipin Ram and his sons do not constitute a common object or intention of all the members of the mob because, what they did, was their individual act and, as such, the said incident cannot be said to be an incident in furtherance of common object of the settlee of lands who are being termed as encroachers.

10. Learned senior counsel for the petitioner further submits that the petitioner was admittedly not an encroacher. He was an M.L.A. at that point of time and had gone there to pacify the mob and to find out an amicable solution to the

problem.

11. Learned senior counsel for the petitioner further submits that large number of settlees were not informed about cancellation of their settlement of the land. According to him, it was the members of the prosecution party including the Sub-Divisional Officer, who acted quite arbitrarily and it was their arbitrary action, because of which, the mob turned violent. The words used by the petitioner cannot be treated as instigation to commit crime rather the same connotes the preservance of one's rights. He also submits that there is no allegation of specific overt act against the petitioner and there is also no allegation that at any point of time, he indulged in scuffle with any of the members of the prosecution party.

12. In support of his submission, learned counsel for the petitioner has relied upon decisions reported in Noorul Huda Maqbool Ahmed Vs. Ram Deo Tyagi and Others, , Kesar Singh and Another Vs. State of Haryana, , State of Maharashtra Vs. Priya Sharan Maharaj and Others, & State of Karnataka Vs. L. Muniswamy and Others, .

13. On the other hand, learned counsel for the State submits that the present application lacks merit. The order impugned has been passed by the trial court on consideration of the case diary and the documents submitted therewith. There is no illegality in the impugned order. The trial court has found sufficient material to proceed against the petitioner. He submits that apart from whatever has been alleged in the F.I.R., several witnesses whose statements were recorded in course of investigation by the Investigating Officer of the case have supported the allegation and involvement of the petitioner in the alleged offence. He refers to paragraphs 9, 10, 11, 12, 13 and 20 of the case diary wherein witnesses have made allegation against the petitioner. He submits that in paragraph 9, the statement of Sri Mohan Ram, Sub-Divisional Officer, Katihar has been recorded, who has clearly stated that when he tried to persuade the petitioner, he entered into a wordy duel with him. He instigated the mob, violated the order made u/s 144 Cr. P.C. and it was under his influence, incitement and provocation the unlawful mob started pelting stones causing injury to the informant, an A.S.I. of Police Md Sohaib and several other constables. Thereafter, some of the members of the violent mob attacked on the police party with deadly weapon. In the process, one Bipin Ram together with his two sons came out being armed with sword and repeatedly assaulted Sahdeo Pandit all over his body. Sahdeo Pandit, subsequently, in course of treatment died.

14. Mr. Ajay Mishra, learned counsel for the State further submits that similar is the statement of Santosh Kumar, Executive Magistrate in para 10, Nawal Kishore Singh, Sub-Divisional Officer, Katihar in para 11, Ashok Kumar, Sub-Divisional Police Officer (Headquarter), Katihar in para 12, Manish Kumar, Officer-in-Charge, Sahaik Police Station, Ashok Kumar, Officer-in-Charge, Muffasil Police Station and Md. Sohaib, an A.S.I. of Sahaik Police Station in para 13 and Sri Sachidanand Prasad Singh, Circle Inspector-cum-Officer-in-Charge, Town Police

Station in para 20 of the case diary. He also submits that in para 14 of the case diary the injuries sustained by the public servants in the incident have been recorded.

15. Learned counsel for the State further submits that concept of common object is different from common intention. So far as common object is concerned, no prior concert is required. Common object can be formed at the spur of the moment. He submits that for the purposes of attracting Section 149 a specific overt act on the part of the accused is not necessary. The crucial question for determination in such a case is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects specified by Section 141 of the Indian Penal Code.

16. Learned counsel for the State further submits that at the stage of passing the order in terms of Section 227 of the Code, the Court has merely to peruse the evidence in order to find out whether or not there is sufficient ground to proceed against the accused.

17. Having heard the parties and perused the record, I find substance in the submission made by learned counsel for the State. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter u/s 227 of the Code. At the stage of Section 227 of the Code, the trial court has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. The sufficiency of ground would take within its fold, the nature of the evidence recorded by the police and the documents produced before the court. At the stage, the probative value of the material on record cannot be gone into. Whether, in fact, the accused committed the offence or not can only be decided in the trial. The law is well-settled that charge may be directed to be framed when there exists some materials raising strong suspicion against the accused.

18. In the present case, the petitioner is named in the F.I.R. There is specific allegation against him that he instigated the mob and on his provocation the mob started pelting stones and bricks upon the public servants present at the scene. It is true that there is no allegation that he was armed with any weapon or he indulged in any specific overt act and individually assaulted anyone, but, the allegation is that the anti-encroachment drive was peaceful till his arrival. The moment he arrived at the scene, the problem started. He instigated the encroachers not to vacate the land, as a result of his provocation, the mob turned violent. He defied to pay any heed to the announcements made u/s 144 Cr. P. C. by the Sub-Divisional Magistrate. He became a part of the unlawful assembly which indulged in rioting, deterring public servants in discharge of their official duty, causing injuries to them and killing a police constable.

19. Under the facts and circumstances of the case, in my view the court below committed no error while passing the impugned order. The plausible defence of

the petitioner can only be considered at the stage of trial. 21. In the result, the petition is dismissed. The interim stay granted by the court by order dated 20.11.2007 is vacated.