

(2017) 03 PAT CK 0078

In the Patna High Court

Case No : 623 of 2016

Dr. Ripusudan Shrivastava @ Ripusudan Prasad Shrivastava

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 24-03-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 156\(3\)](#) - Police officers power to Investigate cognizable case
[Indian Penal Code, 1860](#), [Section 120B](#), [Section 1767-397](#)

Citation : (2017) 03 PAT CK 0078

Hon'ble Judges : Birendra Kumar

Bench : SINGLE BENCH

Advocate : Vindhchayal Singh, ?Soni Shrivastava, ?Prashant Pratap, ?Ravi Ranjan

Final Decision : Allowed

Judgement

1. All the three petitioners are accused in Complaint Case

No.1397 of 2016 filed by the private respondent no.4 Kumod

Chaudhary @ Kamod Chaudhary. The petitioners have invoked writ

jurisdiction of this Court to quash the order dated 29.06.2016 passed

by Smt. Rashmi, ACJM-IV, Muzaffarpur in the aforesaid complaint

case, whereby she has directed institution of a police case under

Section 156(3) Cr.P.C.

2. The challenge is on the ground that the impugned

order suffers from non-application of judicial mind, inasmuch as the

court below ignored that the petitioners who are former Vice- Chancellor of B.N. Mandal University, Retired Professor and Head of

Department of Hindi, Bihar University, Muzaffarpur and Sr. IAS Officer would commit theft of wood by cutting and felling from the land of complainant and on forbade by the informant they would commit assault with an intention to commit murder of the complainant.

3. Submission of the petitioners is that co-accused Vijay Kumar Thakur had executed a registered sale deed dated 5.3.2012 in favour of petitioner Dr. Kavita Verma selling away 9 kathas and 12 dhurs of plot no.1272 under khata no.14 in village Rampur Kishuni @ Repura, P.S.-Sakara, District-Muzaffarpur from which land allegation of theft has been leveled in the complaint petition allegedly to be committed on 1.6.2016. Submission is that the complaint suffers from malafide intention and allowing the criminal prosecution would amount to abuse of the process of the Court.

4. According to complaint petition, the complainant was informed that the petitioners and co-accused Vijay Kumar Thakur were cutting the trees standing over plot no.1272 under khata no.14 of the complainant. The complainant reached there and forbade them. Thereafter the petitioners started assaulting with fists and slaps to the informant and started dragging the informant by putting wrapper on his neck.

5. The aforesaid complaint petition was sent to the police with a direction to institute an FIR by the impugned order and accordingly, Sakra P.S. Case No.195 of 2015 was registered under Sections 341, 323, 324, 397, 384, 447 and 120B of the IPC.

6. Thereafter the petitioners filed I.A. No.1443 of 2016 for adding relief that the respondents be directed to not to proceed with the investigation of the aforesaid case and not to take any coercive action against the petitioners. The FIR as well as subsequent criminal proceeding be quashed.

7. The State respondents submitted that the investigation of the police case above is already complete and the police has submitted final form after investigation not sending up the named accused persons for trial. Therefore, in the changed circumstances, the writ application is fit to be dismissed.

8. Learned counsel for the respondent no.4 submits that the police under influence of the petitioners who are senior bureaucrats of the State continued with the investigation of the case in spite of direction of this Court by order dated 20.07.2016 whereby further proceeding in pursuance of the impugned order was stayed by this Court. Further submission is that in respect of the referred land one Kishore Chaudhary had executed a Will in favour of respondent no.4 and for probate of the same Probate Case No.45 of 2011 was going on. In the meantime, the petitioners got the referred sale deed dated 5.3.2012 from a non-title holder just to put wrongful claim on the land of the petitioners and commit the crime alleged.

9. Now the point for consideration is whether the complaint case instituted by the respondent no.4 against the petitioners suffers from malafide and is an attempt to settle the civil dispute through criminal proceeding and whether the learned Magistrate has passed the impugned order after application of judicial mind that this is a fit case wherein case should be investigated by the police.

10. In the State of Haryana & Ors. Vs. Bhajan Lal & Ors. reported in 1992 Supp.(1) SCC 335 in paragraph 102 of the judgment the Hon"ble Apex Court illustrated certain circumstances when the power to quash the criminal proceeding should be exercised. For our purposes illustration nos.5 and 7 are relevant which are being reproduced below:-

"5. Where the allegations made in the FIR or complaint are so absurd and

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.

7. 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."

11. In Priyanka Srivastava & Anr. Vs. State of U.P. &

Ors. reported in AIR 2015 SC 1758 the Hon"ble Apex Court in

paragraph 24 to 27 of the judgment held as follows:

"24. Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order. The present is a case where the accused persons are serving in high positions in the bank. We are absolutely conscious that the position does not matter, for nobody is above law. But, the learned Magistrate should take note of the allegations in entirety, the date of incident and whether any cognizable case is remotely made out. It is also to be noted that when a borrower of the financial institution covered under the SARFAESI Act, invokes the jurisdiction under Section 156(3), Cr.P.C . and also there is a separate procedure under the Recovery of Debts due to Banks and Financial Institutions Act, 1993, an attitude of more care, caution and circumspection has to be adhered to. 25. Issuing a direction stating "as per the application" to

lodge an FIR creates a very unhealthy situation in the society and also reflects the erroneous approach of the learned Magistrate. It also encourages the unscrupulous and unprincipled litigants, like the respondent no.3, namely, Prakash Kumar Bajaj, to take adventurous steps with courts to bring the financial institutions on their knees. As the factual exposition would reveal, he had prosecuted the earlier authorities and after the matter is dealt with by the High Court in a writ petition recording a settlement, he does not withdraw the criminal case and waits for some kind of situation where he can take vengeance as if he is the emperor of all he surveys. It is interesting to note that during the tenure of the appellant no.1, who is presently occupying the position of Vice-President, neither the loan was taken, nor the default was made, nor any action under the SARFAESI Act was taken. However, the action under the SARFAESI Act was taken on the second time at the instance of the present appellant no.1. We are only stating about the devilish design of the respondent no.3 to harass the appellants with the sole intent to avoid the payment of loan. When a citizen avails a loan from a financial institution, it is his obligation to pay back and not play truant or for that matter play possum. As we have noticed, he has been

able to do such adventurous acts as he has the embedded conviction that he will not be taken to task because an application under Section 156(3) Cr.P.C. is a simple application to the court for issue of a direction to the investigating agency. We have been apprised that a carbon copy of a document is filed to show the compliance of Section 154(3), indicating it has been sent to the Superintendent of Police concerned. 26. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial Mind. A court of law is involved. It is not the police taking steps at

the stage of Section 154 of the Code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same.

27. In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores. We have already indicated that there has to be prior applications under Section 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."

12. In Md. Ibrahim Vs. State of Bihar reported in

(2009) 8 SCC 751, the Hon"ble Apex Court noticed the earlier judgment in G.Sagar Suri Vs. State of UP reported in (2000) 2 SCC 636 and in Indian Oil Corporation Vs. NEPC Indian Ltd. reported in (2006) 6 SCC 736 and observed in paragraph 7 of the judgment as follows:-

"This Court has time and again drawn attention to the growing tendency of complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for setting scores or to pressurize parties to settle civil disputes. But at the same, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes." 13. Keeping in mind the aforesaid principles, let this

Court examine the merit of this case. The claim of the petitioners on the land over which the occurrence allegedly took place is on the basis of a registered sale deed dated 05.03.2012 executed by co-accused Vijay Kumar Thakur in favour of petitioner no.2. A sale deed transfers title and possession in favour of transferee, however, the same is subject to the title of the vendor. The respondent no.7 has claimed over the same land on the basis of a Will said to be executed in his favour by Kishore Chaudhary. For probate of the Will, Probate Case No.45 of 2011 is pending. It is well settled that Will does not create a title and has no effect unless it is established in the court of law that the same is duly and voluntarily executed genuine document and probated accordingly. Moreover, the title of the executant of the Will is yet to be established. Thus, both sides stand on the same pedestal so far their claim of title is concerned. Therefore, there is bona fide dispute over the land between the parties on which the occurrence allegedly took place.

14. Moreover, it is not acceptable to the judicial conscience of the Court that the petitioners would commit theft of

wood from the land which they had purchased years back. Similarly other allegations appear to be creation of mind of the private respondent just to put pressure for redressal of grievance of civil dispute. Moreover, the police has found the allegations false after investigation of the case. Therefore, continuance of criminal proceeding would be an abuse of the process of the Court, which cannot be allowed. Hence, the impugned order and the entire criminal proceeding in pursuance thereof are hereby quashed and the writ application stands allowed.