
(2010) 10 PAT CK 0074

In the Patna High Court

Case No : Criminal Miscellaneous No. 31143 of 2000

Dr. Sanjay Kumar Sinha and Dr. Kalpana Sinha

APPELLANT

Vs

The State of Bihar and Bijay Kumar Choudhary

RESPONDENT

Date of Decision : 28-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 482
Penal Code, 1860 (IPC) — Section 323, 34, 341, 342, 379

Citation : (2010) 58 BLJR 1436

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—The Petitioner No. 1, who was posted as Registrar of Medicine at Patliputra Medical College and Hospital, Dhanbad and Petitioner No. 2, at the relevant time, was Medical Practitioner, have approached this Court, while invoking its inherent jurisdiction u/s 482 of the Code of Criminal Procedure with a prayer to quash an order dated 3.4.2000 passed by Shri B.K. Dixit, learned Judicial Magistrate, Ist Class, Patna in Complaint Case No. 1736(c) of 1999. By the said order, learned Magistrate has taken cognizance of offence under Sections 323, 341, 342, 379, 504 of the Indian Penal Code.

2. Short fact of the case is that opposite party No. 2, who was Director, JCC Buildcon Pvt. Ltd, Patna filed a complaint in the court of Chief Judicial Magistrate, Patna vide Complaint Case No. 1736(c) of 1999 against both the Petitioners for offences under Sections 323, 379, 341, 342 and 504/34 of the Indian Penal Code. It was alleged in the complaint petition that the Petitioners had booked a flat, which was being developed and constructed by the complainant. It was alleged that without issuance of allotment letter, the Petitioners occupied Flat No. 301 in the Pawanputra Apartment, Patna. After noticing the fact that the Petitioners had occupied the flat, the complainant rushed to the spot where it was alleged that both the Petitioners along with some other unknown accused

persons abused and assaulted the complainant and also in the said occurrence, they snatched Rs. 1,000/- from the pocket of the complainant. On aforesaid allegation, complaint was filed. After filing of the complaint petition, enquiry was conducted and by the impugned order, learned Magistrate has taken cognizance of the offences as mentioned above.

3. Aggrieved with the order of cognizance dated 3.4.2000, both the Petitioners approached this Court by filing the present petition. On 30.8.2001, while issuing notice to opposite party No. 2, this Court directed that in the meantime, further proceeding in the case shall remain stayed. Subsequently, on 18.2.2002, the case was admitted for hearing and it was directed that pending final hearing of this application, interim order passed on 30.8.2001 shall remain operative. The order of stay is still continuing.

4. Shri Abhimanyu Sharma, learned Counsel for the Petitioners at the very outset, has submitted that during the pendency of the present petition, the complainant, namely, Vijay Kumar Choudhary has died, which was not disputed by learned Counsel appearing on behalf of opposite party No. 2. However, he has argued that on complete false allegation, the complaint petition was filed against both the Petitioners. It has been submitted that both the Petitioners had booked two flats i.e. Flat No. 201 and Flat No. 301 in Pawanputra Apartment, Patna and for that an agreement was entered in between the parties. As per the agreement, total consideration amount of each flat was Rs. 4 lakhs and Rs. 20,000/- was given for the purpose of occupying parking area. It was submitted that since the Petitioner No. 1 was posted at Patliputra Medical College and Hospital, Dhanbad he was not residing at Patna. However, the Petitioner No. 2, who is wife of Petitioner No. 1, after allotment of the flat in question, had occupied the same. It has been stated that the opposite party No. 2, after occupying the flat, had found that basic amenities were not available in the flat and thereafter, she had already raised objection against opposite party No. 2. Thereafter, opposite party No. 2 started to create un-necessary harassment to the Petitioner No. 2 and finally on complete false and imaginary allegation, the present complaint was filed. It has further been submitted by referring to Annexure-6 to the petition that on 21.12.1999 i.e. just four days after the filing of the present complaint, the opposite party No. 2 had filed a petition before the Officer-in-charge of Gandhi Maidan Police Station. Some allegations were made against the Petitioners, but it was not at all whispered regarding assault and other acts, which were alleged in the complaint petition. Learned Counsel has further referred to Annexure-7 to the petition, which is a report of Deputy Superintendent of Police, Patna submitted to the Sub Divisional Officer, Patna for initiating a proceeding u/s 107 of the Code of Criminal Procedure. It has been submitted that even the Dy. S.P., Patna had found that the complainant was unnecessarily creating trouble to Dr. Kalpana Sinha, who is Petitioner No. 2. It has also been submitted that it is not expected that a lady Medical Doctor and Petitioner No. 1, who was Medical Officer posted at Patliputra Medical College and Hospital would commit such type of offence in which it was alleged that accused

persons had forcibly taken Rs. 1,000/- from the pocket of the complainant.

5. After hearing learned Counsel for the parties and examining the materials available on record, the court is of the opinion that the present complaint was not filed fairly and honestly, but it was filed maliciously. Accordingly, the court is of the opinion that for preventing the abuse of the process of the court, it is necessary to interfere even at the initial stage of criminal proceeding and as such it is necessary to quash the order of cognizance dated 3.4.2000 passed by Shri B.K. Dixti, Judicial Magistrate, Ist Class, Patna in Complaint Case No. 1736(c) of 1999.

6. Accordingly, the order of cognizance dated 3.4.2000 passed in Complaint Case No. 1736(c) of 1999 is hereby set aside and petition stands allowed.