

(2000) 01 PAT CK 0144

In the Patna High Court

Case No : Criminal Miscellaneous No. 19348 of 1995

Fr. Francis Mattathilani and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 18-01-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144
Penal Code, 1860 (IPC) — Section 147, 295, 323, 379, 390

Citation : (2000) 2 PLJR 226

Hon'ble Judges : S.N. Mishra, J

Bench : Single Bench

Advocate : Anjana Prakash and K.M. Joseph, for the Appellant; A.H.M. Rahman, for State and Sarvendra Kr. Verma, for O.P., for the Respondent

Final Decision : Allowed

Judgement

S.N. Mishra, J.—In this application the Petitioners have prayed for quashing the order dated 26.8.95 passed by the learned Sub divisional Judicial Magistrate, Lakhisarai taking cognizance of an offence punishable under Sections 147, 295, 323, 390, 427, 449 of the Indian Penal Code against the Petitioners. Shortly stated the prosecution is that opposite party filed a complaint petition before the learned Sub divisional Judicial Magistrate, Lakhisarai on 14.9.94 alleging therein that the Officer Incharge, Piro Bazar police station alongwith some other persons trespassed the premises of Ramanujacharya koti and had not only obstructed the renovation work of Hanuman Mandir which was going on at the relevant time but also assaulted the witnesses and took away certain articles from the room of the complainant. On the basis of the complaint petition, statement of solemn affirmation and the witnesses examined during the course of enquiry, learned Magistrate took cognizance of the alleged offence as stated above.

2. In this case, Petitioner No. 1 is the Priest of the Catholic mission, Petitioner No. 2 is the resident of Basauni who is alleged to be of 75 years of age suffering from various ailments whereas Petitioners No. 3 and 4 are employees of the said

Catholic mission.

3. Learned Counsel for the Petitioners has challenged the order taking cognizance of the alleged offence on the ground that the very initiation of the proceeding against the Petitioners is mala fide and frivolous, inasmuch as, the subject matter of the dispute with respect to the plot over which the alleged occurrence took place, belongs to the Petitioners. While developing argument, learned Counsel submits that the title with respect to the plot No. 491 which is alleged to be the disputed land over which the temple, in question, situates declared in favour of the Petitioners in a title suit, it is further submitted that in spite of status quo order passed by the civil court as well as in a proceeding initiated u/s 144 Code of Criminal Procedure, the complainant opposite party had tried to disturb the possession of the Petitioners. It is further submitted that several criminal cases with respect to the land, in question, were earlier initiated, in which Petitioners have been acquitted of the criminal charges and in support of this contention, learned Counsel cited several orders passed by the competent court which are made Annexures-6 and 7 to this application.

4. In opposition, learned Counsel for the complainant-opposite party, however, submits that dispute in the instant case relates to Hanuman Mandir which is situated over plot No. 491. He further submits that the aforesaid suit in which status quo was passed has nothing to do with the allegation made in the complaint petition. In the light of the submission made on behalf of the parties I have perused the plaint of Title suit No. 26/70 as well as Title suit No. 27/78. Title suit No. 26/70 relates to plot No. 503, 504 measuring an area 54 decimal 76 decimal respectively. Title suit No. 27/78 relates to plot No. 491 measuring an area one decimal to the south eastern corner. Against the judgment and decree passed in Title suit No. 26/70, the Plaintiff-Petitioners filed an appeal which was registered as Title Appeal No. 47/88 and the learned appellate court on consideration of the evidence has recorded a finding in para-31 which reads thus:

Thus, in view of the finding that the Plaintiff has got right, interest and title over plot Nos. 479 and 491 measuring an area of 4 dec. and 8 dec. respectively but was dispossessed by the Defendants and, hence the Plaintiff certainly had cause of action to bring the present suit and is entitled to recover his possession over the same. It may be stated here that it has categorically been submitted by Shri Laxmi Narayan Singh learned Counsel appearing on behalf of the Plaintiff, that if the case is decided in favour of the Plaintiff, the Plaintiff out of good gesture would not take any step for recovery of those land over which Mahabir Mandir stands.

It further appears that during the pendency of the appeal being Title appeal No. 47/88 status quo was ordered to be maintained vide order dt. 18.12.93. In spite of the status quo order the complainant started construction over the temple for which contempt petition was also, filed as it appears from Annexure-10 to this application. It is further submitted that similar complaint petition was filed by the complainant on the basis of which criminal proceeding was initiated.

Subsequently, on consideration of the materials on record, the Petitioners were acquitted of the charge u/s 379 IPC which is apparent from Annexures-6 and 7 to this petition. From the facts stated above, it is apparent that inspite of status quo order passed by the civil court, complainant-opposite party attempted to make certain constructions as a result the authority has to intervene in the matter. It is submitted that having lost in the suit as well as in the criminal case, complainant has filed the instant complaint petition against the Petitioners which is nothing but a malafide and frivolous attempt on the part of the complainant.

5. After having heard learned Counsel for the parties and going through the materials on record, it is apparent that the subject matter of the dispute is of civil nature which, in fact, has already been adjudicated in favour of the Petitioners both by the trial as well as appellate court. That apart the Petitioners have been acquitted earlier of the similar allegation made by the complainant. In that view of the matter, the instant complaint petition, on the face of it, seems to be frivolous one. Accordingly, in my view, it would be an abuse of the process of the court to allow the instant criminal proceeding to continue against the Petitioners who are the Catholic mission and its employees. In the result, the order taking cognizance of the alleged offence against the Petitioners is hereby quashed. This application is thus, allowed.