

(2022) 12 PAT CK 0057

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 1056 Of 2017

Ghanshyam Kumar

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 19-12-2022

Acts Referred:

Indian Penal Code, 1860 — Section 147, 148, 149, 160, 290, 302, 304, 307, 323, 325, 332, 337, 353, 427

Scheduled Castes And Scheduled Tribes (Prevention Of Atrocities) Act, 1989 — Section 3(1)(x), 3(2)(v)

Citation : (2022) 12 PAT CK 0057

Hon'ble Judges : Rajeev Ranjan Prasad, J

Bench : Single Bench

Advocate : Shashank Deo Sudhi, Santosh Kumar, Deepak Kumar, Indradeo Prasad

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioner, learned counsel for the informant as also Mr. Deepak Kumar, learned AC to GP-4 for the State.

2. Petitioner, in the present case, is seeking the following reliefs:-

"i. For quashing of FIR bearing Sirdala P.S. Case No. 217/2015 dated 12/11/15;

ii. For deleting the acquisition U/Ss 3(1)(x), 3(2)(v) of SC/ST Act as there is no any specific allegation attributed with regard to the special act against the present petitioner;

iii. For staying the no-coercive steps being taken/to be taken against the present petitioner;

iv. For any other relief/reliefs for which petitioner is found entitled in the facts and circumstances of the case."

Brief facts of the case

3. In Sirdala P.S. Case No. 217/2015 registered on 12.11.2015 at about 2:45 P.M. the allegation is that on 11.11.2015 at about 12:00 P.M. in the night, the informant had gone to search his deceased nephew Rakesh Kumar @ Pappu Chaudhary and at Chamotha Hat, some children were said to have been playing gambling on the occasion of Dipawali. It is alleged that during this period, the SAP Police Force caught hold of the informant from behind and allegedly removed Rs. 1200/- from his pocket as also abused the informant and assaulted him. The informant claims that he can identify the assailants by face. He has identified the said person as Assistant Sub-Inspector of Police, namely, Subhash Yadav who is alleged to have been with SAP force. It is alleged that when the informant started crying, all children playing there started fleeing away. Allegation is also that all the police force had consumed wine and had started firing and in this firing the nephew of the informant who was playing there received gun shot injury and died at the alleged place of occurrence. One Upendra Choudhary and another Gorelal Chaudhary had received gun shot injuries and they were referred for treatment to a Private Hospital at Patna

Counter version

4. Contrary to the version of the informant, the 'SAP Jawans' who were led by A.S.I. Subhash Yadav, have a different story. A.S.I. Subhash Yadav has lodged a complaint with Sirdala Police Station giving rise to Sirdala P.S. Case No. 216/2015 under Sections 147/148/149/341/323/325/307/353 /337/160/290/332/427 of the Indian Penal Code against 150-200 unknown persons for gambling, fighting among them, creating nuisance and pelting stones/bricks, breaking the glass of the police vehicle, snatching of rifles, scuffling and beating Mr. Ghanshyam Kumar (the petitioner). In this F.I.R., the allegation against the unknown person is to attempt of killing the police official in which three rounds firing took place mistakenly. Copies of both the F.I.Rs. have been enclosed as Annexure '1' and '2' respectively.

5. Learned counsel for the petitioner submits that the version of two F.I.Rs. are completely contradictory. The investigating officer was supposed to investigate both the cases simultaneously to find out the truth but in this case while the investigation of Sirdala P.S. Case No. 216/2015 has been kept pending till date, in Sirdala P.S. Case No. 217/2015, police has hurriedly submitted a charge-sheet under Section 304 I.P.C. and Section 3(1)(x), 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention Atrocities) Act, 1989 (hereinafter referred to as the "SC/ST Act").

6. The said charge-sheet has been sought to be challenged by filing one Interlocutory Application No. 01/2022 which has been allowed and the statements made in the interlocutory application with the reliefs prayed therein have been treated as part and parcel of the writ application.

7. This Court has given opportunity to the informant to respond to the writ application and the interlocutory application and the informant has filed counter

affidavit. Similarly, the official respondents/State has also filed a counter affidavit enclosing therewith the copy of the case diary.

Submissions

8. In course of argument, learned counsel for the State submits that so far as the investigation of Sirdala P.S. Case No. 216/2015 is concerned, presently he has no instruction, but one thing is evident that while filing a charge-sheet in Sirdala P.S. Case No. 217/2015, the investigation of Sirdala P.S. Case No. 216/2015 was kept pending.

9. Learned counsel for the informant has though opposed this writ application but at the same time he has supported the writ petition on certain points. In his opinion, the police was wrong in lodging of the first information report under the provisions of SC/ST Act, because the said provision could not have been attracted in the present case. He has further submitted that surprisingly even after investigation police has not dropped the sections under the SC/ST Act and the charge-sheet has been submitted unmindfully under the provisions of SC/ST Act. Mr. Indradeo Prasad, learned counsel for the informant has, thus, submitted that so far as the prayer made in paragraph 1(ii) of the writ petition is concerned, the same may be allowed. Learned counsel has, however, submitted at the same time that the investigating agency should have submitted charge-sheet in this case under Section 302 I.P.C. instead of Section 304 I.P.C.

10. Towards the end of the argument, learned counsel for the State as well as the informant agree that in this case the investigating agency was required to investigate both the cases together to find out the truth and in the present circumstance where in one of the cases only charge-sheet has been filed that too under wrong provisions of law which is not attracted, they would have no objection if the charge-sheet in question is set-aside and the entire investigation of both the cases are transferred to the Criminal Investigation Department, Government of Bihar for a proper, fair and impartial investigation of both the cases afresh.

11. Learned counsel for the petitioner agrees with this and submits that he would be satisfied if both the cases are reinvestigated by an independent agency such as CB-CID, Government of Bihar.

Consideration

12. Having heard learned counsel for the parties and upon perusal of the records, two facts, which have transpired, seem to be the admitted facts. Firstly, the police has submitted charge-sheet only in Sirdala P.S. Case No. 217/2015 that too under wrong provisions of law. The informant himself agrees that the provisions of SC/ST Act would not be attracted. Secondly, the investigation of Sirdala P.S. Case No. 216/2015 has been kept pending whereas both were required to be investigated together.

13. In the given facts and circumstances of the case, this Court is of the

considered opinion that so far as the charge-sheet bearing No. 386/2020 dated 10.09.2020 filed in connection with Sirdala P.S. Case No. 217/2015 is concerned, the same is liable to be set-aside, the same is, hereby set-aside. This Court would not quash the First Information Report at this stage as even learned counsel for the parties have agreed that both the cases require reinvestigation/fresh investigation by an independent agency. In that view of the matter, this Court directs the CB-CID, Government of Bihar, to take over the investigation of both the cases and conduct a fresh investigation in respect of both of them. The investigation must be fair, impartial and independent.

14. Let the CB-CID, Government of Bihar through it's Additional Director General be added as party respondent no. 8.

15. Mr. Deepak Kumar, learned AC to GP-4 for the State accepts notice on behalf of CB-CID, Government of Bihar.

16. The Superintendent of Police, Nawada (respondent no. 2) is directed to hand-over the entire case records of both the cases to the CB-CID, Government of Bihar within a period of two weeks from today.

17. The prayer as contained in paragraph 1(ii) is allowed in view of the admitted position that the provision of SC/ST Act would not be applicable

18. This Writ Application is allowed to the extent indicated hereinabove.