

(1990) 11 PAT CK 0037

In the Patna High Court

Case No : Criminal Miscellaneous No. 5058/86

Guneshwar Narain Singh @ Bighnesh Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 09-11-1990

Acts Referred:

Bihar Panchayat Raj Act, 1947 — Section 79B, 83, 84A
Criminal Procedure Code, 1973 (CrPC) — Section 156(3)
Penal Code, 1860 (IPC) — Section 21, 409, 420, 467

Citation : (1990) 11 PAT CK 0037

Hon'ble Judges : Nunumani Prasad Singh, J

Bench : Single Bench

Advocate : Chandramauli Kumar Prasad, N.K.P. Sinha, Bipin Kr. Sinha and Sujeet Kumar Sinha, for the Appellant; B.P. Gupta, of State, for the Respondent

Final Decision : Allowed

Judgement

Nunumani Prasad Singh, J.—This is an application for quashing the order dated 30.5.1986 passed by Sri. P.N. Yadav, Chief Judicial Magistrate, Madhubani in G.R. Case No. 1330/85 whereby he has taken cognizance of the offence u/s 409, 420 and 467 of the Indian Penal Code against the Petitioner.

2. On 5.8.1936 complainant Bansi Ram filed a complaint petition before the Judicial Magistrate, 1st Class, Madhubani alleging therein that the Petitioner who was a Mukhia of Sagauna Gram Panchayat had committed forgery in the official record of old age pension scheme and misappropriated the public money. The complaint was sent to the police for instituting a case u/s 156(3) of the Code of Criminal Procedure. Accordingly Rajnagar P.S. Case No. 125/85 u/s 409, 420 and 467 of the Indian Penal Code was registered against the Petitioner.

3. The police after investigation submitted charge-sheet against the Petitioner and cognizance of the offence was accordingly taken by the Chief Judicial Magistrate as mentioned aforesaid. As against that the Petitioner has come tip before this Court for quashing the cognizance.

4. Learned Counsel for the Petitioner has contended that the cognizance taken against the Petitioner is illegal and the same cannot be sustained. He contended that earlier the complainant had filed a petition on the same allegation before the District Magistrate, Madhubani who got the matter enquired into by the S.D.O. The S.D.O. after enquiry submitted of report to the District Magistrate stating that the allegation made against the Petitioner was palpably false and motivated. The District Magistrate accordingly dismissed the complaint by his order dated 26.3.1985. Thereafter, the complainant filed petition for complaint in the court of Judicial Magistrate, 1st class Madhubani for an action against the Petitioner and the same was sent to the police for instituting a case. Accordingly, this case was registered und the cognizance was taken. He has further contended that during investigation of the case, the case was supervised by the S.D.P.O. On 24.3.1986 the Petitioner filed a petition before the learned Magistrate to call for the case "diary, supervision note of S.D.P.O. Madhubani, ledger of the old pension and payment voucher from the office of the Block if Development Officer, Rajnagar. The petition was accordingly allowed and the documents were called for but the same were not made available to the Chief Judicial Magistrate on 30.5.1986, but inspite of that cognizance of the offence was taken by the Chief Judicial Magistrate. He contended that learned Chief Judicial Magistrate was not justified in taking cognizance against the Petitioner without looking into the evidence against the Petitioner in the case dairy supervision note and other papers and satisfying himself as to the prima facie case. I find merit in the submission of the learned Counsel for the Petitioner. From Annexure-3 it appears that a similar allegation made against the Petitioner was enquired into by the S.D.O. and the same were found to be false. It further transpires from Annexure-4 that the complaint of the informant was dismissed by the District Magistrate. Thus the Chief Judicial Magistrate should have perused the papers which he had called for before taking cognizance in the case and he should not have taken cognizance hastily without satisfying himself as to the prima facie case against the Petitioner when a doubt was created in the mind of the learned Chief Judicial Magistrate. The cognizance taken by the Chief Judicial Magistrate does not appear to be in accordance with law. It is also contended that the cognizance is also bad on account of the fact that the Petitioner is a Mukhia of Sugauna Gram Panchayat and he being been taken against him without prior sanction of the State Government. He referred to Section 83 and 84(A) of the Bihar Panchayat Raj Act, 1947. Section 83 of Bihar Panchayat Act lays down as follows:

Public servant.--

Every member a bench of the Gram Cutcherry, the Mukhiya, the Up Mukhiya while performing the duties of exercising the powers of the Mukhiya, the Panchayat Sevak or Sahyak Sevak and the Chief Officer of a Village Volunteer Force shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal code 1860 (XLV of 1860) and the provisions of Chapter X of the said Code shall apply in respect of any contempt of the lawful authority of such public servant.

Section 84(A) reads lays down as court not to take cognizance of certain t without previous sanction. When Mukhiya, the Up-Mukhiya or any member of the Executive Committee chief Officer of the Village Volunteer of the Gram Panchayat or the Sarpanch or the Up-Sarpanch of any thereof the Gram Cutcherry or the authority appointed under Clause (b) of Section 79B to exercise the powers and perform the Of the duties of the Executive Committee during the period of its dissolution or supersession is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official no court shall take cognizance of the except with the previous sanction Government or such other authority as may be prescribed.

5. It is apparent from Sections 83 and 84A Panchayat Raj Act, 1947 referred to above that the Mukhia is a public servant and he cannot to be prosecuted for an offence committed by him in discharge of his official duty without the prior sanction of the State Government. Here in this case no sanction appears to have nod by the complainant for launching prosecution against the Petitioner who is a Mukhia of Sugauna Gram Panchayat. Thus the cognizance taken against the Petitioner by the Chief Judicial Magistrate without (sic) sanction of the State Government is bad in law and the same cannot be sustained.

6. In the result, the petition is allowed and the prosecution case launched against the Petitioner is squashed.