
(1996) 04 PAT CK 0068
In the Patna High Court
Case No : Cr. Misc. No. 8142/89

Jagdish Mandal

APPELLANT

Vs

The State of Bihar Awadh Prasad Mandal

RESPONDENT

Date of Decision : 15-04-1996

Acts Referred:

Citation : (1996) 04 PAT CK 0068

Final Decision : Dismissed

Judgement

R.N. Prasad, J.—The Petitioner has filed this application for quashing the order dated 23.5.1989 passed in Complaint Case No. 48C/88 whereby the Magistrate after taking cognizance issued notice to the Petitioner.

2. Opposite Party No. 2 filed a complaint case on 9.2.1988 making allegation that on 22.1.1988 the Petitioner and other accused persons came variously armed and took away articles as mentioned in the complaint petition. On protest made by Rajendra Mandal, Govind Das and Shiv Narain Mandal, accused persons threatened to assault them. The complaint petition was referred to the police u/s 156(3) of the Code of Criminal Procedure (hereinafter to be referred as the Code) for registering First Information Report and for investigation on the same day i.e 9.2.1988. On 6.4.1989 Opposite Party No. 2 filed an application stating therein that in spite of order passed u/s 156(3) of the Code, no First Information Report was registered by the police and, accordingly, a prayer was made to recall the order. On the same day, order dated 9.2.1988 referring the complaint petition to the police, was recalled. The complainant was examined on solemn affirmation on 22.4.1989 and the case was transferred to Sri M.M. Choudhary, Judicial Magistrate u/s 192 of the Code for enquiry and trial. During enquiry. 5 witnesses were examined on behalf of complainant. The Court on consideration of materials and on being satisfied that prima-facie case is made out, directed for issuance of summons to the accused persons including the Petitioner by the impugned order.

3. Learned Counsel for the Petitioner contended that the order taking cognizance

is bad in law as the Magistrate had no power to recall the order dated 9.2.1988 whereby the complaint was referred to the police for investigation. He also pointed out that the prosecution case is absurd, and hence the entire proceeding including the order taking cognizance be quashed. On the other hand, learned Counsel for the Opposite parties contended that there is no illegality in the order taking cognizance as the Magistrate being satisfied that sufficient material is available on the record has taken cognizance. Besides recalling the order dated 9.2.1988 in the facts and circumstances of the case was not bad in law.

4. To appreciate the question raised by learned Counsel for the Petitioner it would be pertinent to consider the relevant provisions of the Code. Section 156 of the Code authorises Officer-in-charge of a Police Station to investigate into any cognizable offence. Section 157 of the Code provides procedure for investigation and duty of the Officer-in-charge and says that on receipt of information with regard to commission of cognizable offence or a cognizable offence is suspected from the information received, the Officer-in-charge of the Police Station shall send a report forthwith to the Magistrate empowered to take cognizance of such offences and the Officer-in-charge of the Police Station shall proceed in person or shall depute one of his subordinate officers to take up investigation of the case. However, proviso (a) of Sub-section (1) of Section 157 of the Code says that if the case is not of a serious nature, the Officer-in-charge of the Police Station need not proceed in person or depute a subordinate Officer to make an investigation on the spot. Proviso (b) thereof lays down that if it appears to the Officer-in-charge of the police station that there is no sufficient ground for entering into an investigation, he shall not investigate into the case. Sub-section (2) of Section 157 of the Code says that in cases covered by proviso, the Officer-in-charge of the Police Station is required to state the reason in his report for not fully complying with the requirements of Sub-section (1) and in cases mentioned in proviso (b) he shall forthwith notify the First Informant the fact that he will not investigate the cases. Section 159 of the Code then comes into play which reads as follows :

159. Power to hold investigation or preliminary inquiry. Such Magistrate, on receiving such report, may direct an investigation or, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry into, or otherwise to dispose of, the case in the manner provided in this Code.

5. "Report" mentioned in Section 159 of the Code refers to the report mentioned in Section 157 of the Code. On a plain reading of Section 159 of the Code, it would be manifest that the magistrate may adopt one of the two courses (i) he can either direct an investigation by police or (ii) if he thinks fit he can proceed himself or depute magistrate subordinate to him to hold enquiry. However, it is also manifest that no direction for investigation by the police can be given by a magistrate u/s 159 of the Code in cases where the investigation has already been taken up by the police of its own accord i.e. in cases not covered by proviso

to Sub-section (1) of Section 157 of the Code. The second part of Section 159 of the Code provides an alternative procedure to that of first part of the section and the Magistrate can take recourse to the alternative procedure contained in the 2nd part thereof only in those cases in which investigation has not been taken up by the police i.e. in the cases covered by proviso (a) and (b) of Sub-section (1) of Section 157 of the Code. In other words the magistrate in cases covered by proviso to Sub-section (1) of Section 157 of the Code can proceed himself or depute any magistrate subordinate to him to proceed to hold enquiry into or otherwise to dispose of the case in the manner provided in this Code.

6. In the instant case on 9.2.1988 the complaint petition was referred to the police u/s 156(3) of the Code for institution of a case and investigation but no case was instituted till 6.4.1989 i.e. even after more than a year. Though no report was submitted by the police as required u/s 157(2) of the Code but it shall be deemed in the circumstances as stated above that the Officer-in-charge of the police Station acted in terms of proviso (a) and (b) of Sub-Section 1 of Section 157 of the Code. The action of the magistrate in the circumstance, recalling the order dated 9.2.1988 and proceeding with the complaint case cannot be held to be without jurisdiction. It can safely be said that such cases are covered under proviso to Sub-section (1) of Section 157 of the Code and the action of the magistrate is covered under second part of Section 159 of the Code and the magistrate may himself proceed or depute any magistrate subordinate to him to proceed to hold an enquiry. There is no dispute with regard to the law laid down in the case of Kanai Lal Agarwalla Vs. The State and Others, that the magistrate has no power to hamper the investigation or to recall the order of investigation but the above mentioned decision is applicable in the cases where the investigation has already been taken up. In the case in hand no First Information Report has been registered nor investigation of the case has been taken up in spite of reference of the complaint to the Police u/s 156(3) of the Code even after a lapse of more than a year. The decision referred to above in the circumstance has no application. Accordingly, I do not find any illegality in the order impugned.

7. Learned Counsel for the Petitioner next contended that the prosecution case is absurd and in support of his submission he pointed out that huge quantity of articles mentioned in the complaint petition alleged to have been taken away on a Tractor cannot be accepted. The submission in my view has no substance at all. It depends upon the capacity of the Tractor. There is nothing to indicate on the record that such quantity of articles cannot be loaded on the Tractor. Besides, it is a question of fact which are yet to be determined.

8. Thus, on consideration of the entire facts and circumstances of the case, I do not find any merit in this application. Accordingly, it is dismissed.