
(2010) 12 PAT CK 0020
In the Patna High Court
Case No : Cr. Misc. No. 36081 of 2000

Janardan Singh and Others	Vs	APPELLANT
The State of Bihar and Another		RESPONDENT

Date of Decision : 09-12-2010

Acts Referred:

Citation : (2010) 12 PAT CK 0020

Final Decision : Allowed

Judgement

Sheema Ali Khan, J.—Petitioners are aggrieved by order dated 15.9.2000, passed by the Additional Sessions Judge-II, Barh, refusing to discharge the Petitioners for offences under Sections 147 and 379 of the Indian Penal Code.

2. The allegations in the First Information Report is that Narain Singh (opposite party No. 2) had filed an application before the Sarpanch, Gram Panchayat Maranchi alleging that the Petitioners were responsible for harvesting the crop of "Rai" standing on Khata No. 1503, Khesra No. 4217 measuring 12 decimals.

3. Learned Counsel for the Petitioners submits that the Civil Court in the year 1924 by (Annexure-2) has already held that the lands in question were in the possession of the Petitioners. In the said Title Suit numbered as 375 of 1922, the father of the informant Chhattar Singh is the Defendant No. 1. It is, therefore, submitted that the parties and the lands in the suit are the same. Subsequently, the complainant filed a Title Suit numbered as 64 of 1996 alleging therein that the judgment and decree in Title Suit No. 375 of 1922 is not binding on the opposite party. An injunction application was also filed in Title Suit No. 64 of 1996 which has been dismissed.

4. Learned Counsel for the complainant on the other hand submits that this Court has to examine whether there is a prima facie case made out against the Petitioners for the purposes of proceeding in the trial.

5. From the facts stated aforesaid, it is apparent that there is a bona fide dispute with respect to lands of Khata No. 1503, Plot No. 4217. This aspect is admitted

by both the parties and has also been recorded by the Court below in the order impugned.

6. The Court below has relied on a judgment in the case of State of Maharashtra, Etc. Etc. Vs. Som Nath Thapa, Etc. Etc., wherein it has been held that if there is a ground for presuming that the accused has committed the offence, a Court can justifiably say that a prima facie case against him exists, and so, frame charge against him for committing that offence. This case relates to the terrorist acts committed in 1993, when at one time several bombs blasted at different locations in Mumbai. In the said bomb blast 730 persons injured and property worth about Rs. 27 crores destroyed. Several persons were made accused in that case and investigation showed the chain of circumstances and events in which the incident was planned and executed. In the context, in the facts of such a case, the Court interpreted the word "presume to believe" that an offence has been committed. The present case arises out of very different set of facts, inasmuch that it is admitted by both the parties that there was a bona fide dispute, so much so, as there is also a decree in favour of the Petitioners' ancestors with respect to possession. In the case of Chandi Kumar Das Karmarkar and Another Vs. Abanidhar Roy, , the Supreme Court has considered whether the existence of bona fide civil dispute over a piece of land would affect the allegation that one of the parties to the dispute has committed theft on the land would come within the purview of a criminal proceeding. The facts in Chandi Kumar Das Karmakar's case are that a Pokhar was in dispute. One of the parties claimed that they were the tenants of the Pokhar in question as it was settled to them as "raiyyot Mukurari", whereas the other party claimed that the lands was settled in his favour. The accused in that case had taken out all fishes from the tank resulting in institution of a criminal case u/s 379 of the Indian Penal Code. In this context, the Apex Court found that where there is a bona fide civil dispute, one of the parties rightly or wrongly claims, that he has a right over the property in question, the actions of such a party under a bona fide believe cannot constitute an offence u/s 379 of the Indian Penal Code. To constitute an offence u/s 379 I.P.C., there must be an element of intention to dishonestly remove or take away the property. "This intention is known as "animus furandi" and without it the offences of theft is not complete." It is well settled that where a bona fide claim of right exists, it can be a good defence to a prosecution for theft. An act does not amount to theft, unless there is not only no legal right, but no appearance or colour of a legal right. There must be fair and bona fide claim.

7. In the present case, this Court finds that prima facie the Petitioners had a legal right by virtue of a decree passed in 1924, even though the said decree is under challenge. Therefore, in my opinion, there was an absence of the "animus furandi" and in the circumstances I find that the order rejecting the discharge application of the Petitioners has to be quashed.

8. In the result, the order dated 4.8.1998 taking cognizance and the order dated 20.4.2000 refusing to discharge the Petitioners are quashed.

9. This application is allowed.