
(2008) 08 PAT CK 0142

In the Patna High Court

Case No : Criminal Miscellaneous No. 37450 of 2007

Kamal Kishore Agrawal and Others

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 06-08-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 202
Penal Code, 1860 (IPC) — Section 147, 149, 323, 34, 341

Citation : (2009) PLJR 408 Supp : (2008) 2 PLJR 408

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Radha Mohan Singh, for the Appellant; Jharkhandi Upadhaya for the State and Mr. Diwakar Singh for O.P. No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Abhijit Sinha, J.—All the 16 accused of Bahadurganj P.S. Case No. 26 of 2006 in which final form was submitted against them by the police and subsequently was proceeding on the protest petition as Complaint Case No. C176 of 2006 are aggrieved by order dated 6.12.2006 passed therein by the learned Chief Judicial Magistrate, Kishanganj, whereby he has taken cognizance against them under Sections 147, 149, 323, 341, 380, 427, 448 I.P.C, and have prayed for quashing of the same. One Md. Gulab Naddaf, impleaded as O.P. No. 2, filed a complaint before the learned Chief Judicial Magistrate, Kishanganj on 5.12.2004 bearing Complaint Case No. C-1395 of 2005 inter alia alleging commission of offences under Sections 341,323,147,379,380/34 I.P.C. at the hands of the petitioners and the learned Magistrate having sent the same to the concerned police station u/s 156(3) Cr.P.C. Bahadurganj P.S. Case No. 26 of 2005 came to be registered. It was alleged that on 21.12.2004 at about 9 A.M. all the accused persons assembled with lathi, farsa, garasa and revolver in front of the shop of the informant and asked him to vacate the same as also the other shops given to tenants on rent. The informant is said to have remonstrated since all the shops were located on his lands whereupon all the accused persons in a fit of rage

started hurling abuses and assaulted the informant with slaps and fists and amongst them accused Kamal Kishore Agrawal gave orders to loot the informant's shop and to see to it that all the other shops were also vacated. Accused Mukhtar is alleged to have put his revolver on the chest of the informant and threatened to kill if he moved. The accused persons are said to have entered into the tenanted shops of Mazdool, Shivcharan Sharma and Sunil Sharma and resorted to destruction and loot of the articles stored therein. They also damaged property and looted 18 corrugated sheets used as roof and while departing set fire to the eastern most tenanted shop which was later on doused and there was a total loss of Rs. 40,000/- due to the accused resorting to vandalism. It is further said that accused Kamal Kishore Agrawal is an affluent person and in connivance with the police and on strength of money power had caused the incident. It is also alleged that a Panchayati in the village in this regard was scheduled to be held on 27.12.2004 wherein the accused persons did not participate. It was only to see the result of the Panchayati that the delay had been caused in filing the complaint.

2. It appears that the police after due investigation submitted final form on 12.7.2005 saying that there was land dispute between the parties which was pending in the Court.

3. As stated above earlier, the protest petition by the informant was taken up as a complaint case and after the recording of the statement of the complainant on S.A., three witnesses were examined on behalf of the complainant and on consideration of the materials available on record by order dated 19.10.2006 the learned Chief Judicial Magistrate, Kishanganj, directed the complainant to produce witnesses Shivcharan Sharma, Sunil Sharma: two alleged tenants of the shops said to have been looted and also to produce basgit parcha alongwith rent receipts relating to the P.O. lands and eventually by order dated 6.12.2006 cognizance as stated above was taken.

4. It has been submitted on behalf of the petitioners that in the whole of the complaint petition the khata and khesra No. of the alleged land in question have not been furnished and admittedly was not basgit or belonging to the complainant and wrong documents of basgit settlement had been produced. It was also pointed out that there were great contradictions in the evidence of the witnesses examined in the inquiry, specially those of Sultana Khatoon and Jahrum Nisa and that the learned Magistrate had taken cognizance mechanically without applying its judicial mind and regard being had to the fact that the police had submitted a final form in respect of the same offence.

5. A four Judge Bench of the Apex Court in the case of Chandra Deo Singh Vs. Prokash Chandra Bose and Another, while approving the decisions of the Patna High Court in the case of Parmanand Brahamchari vs. Emperor (AIR 1930 Pat. 30), Radha Kishun Sao Vs. S.K. Misra and Another, and Ramkisto Sahu Vs. The State of Bihar, observed that no doubt that one of the objects behind the provisions of Section 202 Cr.P.C. is to enable the Magistrate to scrutinize carefully

the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face a frivolous complaint; but there is also another object behind this provision and it is to find out what material there is to support the allegations made in the complaint. It was further observed that it is the bounden duty of the Magistrate while making an inquiry to elicit all facts not merely with a view to protect the interests of an absent accused but also with a view to bring to book a person or persons against whom grave allegations are made. Whether the complaint is frivolous or not has, at that stage, necessarily to be determined on the basis of the material placed before him by the complainant. Whatever defence the accused may have can only be inquired into at the trial.

6. Their Lordships further observed that since the object of the inquiry u/s 202 Cr.P.C. is to ascertain whether the allegations made in the complaint are intrinsically true, the Magistrate has to satisfy himself that there is sufficient grounds for proceeding. In order to come to this conclusion he is entitled to consider the evidence taken by him or recorded in an inquiry u/s 202 Cr.P.C. and it was not open to him to consider the statements recorded during investigation by the police. For this the Magistrate making the inquiry has to rely only on the intrinsic quality of statements made before him at the inquiry which would only mean the complaint itself, the statement on oath made by the complainant and the statements made before him by persons examined at the instance of the complainant. Bona fide of the minor discrepancies in the statement of the witnesses examined at the inquiry are not relevant at this stage. In view of the categorical observations of the Hon'ble Apex Court there is no room for interference with the impugned order taking cognizance. Accordingly I find no merit in this application which is dismissed.