

(1980) 02 PAT CK 0008

In the Patna High Court

Case No : Criminal Miscellaneous No. 4438 of 1979

Kanhaiya Ram

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-02-1980

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197
Penal Code, 1860 (IPC) — Section 147, 325, 379, 448

Citation : (1980) PLJR 460

Hon'ble Judges : S. Shamsul Hasan, J

Bench : Single Bench

Advocate : Uma Shanker Singh, for the Appellant; Kamta Prasad Gupta for the State, Umesh Prasad Singh and Ajay Bihari Sinha, for the Respondent

Final Decision : Allowed

Judgement

S. Shamsul Hasan, J.—This application is directed against the order of the Sessions Judge of Rohtas at Sasaram dated the 11th September, 1979, by which he has set aside an order of cognizance dated the 19th September, 1978 and remanded the case to the file of Shri B. Pandey for further enquiry in the light of the observations made in that case. A complaint was filed on the 14th July 1978 by the petitioner before the Chief Judicial Magistrate Sasaram, making various allegations against opposite party nos. 2 to 9. The complainant was examined on solemn affirmation, followed by the examination of the witnesses, where-after the Magistrate took cognizance under Sections 147, 325, 379 and 448 of the Indian Penal Code and transferred the case to Shri B. Pandey Judicial Magistrate, for trial. That order was set aside by the Sessions Judge, as stated above.

2. Learned counsel for the petitioner has submitted that the learned Sessions Judge should not have set aside the order on the ground of absence of sanction and further he could not direct a transferee court to hold further enquiry because this would amount to interfering with the discretion of the Magistrate concerned. Learned counsel for the respondents submitted that the officer concerned in

course of the round duty came to know that the complainant and others had assembled for the purpose of committing dacoity and it was in effecting that arrest that he had to face even gunshot fire from the side of the complainant and he has done nothing that can be said to be an offence and this case has been cooked up to blackmail the opposite party.

3. At this stage, the order of the Sessions Judge is palpably wrong on the question of sanction. The law on this point has been well settled by the various decisions of the Supreme Court including the decision in the case of (1) Bhagwan Prasad Srivastava Vs. N.P. Mishra, , in which it has been held as follows.

5. The principle embodied in this section seems to be well understood; the difficulty normally lies in its application to the facts of a given case. The question whether a particular act is done by a public servant in the discharge of his official duty is substantially one of fact to be determined on the circumstances of each case. In the present case the alleged offence consists of the use of defamatory and abusive words and of getting the complainant forcibly turned out of the operation theatre by the cook. There is nothing on the record to show that this was a part of the official duty of the appellant as Civil Surgeon or that it was so directly connected with the performance of his official duty that without so acting he could not have properly discharged it.

6. As suggested by this Court in (2) Prabhakar V. Sinari Vs. Shanker Anant Verlekar, , it would be open to the appellant to place material on the record during the course of the trial for showing what his duty as Civil Surgeon was and also that the impugned acts were interrelated with his official duty so as to attract the protection afforded by Section 197, Cr.P.C. We do not find any material on the existing record suggesting that the impugned acts were done by the appellant in the discharge of his official duty or that they are directly connected with it. This appeal accordingly must fall and is dismissed.

It will be open, therefore, to the opposite party to show at the time of the trial that their action was such for which sanction was necessary. Once that is established, the opposite party will be entitled to acquittal on that ground alone. On the prosecution allegation. In an application for quashing it is difficult to say whether sanction is required or not. It is only in a case where there is no doubt whatsoever that the person concerned was acting only in his official capacity that the matter can be looked into at the very initial stage.

4. The second point of the petitioner has also substance. It was for the transferee court to decide whether he was satisfied with the materials before him; or any further enquiry was necessary. It was not open to the Sessions Judge to remand the matter for this purpose thereby interfering with the discretion of the Magistrate. In the result, the order dated the 11th September, 1979 is set aside and the matter is sent back to the transferee Magistrate for disposal in accordance with law. The application is, accordingly allowed.