
(2015) 02 PAT CK 0112
In the Patna High Court
Case No : Criminal Misc. No. 37927 of 2012

Kavita Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 26-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)
Penal Code, 1860 (IPC) — Section 323, 34, 379, 384, 504
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 10, 3, 4, 5, 6

Citation : (2015) 3 PLJR 274

Hon'ble Judges : Dharnidhar Jha, J

Bench : Single Bench

Advocate : Praveen Kumar, for the Appellant; Ajay Kumar Jha, Advocates for the Respondent

Final Decision : Allowed

Judgement

Dharnidhar Jha, J—Heard. The present petition seeks the quashing of the prosecution initiated against petitioner Kavita Kumari and others by passing an order of summoning dated 17.8.2011 in Complaint Case No. C-189 of 2010 Parwati Devi and others by the learned Judicial Magistrate, 1st Class, Banka.

2. Initially a complaint petition was filed before the above noted court. A copy of the same was transmitted to the concerned police station for investigation under Section 156(3) Cr.P.C., The police station submitted final report indicating implication of petitioner false. The complaint petition was taken up for hearing. The complainant was examined along with her three witnesses and after perusing the contents of the complaint petition, the statement of the complainant on solemn affirmation and those of the three witnesses, the learned Judicial Magistrate, 1st Class, Banka passed the impugned order summoning the accused persons including the petitioner. While passing the order of summoning, the learned Magistrate was of the view that offence under Section 384 Indian Penal Code and those under Sections 3/4/5/6 and 10 of the Scheduled Castes and

Scheduled Tribes (Prevention of Atrocities) Act were not made out on facts of the case and that only offences under Sections 323, 379 and 504/34 appeared by the accused persons.

3. The complainant Parwati Devi stated that she went into the Anganwari Sevika Kendra for getting the vouchers passed by the present petitioner, the Child Development Project Officer, Banka where other accused persons were also sitting. The complainant was accompanied by some persons, both male and female, of her village and when she entered along with her companions into the Chambers of the present petitioner, she found the accused persons taking some refreshment and tea. As soon as the complainant was seen by the present petitioner she rebuked her very badly and threatened her to retrench her from job and further directed to hand over the charges of her office and then assaulted her with other accused persons by calling her by her caste name and asked her to pay up an extortion money of Rs. 4,500/-. It was, lastly, alleged that the complainant was pushed out of the Chambers and while so being pushed Rs. 200/- was also-taken away from her purse.

4. The complainant supported her case on solemn affirmation but during the Court question she admitted that she had been removed from employment as Anganwari Sewika as back as in February, 2008; the complaint petition having been filed on 10.7.2008, i.e., after five months of her dismissal from service. She further admitted her dismissal as complaints were received regarding her indulgence in mal-practices and that she did not complain to any one as regards her dismissal or removal from her job. She further admitted in answer to the last question put to her by the Court, that if she was taken back in employment, she would not have any complains.

5. As regards the three witnesses, P.W. 1 happened to be the husband of the complainant, but that does not appear of any importance what was stated by him in response to a question by the court below was that he had implicated the accused persons only because his wife asked him to do so. P.W. 2 Madho Das while supporting the charges was also put certain questions by the court below and it appears from his answers that he was never inside the room where the incident had allegedly taken place so as to witness it. He admitted that he did not enter the room and that he was outside and that, the purse was not snatched from the complainant. Likewise, P.W. 3 also stated that it was for the first time that he had gone to the Anganwari Kendra and he had never the occasion of entering inside the room and whatever he saw, he saw from the outside.

6. On the analysis of the statements the complainant and the witnesses, what appears is that the complainant had filed the case quite some times-after she had been removed from her job. As such, her allegations are inherently improbable as she had no occasion to go to the present petitioner for job related matter. What further emerges from that statement of the complaint to a Court question was that the complaint petition had probably been filed only to malign

the accused persons by dragging them to court by fastening completely false and baseless allegations. The allegations are false and baseless emerges also from the fact that who could not have seen the occurrence were coming in support of the charges so much so that one of them, i.e., the husband of the complainant was admitting that it was only on account of her wives [sic--his wife's?) desire that he was there to make his statement during enquiry so as to naming the accused persons.

7. Thus, what appears to me is that the whole prosecution was launched on account of some mala fide. The patent improbability has already been pointed out by noting that the complainant did not have any real cause to approach the accused persons in connection with her job related matters in the month of July, 2008 on account of the fact that she had been removed from her job in February, 2008 itself. The absurdity in the prosecution case was that none of the witnesses had witnessed any incident and they had probably deposed to the fact without having seen the occurrence.

8. After considering the statement of the complainant on solemn affirmation, the statements of witnesses examined by her and the probabilities which emerged from the materials placed on record, this Court is of the opinion that the very summoning of the petitioner for committing offences under Sections 323, 379 and 504/34 Indian Penal Code was outright an abuse of the process of the Court. The prosecution was launched so as to misusing the forum of justice by foisting a mala fide prosecution upon the accused. Petition succeeds. The order taking cognizance dated 17.8.2011 passed by CJM, Banka in Complaint Case No. C-189 of 2010 is hereby quashed.