
(2001) 09 PAT CK 0004
In the Patna High Court
Case No : Cr. Misc. No. 13308 of 1997

Kedar Singh @ Kedar Nath Singh and Others

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 10-09-2001

Acts Referred:

Citation : (2001) 09 PAT CK 0004

Final Decision : Dismissed

Judgement

Prabhat Kumar Sinha, J.—This is a petition u/s 482 of the Code of Criminal Procedure (hereinafter referred to as "the Code") preferred by Kedar Singh and six others, accused in Complaint Case No. 1688 of 1997 corresponding to Trial Case No. 805 of 1997, pending in the Court of a Judicial Magistrate, first class at Gopalganj, for quashing of the impugned order dated 4.7.1997 recorded in that case by which the learned Magistrate had ordered for issuance of process against the Petitioners having found prima-facie evidence against the accused/Petitioners for having committed offence under Sections 465 and 120B of the Indian Penal Code.

2. The facts in brief are that one Yogendra Singh filed the aforesaid complaint (Annexure-1) against the Petitioners first stating therein the family tree. As per allegations Pukaro Kuer had inherited the property of her father, Rajnandan Singh, whereas accused Nos. 1 to 5 were Kedar Singh, his son and sons of Paras Nath Singh, another "Gotia". It was alleged that Pukaro Kuer was illiterate and used to be ill therefore she wanted to sell her property at which accused/Petitioners No. 1 to 5 agreed to purchase her three bighas land for a consideration of rupees fifty thousands and they brought Pukaro Kuer to the Registry Office on 3.9.1996. They got a document prepared and asked Pukaro Kuer to put her left thumb impression on the same assuring her that the money would be paid before the Registrar. They filed the document in the Court of Registrar but after some time they informed Pukaro Kuer that since the money could not be brought from the Bank, they would come other day for getting the

registration done. Further allegation is that thereafter Pukaro Kuer asked them to get the document registered by paying money but they avoided to do so and thereafter rumour floated that the document had already been registered. From Registry office the complainant came to know that the accused had purchased document for "Bakshishnama" over which the other two accused/Petitioners signed as witnesses and without knowledge of Pukaro Kuer, on 14.11.1996 they got another lady presented before Sub-Registrar, Gopalganj, and also got the document registered. Further allegation is that thereafter Pukaro Kuer had sold the lands to the sons of the complainant and another "pattidar", Kailash.

3. The argument of the learned Counsel was, firstly, that the offence apparently was committed punishable u/s 82 of the Registration Act, 1908 for which, u/s 83 of the Registration Act, the prosecution could have been commenced only by, or with permission of the Registrar General, the Registrar or Sub-Registrar, in whose territories, district or sub-district, the offence had been committed. Learned Counsel submitted that even the learned lower Court had noted this point in the impugned order wherein the learned lower Court observed that no material was brought on the record as to whether or not the complainant or the person offended had intimated the competent authority about the offence, punishable u/s 82 of the Registration Act. However, the learned lower Court also found the case to be prima facie established under Sections 465 and 120B of the Penal Code, hence summoned the accused persons to face the trial.

4. The second argument of the learned Counsel was that from the complaint as well from the evidence brought on the record in course of enquiry no nexus of the Petitioners with the alleged offence could be established, hence on that ground also this application was fit to be allowed. In other words, the argument of the learned Counsel was that complaint petition and the materials on record did not disclose commission of any offence by the Petitioners.

5. In so far as first argument of the learned Counsel is concerned, Section 83 of the Registration Act runs as follows:

83. Registering Officer may commence prosecutions.- (1) A prosecution for any offence under this Act coming to the knowledge of a Registering Officer in his official capacity may be commenced by or with the permission of the Inspector General, the Registrar or Sub-Registrar, in whose territories, district or sub-district, as the case may be, the offence has been committed.

(2) Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a Magistrate of the second class.

6. This provision mentions that a prosecution for any offence under the Act coming to the knowledge of the Registering Officer in his official capacity may be commenced (emphasis added) by and with the permission of the authorities mentioned therein. The use of word "may" would show that this provision is only enabling provision which does not take out the right of a private person to file a case for an offence punishable u/s 82 of the Registration Act. Obviously, this

provision does not prohibit filing of case even for the offences punishable u/s 82 of the Registration Act by a private person though the authority mentioned in Section 83 of the Registration Act also may commence the proceeding if the commission of offence comes to his knowledge. Similar view has been taken by the Supreme Court in the case of Dharmadeo Rai v. Ram Nagina Rai 1972 P.L.J.R. (SC) 502.

7. It is, therefore, apparent that a complaint alleging commission of offence not only under the provisions of Indian Penal Code but also u/s 82 of the Registration Act could have been brought by a private person.

8. Learned Counsel for the Petitioners also placed reliance upon another decision of the Apex Court in the case of Government of Andhra Pradesh Vs. Thummala Krishna Rao and Another, From reading of that decision it is clear that the facts and circumstances of the two cases are different.

9. In so far as the second argument of the learned Counsel is concerned, the learned Additional Public Prosecutor submitted that the averments in the complaint did reveal the ingredients of commission of offence as claimed, which was also supported by witnesses including the handwriting expert. Learned Counsel for the opposite party No. 2 also argued on the same line pointing out the averments in the complaint petition and evidence as coming in the statements of witnesses examined in course of enquiry u/s 202 of the Code.

10. The averments in the complaint petition allege as to how the Petitioners had allegedly got a "Bakshishnama" registered by Pukaro Kuer also getting her impersonated by another, without paying her any consideration amount. Learned Counsel for opposite party No. 2, the complainant, has pointed out that the complainant in his statement on solemn affirmation had supported that and in course of enquiry the complainant had examined as many as four witnesses including Pukaro Kuer who by and large supported the allegations. It was also submitted that hand-writing and finger print expert was also examined as a witness of the complainant in course of enquiry, who found that the thumb impressions on documents such as on "Bakshishnama" and upon the register maintained in the office of the Sub-Registrar, Gopalganj did not tally with the admitted thumb impression of Pukaro Kuer.

11. An accused can be summoned after enquiry u/s 202 of the Code if the learned lower Court finds that there are materials on record to justify proceeding further in the matter. At the initial stage prosecution can be scuttled only under certain circumstances such as there being a legal defect, for example, want of sanction of competent authority, or the complaint and the materials on record not disclosing commission of any offence or if the allegations were so absurd that no reasonable person can place reliance on those. If there are allegations in the complaint satisfying the main ingredients of the offence allegedly committed by accused along with other supporting materials, the prosecution should not be quashed at initial stage by this Court exercising powers u/s 482 of the Code.

12. In view of the aforesaid, I find no merit in this application, which is dismissed.

13. However, it is made clear that the findings and observations made in this order are solely for the purpose of deciding the issue in hand which would not have any bearing on the trial.