

(1999) 07 PAT CK 0109

In the Patna High Court

Case No : Criminal Miscellaneous No. 13009 of 1993

Lalji Prasad Rai

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 27-07-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 109, 147, 149, 307, 323

Citation : (1999) 3 BLJR 1851 : (2000) 1 PLJR 19

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Katriar, J.—This is an application u/s 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) for quashing the impugned order of cognizance dated 20-5-93, passed by the learned Additional Chief Judicial Magistrate, Patna, in Digha P.S. case No. 45/93 whereby cognizance of the alleged offences has been taken under Sections 147 149 307 342 323 109 504, I.P.C., and the accused-persons have been summoned to stand their trial.

2. One Suresh Singh, the Personnel Manager of Data India Limited Digha Ghat Patna lodged a First Information Report with Digha police station, which appears to be in his official capacity, for and on behalf of Bata India Limited, which owns a factory in Digha Area of Patna. According to the allegations, Mr. Rizzo, Senior Vice-President, Bata International Toronto, Canada, Mr. D.M. Merchant, Regional Co-ordinator of the Region, and Mr. G.C. Bahuguna, Executive Director, Bata India Ltd., were on inspection visit of the Digha Factory on 24-2-93 at about 11.15 a.m. During the course of inspection within the factory precincts, they were physically obstructed by several employees belonging to "Bata Kamgar Union", and were physically manhandled and assaulted by them. They also hurled Chappals, wooden lasts, tins, and other objects on the aforesaid three visiting functionaries of the company. The employees behaved in a riotous and

violent manner and forced the aforesaid visitors to enter the Unit Manager's office in the factory and, at the time the F.I.R. was lodged, were still wrongfully confined in this office without essential food and water, and were obstructed from going out of the above office to their other official engagements in Patna.

2.1. On these allegations, Digha P.S. Case No. 45/93, dated 24-2-93," under Sections 147 149 307 342 323 109 and 504, I.P.C. against unknown persons was registered. A copy of the F.I.R. is Annexure-1 to the quashing petition.

3. According to the averments made in the quashing petition, the police immediately arrived, and arrested 8 workmen including the petitioner herein, who were released on bail on 26-2-93. The police investigated the allegation made in the FIR and submitted charge-sheet No. 32/93, dated 16-5-93, against eight accused-persons. The learned ACJM, by his order dated 20-5-93, took cognizance of the alleged offences under Sections 147 149 307 342 323 109 and 504, I.P.C., and summoned the accused-persons shown in column Nos. 3 and 4 of the charge-sheet including the petitioner herein the stand their trial. By the same order, he has transferred the case to the file of Sri Sunil Kumar, Judicial Magistrate, 1st class, Patna, for trial.

4. While assailing the validity of the impugned order of cognizance, learned Counsel for the petitioner submitted that FIR does not name the accused-persons. It does not attribute or apportion the criminal acts, nor does it state the Exact number of persons who were involved in the alleged occurrence, nor does it state the manner of assault. In other words, the allegations in the FIR are vague. I am unable to accede to the contention. It is manifest from a plain reading of the FIR that the same was lodged on the spur of the moment, even before the chain of events were complete, and while the aforesaid functionaries were forcibly confined in the office. The following allegations in the FIR is relevant in the present context:

Therefore, the above employees behaved in a riotous and violent manner and forced the above visitors to enter the Unit Manager's office in our factory. The above dignitaries are still being kept wrongfully confined in this office without essential food and water and obstructed from going out of the above office to their other official engagement in Patna.

In that situation of panic and uncertainty, a better first information report, could not have been lodged with the police. Realising the gravity of situation, the police seems to have rushed to the place of occurrence promptly and had arrested the accused-persons including the petitioner. It is well settled law that bare information to the police can start criminal action against the offenders and it becomes the duty of police to commence investigation. The contention of the petitioner is, therefore, rejected.

5. Learned Counsel for the petitioner next submitted that the informant, G.C. Bahuguna, Badrul Hasan, and Kanth have stated before the police that the petitioner had merely presented a memorandum before the aforesaid visiting

officers and left. He, therefore, challenged the formation of opinion on the part of the police to charge-sheet the petitioner.

I am afraid, it is not possible to examine the unsubstantiated submission of the learned Counsel for the petitioner. During the cause of arguments, he orally adverted to certain paragraphs of the case diary which is not before me, and seems to completely overlook a conjoint reading of the entire case diary.

6. It was next submitted on behalf of the petitioner that the informant had sent its supplementary information dated 3-3-93 to Digha police station about the said occurrence wherein they did not name the accused-persons including the petitioner once again. I am unable to accept this submission for two reasons, Firstly, it is not possible to consider the unsubstantiated statement of the petitioner. The aforesaid supplementary application dated 3-3-93 is not before me. Secondly, once the information is lodged with the police station, it is for the police to investigate the allegations and act in accordance with law which includes identification of the offenders. The contention of the petitioner is rejected.

7. It was next submitted that the specific provisions of the I.P.C. with respect to the alleged violations are mentioned at three places in paragraph 45 of the case diary which do not include Section 307, I.P.C., but the police with oblique motive have charge-sheeted the accused-persons u/s 307, I.P.C, also. This once again is an unsubstantiated statement, and also appears to me to overlook an over-all view of the entire case diary. It is not possible to entertain the contention on the basis of mere oral submission of the Counsel and is rejected.

8. He lastly submitted that the impugned order of cognizance on the very face of it appears to be the result of non-application of the mind. He submitted that the impugned order states that the Magistrate had perused the case diary which is on the face of it incorrect. Had he considered para 45 of the case diary, he would not have taken cognizance u/s 307, I.P.C. He next submitted that the impugned order does not state that the learned A.C.J.M, had perused the F.I.R. also. The contention is hereby rejected, inter alia for the reason that it is not possible to make any comment without perusal of para 45 of the case diary. It also appears to me to overlook an over-all view of the case diary. As to the question of non-consideration of the F.I.R., it is elementary to state that the case diary begins with a reproduction of the F.I.R. Learned Counsel also relied on a Single Judge judgment of this Court reported in 1998 (3) B.L.J. 357, Paras Nath Singh v. The State of Bihar. In my view, that judgment was rendered in the back-ground of an entirely different factual matrix. It is manifest from a close reading of the entire judgment that the learned Single Judge dealing with that case had felt dissatisfied over the perfunctory investigation conducted by the police overlooking a vital aspect of the matter which, if considered, may have made a difference in the conclusion of investigation. The judgment was rendered in the background of the following submission recorded in paragraph 3 of the judgment:

...The petitioner's contention is that the impugned order was passed without ascertaining the fact that the petitioner retired from the said partnership long back in the year 1980 and all the shares, liabilities and assets of the petitioner was accepted by the other partner, namely, Bipin Kumar Singh who have given declaration to the Branch Manager, Bihar State Financial Corporation, to that effect.

The contention is hereby rejected.

9. In the result, this quashing petition fails. The impugned order of cognizance dated 20-5-93, passed by the learned A.C.J.M., Patna, in Digha P.S. Case No. 45 of 1993, is hereby upheld. This being an old case, the trial Court is directed to conclude the trial within a period of six months without fail.