

(2007) 09 PAT CK 0017

In the Patna High Court

Case No : Criminal Miscellaneous No. 33050 of 2006

Leeladhar Jha and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 17-09-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 482
Penal Code, 1860 (IPC) — Section 323, 379, 380

Citation : (2009) 1 PLJR 49

Hon'ble Judges : Mihir Kumar Jha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mihir Kumar Jha, J.—Heard Counsel for the petitioners and the State. This court by an order, dated 10.11.2006 had issued notice to the Opposite Party No. 2. Subsequently, the Opposite Party No. 2 had also appeared through a Counsel and the vakalatnama of the Opposite Party No. 2 was also accepted by an order dated 21.5.2007. Thereafter, on two occasions the Opposite Party No. 2 sought adjournment to file counter affidavit as is reflected from the orders, dated 13.8.2007 and 29.8.2007. Today however when this case has been called out, no one has appeared for the Opposite Party No. 2 nor any counter affidavit has been filed on his behalf. In such a situation, this Court has no other option but to decide the case in the absence of Opposite Party No. 2.

2. The prayer in this application is to quash the entire proceeding including the order taking cognizance dated 7.10.2005 in Complaint Case No. C-1198 of 2005 under Sections 323, 379 and 380 of the Indian Penal Code. The complaint case was filed on 1st of June, 2005 alleging therein that the petitioners, ten in numbers, had indiscriminately assaulted the complainant and his wife merely because the wife of the opposite party No. 2 had asked to return the money which was allegedly given to the petitioner No. 1 by the wife of the Opposite Party No. 2 for allotting the house under "Indira Awas Yojana". It has been

stated that such transaction by way of giving illegal gratification by the wife of Opposite Party No. 2 had taken place some six months earlier of the date of lodging of the complaint case and only when such house under "Indira Awas Yojana" was not allotted to the Opposite Party No. 2 and his wife, a demand was made to return the bribe amount of Rs. 2,000/-, the Opposite Party No. 2 by way of vengeance and retaliation had maliciously filed the present complaint case against the petitioners. From the records, it also transpires that the filing of the complaint was followed by an enquiry u/s 202 of the Code of Criminal Procedure wherein the complainant-Opposite Party No. 2 had examined three witnesses, namely, Rabindra Sharma, Mehar Sharma and Mahabir Sharma and all of them have only stated that the accused persons had entered into the house of the complainant-Opposite Party No. 2 and had assaulted both the complainant and his wife.

3. Normally in a case like this where the allegations, on the first look are supported by the statement of the witnesses u/s 202 of the Code of Criminal Procedure making out a prima facie case, this Court in exercise of powers u/s 482 of the Code of Criminal Procedure is always reluctant in interfering with the order taking cognizance. However, keeping in view the special feature of this case which reveal that it is out and out false and malicious prosecution, this Court had issued notice to the Opposite Party No. 2 to only explain as to whether it is a fact that there was an encroachment proceedings at the instance of the petitioner No. 1, the Mukhiya of the Village Gram Panchayat, in which the complainant-Opposite Party No. 2 had been facing eviction proceeding and demolition of the unauthorised construction made by him. From the admitted records not controverted by any counter affidavit of the Opposite Party No. 2, this much is clear that the petitioner No. 1, on receipt of a public petition, dated 15.4.2005 signed by a large number of villagers as is apparent from Annexure-4, had reported the matter to the Collector of the district with regard to the removal of encroachment on a public road allegedly made by the Opposite Party No. 2. It is also apparent from the notices issued by the Authority under the Public Land Encroachment Act to the Opposite Party No. 2 that it was at the instance of the petitioner No. 1 that such encroachment proceedings had been initiated in which the date fixed was 30.5.2005 by which period the Opposite Party No. 2 was directed to vacate the land and remove the unauthorized construction which he had made over the public road. It is thus clear from Annexure-6, the notice dated 24.5.2005 issued by the Anchal Adhikari, Bhargama, the Collector under the Public Land Encroachment Act that an encroachment proceeding was initiated against the Opposite Party No. 2 at the instance of the petitioner No. 1, the Mukhiya of the Village Gram Panchayat and it is only when such notices were already issued on 24.5.2005 seeking demolition of the house of the Opposite Party No. 2 that the present complaint case came to be filed on 1.6.2005. It is thus absolutely clear that the present complaint was a malicious complaint filed only with a view to demoralize and humiliate the Mukhiya-petitioner No. 1.

4. Apart from the fact that the aforementioned complaint filed by the Opposite

Party No. 2 is clearly malicious on fact even the attending circumstances are also heavily loaded against him. In this regard one can take judicial notice of the fact that the money was allegedly given some six months earlier by the wife of the complainant to the petitioner No. 1 as stated in the complaint petition for doing some favour under "Indira Awas Yojana" to the Opposite Party No. 2 and his wife but for all these six months even when such favour was not bestowed in favour of the Opposite Party No. 2 and his wife by the petitioner No. 1, no murmuring and even not a complaint was made by the Opposite Party No. 2 or his wife to any one and in fact it was only after the encroachment proceedings had been launched and initiated seeking removal of the unauthorized construction made by the Opposite Party No. 2 on a public road that the present complaint as noted above came to be filed. It is thus on these admitted facts not at all controverted by the Opposite Party No. 2, this Court is inclined to hold that the allegations are inherently improbable and in fact have been only invented for the purposes of making out a false criminal case to harass the Mukhiya, the petitioner No. 1 and his family members and companions, petitioners 2 to 10. In that view of the matter, this Court does not have any other option but to reach at the conclusion that it is out and out a false case and has been filed only with a view to take revenge from the petitioner No. 1 for launching the encroachment proceedings against the Opposite Party No. 2.

5. Taking all the aforementioned facts as well the special features of this case and the accompanying circumstances into consideration and the nature of the allegations, this Court finds substance in the submissions made by the Counsel for the petitioners. In the result, the entire proceedings including the impugned order taking cognizance dated 7.10.2005 in Complaint Case No. C-1198 of 2005 is hereby quashed. In the result, this application is allowed.