
(2010) 05 PAT CK 0072

In the Patna High Court

Case No : Criminal Miscellaneous No. 30051 of 1999

Manjeet Kumar Singh

APPELLANT

Vs

The State of Bihar and The Sub-divisional Magistrate

RESPONDENT

Date of Decision : 14-05-2010

Acts Referred:

Citation : (2010) 05 PAT CK 0072

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—The sole petitioner, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, has prayed for quashing of order dated 23.9.1999 passed by the Chief Judicial Magistrate, Gopalganj. By the said order, the learned Magistrate has taken cognizance of offence u/s 188 of the Indian Penal Code in G. Case No. 17 of 1998, T.R. No. 482 of 1998.

2. Short fact of the case is that opposite party No. 2 i.e. Sub Divisional Magistrate, Gopalganj filed a complaint to the court of Chief Judicial Magistrate disclosing therein that with a view to maintain peace in the entire Sub Division of Gopalganj in between 24.7.1999 and 16.8.1999, a proceeding u/s 144 of the Code of Criminal Procedure was promulgated. During the said period i.e. election period, entire publication was prohibited. Meaning thereby that- during the said period, public meeting, procession etc. without obtaining permission from the competent authority was restrained. It was disclosed that in violation of the promulgated proceeding u/s 144 of the Code of Criminal Procedure, the petitioner on the date and time of occurrence i.e. on 28.8.1999 at 5.30 P.M. in the campus of a saw mill of Shri Gopal Prasad in Barauli Market, the petitioner held a public meeting in favour of one of the candidates of 4 Gopalganj Parliamentary Constituency even though he was restrained for conducting the said meeting. In the complaint, there was assertion that meeting was presided by the candidate of 4 Gopalganj Parliamentary Constituency. It was alleged that the petitioner by the aforesaid Act had violated the provision of Section 144 of the Code of Criminal Procedure. It has also been disclosed in the complaint

petition that show cause notice was issued to this petitioner and since the Sub Divisional Magistrate, the opposite party No. 2 was not satisfied with the show cause reply of the petitioner, the present complaint was filed. After filing of the complaint petition, the learned Chief Judicial Magistrate, by the impugned order, took cognizance of the offence since the complaint was filed by a public servant i.e. opposite party No. 2.

3. Aggrieved with the order of cognizance dated 23.9.1999, the petitioner approached this Court by filing the present petition, which was admitted on 21.2.2000 and while admitting, this Court had directed that pending dispose L of this application, further proceeding in G. Case No. 17 of 1999, T.R. No. 482 of 1998 before the court of Chief Judicial Magistrate, Gopalganj shall remain stayed and order of stay is still continuing.

4. Shri Arun Kumar Singh, learned Counsel appearing on behalf of the petitioner, while challenging the impugned order of cognizance, submits that neither the complaint petition contain any assertion as to whether this petitioner has violated the prohibitory order, which was promulgated u/s 144 of the Code of Criminal Procedure. He further submits that in the complaint petition, there is no averment as to whether the petitioner by such disobedience has caused any obstruction annoyance or injury to any person lawfully employed at the relevant time. Learned Counsel for the petitioner has also referred to Annexure-2 to the petition, which is typed copy of letter dated 28.9.1999 issued by the Block Development Officer and addressed to Sub Divisional Officer, Gopalganj. He submits that though the complaint petition states that the opposite party No. 2 i.e. Sub Divisional Officer, Gopalganj had received a report from the Block Development Officer, Barauli, which was sufficient to indicate commission of alleged offence by this petitioner, the report does not even whisper anything against the petitioner. He submits that in the said report even the name of this petitioner was not mentioned and, accordingly, learned Counsel for the petitioner has submitted that without any cogent material as well as without any specific assertion as mentioned above, the said complaint was filed. Learned Counsel for the petitioner submits that the learned Chief Judicial Magistrate in a mechanical manner, without applying mind, has passed the impugned order of cognizance. Learned Counsel for the petitioner has relied upon a judgment of Madras High Court reported in AIR 1959 Mad 89 Chinnamuthu Ambalam v. Jagannatha Chariar. Learned Counsel has specifically referred to paragraph-9 of the said judgment. It is appropriate to quote paragraph-9 of the judgment, which is as follows:

9. The ingredients of Section 188 I.P.C. require:

1. That there must be an order promulgated by a public servant.
2. That the public servant must have been lawfully empowered to promulgate such order.
3. That a person having knowledge of such order and directed by such order (a)

to abstain from a certain act, or (b) to take certain order with certain property in his possession of under his management, has disobeyed such direction.

4. That such disobedience causes or tends to cause (i) obstruction, annoyance, or injury, or risk of it, to any person lawfully employed, or (ii) danger to human life, health or safety, or (iii) a riot or affray:....

5. On the basis of law laid down in Chinnamuthu Ambalam case (Supra), learned Counsel for the petitioner submits that for prosecuting a person for an offence u/s 138 of the Code of Criminal Procedure, it is essentially required to mention in the complaint petition that such disobedience caused or tends to cause obstruction annoyance or injury or risk to it to any person lawfully employed. He submits that in the whole complaint petition except the word that petitioner had violated the proceeding of Section 144 of the Code of Criminal Procedure, there is no assertion as indicated above.

6. Learned Counsel for the petitioner has also referred to a judgment of this Court reported in Ganga Sah and Another Vs. The State of Bihar and Another, Learned Counsel has emphatically relied on paragraph-5 of the said judgment, which makes it clear that for prosecuting a person for offence u/s 188 of the Code of Criminal Procedure, complaint petition must disclose disobedience which was sufficient to cause or tends to cause obstruction, annoyance or injury or risk of it to any person lawfully employed and in absence of such averment, an order of cognizance will be considered as void.

7. Learned Counsel for the petitioner has further argued that even for the time being, if it is assumed, though it is disputed, that the offence u/s 188 of the Code of Criminal Procedure was committed by the petitioner for such offence, maximum punishment prescribed is one month simple imprisonment or a fine of Rs. 200/-. He submits that the said occurrence was said to commit in the year 1999 and one way or the other, matter remained pending for more than 11 years and as such after expiry of such a long time, it would not be advisable to direct the petitioner to again appear before the concerned court and face a trial for such trivial offence. On the aforesaid grounds, learned Counsel for the petitioner has prayed for quashing of order of cognizance dated 23.9.1999.

8. Smt. Indu Bala Pandey, learned Additional Public Prosecutor appearing on behalf of the State, has opposed the prayer of the petitioner. She submits that for maintaining law and order, it is required to direct the petitioner to face the trial pursuant to the order of cognizance and, accordingly, she has prayed to reject the complaint petition.

9. Besides hearing, learned Counsel for the parties, I have also examined the materials available on record. Of course, at the time of hearing of a petition u/s 482 of the Code of Criminal Procedure, the court is not required to examine documents, which has not been proved in accordance with law, but in peculiar facts and circumstances of the present case, it is necessary to have a glance on such documents. First of all, the contents of the complaint petition does not

indicate that the alleged disobedience of the petitioner had caused any obstruction, annoyance or injury or risk of it to any person lawfully employed, which is the basic ingredients for prosecution u/s 188 of the Code of Criminal Procedure as has been held long back in the year 1959 in the case of Chinnamuthu Ambalam's case (Supra), which has been reiterated by this Court also. Besides this, in the complaint petition an assertion was made that the complainant i.e. Sub Divisional Officer of Gopalganj has received an information from the Block Development Officer, Barauli regarding the commission of the offence as alleged in the complaint petition by this petitioner. In the present case, despite appearance of opposite party No. 2 through the State counsel, no affidavit was filed controverting the stand of the petitioner particularly controverting the contents in Annexure-2 to the petition. Of course, in a criminal case, there is no requirement to controvert a statement by filing counter affidavit, but in the facts and circumstances of the present case, at least some indication should have been given by the opposite party No. 2 that Annexure-2 was not true or correct. However, in this case earlier as per order of this Court, lower court record was received. On perusal of the lower court record, it appears that in the report of Block Development Officer, it was indicated that workers of particular parties had disobeyed the direction. In said report, petitioner's name was not mentioned. Accordingly, it appears that without any specific material, complaint was filed against the petitioner and as such order of cognizance is not sustainable in the eye of law. Besides this, keeping in view the fact that the case remained pending for such a long time i.e. for more than 11 years. At this stage, it would not be appropriate to direct the petitioner to appear before the court to face trial on an accusation, which is prima facie, not sustainable in the eye of law.

10. In view of the facts and circumstances as indicated above, I am of the opinion that with a view to prevent the abuse of the process of law as well as for the ends of justice, it is necessary to exercise the inherent jurisdiction in favour of the petitioner even at this initial stage of cognizance and, accordingly, order of cognizance dated 23.9.1999 is hereby set aside and petition stands allowed.